The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 15, 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 8:02 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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

8:00 P.M. PETER J. & MARY BETH CADDIGAN, VC 94-S-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.4 ft. from rear lot line. Located at 8503 Heron Pond Ln. on approx. 11,064 sq. ft. of land zoned PDH-1. Springfield District. Tax Map 97-3 ((8)) 9.

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

Susan Langdon, Staff Coordinator, presented the staff report and said this 11,064 square foot property is located on Heron Pond Lane in the Crosspointe Subdivision. The subject property and lots to the south, east and west are zoned PDH-1 and are developed with single family detached dwellings. The lot to the north is homeowner association open space. The variance request resulted from the applicants' proposal to construct an addition to be located 8.4 feet from the rear lot line. A minimum rear yard of 25.0 feet is required by the Zoning Ordinance on a PDH-1 zoned lot. Accordingly, the applicant was requesting a variance of 16.6 feet to the minimum rear yard requirement.

Peter Caddigan, 8503 Heron Pond Lane, Fairfax Station, Virginia, introduced his wife, Mary Beth, to the BZA and said they would like to construct a sunroom addition. He agreed with the staff report and added that he would only address comments from the Neuendorf family, a neighbor who was opposed to the request. Mr. Caddigan said the proposed addition will be constructed on top of an already existing deck and will not extend any deeper or be any wider than the deck. The proposed location is exactly where the builder would have constructed the sunroom had they purchased the option when they bought the house. He said the builder, once they had selected their lot, engineered the placement of the house on the lot taking the best advantage of its difficult shape and relatively small size. Mr. Caddigan said the County approved the location of the house based on whatever transaction took place between the County and the builder, a process of which he has no knowledge. He said the only discussion that took place with the builder concerned the opportunity, at the time of construction, to add the sunroom addition in exactly the same place which they were now requesting. If the builder had constructed the sunroom at the time they purchased the house, there would not be a problem because they would not have been restricted to the 25 foot setback requirement. Mr. Caddigan said the Crosspointe Architectural Review Board has approved the addition and noted that there is no other place to locate the addition. He said the photographs submitted by the Neuendorfs is misleading as they imply that the proposed addition would impact the neighbors' view of the pond. Mr. Caddigan said he believed the application met all the requirements and agreed to comply with all the development conditions.

Chairman DiGiulian called for speakers in support of the request.

Bill Reulein, owner of Lot 10, supported the applicants' request noting the triangular shape of the lot. He noted that over the last three years the applicants have made quite a contribution to the neighborhood.

Col. John K. Solomon, U. S. Army Retired, said he has lived in the community since 1989 and that he supported the applicants' proposal. He also noted the applicants' contribution to the neighborhood.

Dr. John McConnell, owner of Lot 11, supported the applicants' request. He said the Architectural Review Board uses very strict guidelines in making its decisions and that he believed the applicants' proposal would enhance the neighborhood.

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

Steve Neuendorf, 8501 Heron Pond Lane, Fairfax Station, Virginia, said he did not take exception to anything the applicants have done, but what was at issue was his perception that the proposed addition would impact his property. He referenced the letter he had submitted to the BZA. Mr. Neuendorf said he believed it was a self-inflicted hardship since the applicants chose the lot and the house. He said he had been advised that the homeowners association wanted any construction to be 32 to 35 feet from the rear lot line, although the Zoning Ordinance only requires 25 feet. Mr. Neuendorf said he suspected the same process occurred during the plan phase with the applicants. He said the proposed addition would block his view of the pond and would lower his property value.

In response to a question from Mr. Hammack as to what area of their house would be adjacent to the proposed addition, Mrs. Neuendorf replied it was the kitchen and family room.

Mr. Ribble asked if he had understood the speaker to say the covenants required 35 feet. Mr. Neuendorf said he was merely recalling a discussion that took place with the builder. Mr. Ribble said it appeared that the builder violated the restriction when he placed the house. Mr. Neuendorf said he had not realized that the neighbors' deck was within the setback, but since it did not block his view of the pond he had not raised any objections.

In rebuttal, Mr. Caddigan said he did not believe it was a self-imposed hardship. He said he did not know the details of the discussion that took place between the Neuendorfs and the builder, but that when he dealt with the builder he was told that only certain models would fit on his lot which dictated the location of the house. Mr. Caddigan said the Neuendorfs bought a house with a water view, which they have. He added that he applied for and obtained a building permit for the deck, and was not aware of the setback violation until he submitted an application for the addition. (Mr. Caddigan submitted and discussed photographs of his property with the BZA.)

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

Mr. Hammack made a motion to grant VC 94-S-114 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 10, 1994.

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the BZA that they would not be meeting the following week. Mr. Ribble moved to waive the eight day waiting period. Mr. Dively seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-S-114 by PETER J. AND MARY BETH CADDIGAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.4 feet from rear lot line, on property located at 8503 Heron Pond Lane, Tax Map Reference 97-3((8))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 November 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 PDH-1.
3. The area of the lot is 11,064 square feet.
4. This was a difficult case in some ways because there are conflicting principles that is applied in the application of the Ordinance.
5. The neighbors' concerns about the variance, and his reasons for preferring that the addition not be added on, is understandable; but, when reviewing the standards for the granting of a variance, the applicants' lot is pie-shaped and the house is sited very much to the rear of the lot, in fact in violation of the closest applicable Ordinance that would apply to this type of development.
8. This is a PDH development and the house locations are approved at the time the site plan is approved.
9. It is not a self-inflected hardship because the applicant did not have any influence as to where the house would be placed.
10. The subject property has converging lot lines.
11. It is not as deep as most of the other properties.
12. If the applicants had been able to afford the sunroom at the time the house was constructed, it would have been permitted without any question had the builder put it on the site plan.
13. The addition will have some detrimental impact on the neighbors, but the Ordinance requires that it be of a "substantial" detriment and it will not be. The neighbors will still be able to see the pond and wildlife and the addition will not affect the value of the neighbors' property.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Dewberry & Davis, dated August 9, 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 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1994. The Board took action to waive the eight-day waiting period This date shall be deemed to be the final approval date of this variance.

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Page 3, November 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. JOHN A. VARLAS, SP 94-P-045 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit billiard and pool hall. Located at 8111 Lee Hwy. on approx. 7.55 ac. of land zoned C-6 and HC. Providence District. Tax Map 49-4 ((1)) 53.

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, Michelle Rosati, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the site is developed with the Merrifield Plaza Shopping Center and is approximately 7.55 acres in size. The subject property is zoned C-6, is within the Highway Corridor, and is bordered on the north by Lee Highway and on the west by Gallows Road. The surrounding properties are zoned C-8, I-5, R-3, and C-3. Right-of-way for an unimproved portion of Porter Road adjoins the subject property's eastern property line.

Mr. Hunter said the applicant was requesting a special permit for a Group 5 Commercial Recreation Billiard Parlor use. The billiard parlor will have food service as an accessory use. Eighteen (18) billiard tables, 35 bar stools and 70 seats were proposed. The Retail shopping center is developed with approximately 78,049 square feet of gross floor area and 389 parking spaces. The billiard hall is proposed to be located within 8,000 square feet of

the shopping center and 53 parking spaces have been allotted for the use. The proposed hours of operation are 7 a.m. to 4 a.m., daily. A maximum of ten employees (10) are proposed.

He said the proposed use and intensity are in conformance with the land use recommendations for this site; however, staff recommended that the hours of operation be limited. By requesting to be open from 7 a.m. to 4 a.m. daily, the applicant proposed almost continuous use of the facility. Staff was of the opinion that the hours of operation should be consistent with those of other billiard and pool halls approved by the Board of Zoning Appeals. This will limit the impact of the proposed use on adjacent uses in the Merrifield Shopping Center. Therefore, staff recommended that the hours of operation be limited to 11 a.m. to 2 a.m., daily. This issue was addressed by a Proposed Development Condition.

Staff concluded that the application would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions if the hours of operation are limited to 11 a.m. to 2 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to the memorandum which it had previously approved with respect to billiard parlors in the County and was contained in the BZA's package.

In response to a question from the Chairman, Mr. Hunter said staff concurred with the development conditions the applicant had submitted to the BZA at the public hearing revising the hours of operation.

Michelle Rosati, with the firm of Lawson & Frank, P.C., Plaza Suite 5, 4141 N. Henderson Road, Arlington, Virginia, said the applicants are restaurant owners first and foremost with the billiard parlor as an accessory use.

Mr. Hammack asked how much room would be left for a restaurant after the billiard tables are installed. Ms. Rosati said there would be approximately 17 tables with 105 seats for dining and a bar along one wall of the establishment.

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

Mr. Pammel made a motion to grant SP 94-P-045 subject to the Development Conditions contained in the staff report dated November 10, 1994 with Conditions 4 and 6 amended as requested by the applicant and reflected in the Resolution.

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the BZA that it would not be meeting the following week. Mr. Pammel moved to waive the eight day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-P-045 by JOHN A. VARLAS, under Section 4-603 of the Zoning Ordinance to permit billiard and pool hall, on property located at 8111 Lee Highway, Tax Map Reference 49-4((1))53, 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 15, 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 and HC.
3. The area of the lot is 8,000 square feet of 7.55 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006.

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 which is located at 8111 Lee Highway consisting of 8,000 square feet of gross floor area and is not transferable to other land. Other by-right or Special Exception

uses on the commercial site may be permitted without an amendment to this special permit.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce & Associates, P.C., dated August 2, 1994, and approved with this application, as qualified by these development conditions. This approval shall only govern the 8,000 square foot area occupied by the approved Billiard Hall.

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 of the billiards facility shall not exceed 11:00 a.m. to 2:00 a.m., daily. The hours of operation of the restaurant shall not exceed 7:00 a.m. to 2:00 a.m., daily.

5. Parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as Determined by the Department of Environmental Management.

6. There shall be a maximum of eighteen (18) billiard tables in the facility, 8111 Lee Highway. No billiard table shall be coin-operated.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 15, 1994. The Board took action to waive the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 5, November 15, 1994, (Tape 1), Action Item:

Request for Reconsideration for
Jennifer S. Duncan, VC 94-H-104

Mr. Ribble made a motion to deny the applicant's request for reconsideration. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. This application was heard and denied on November 10, 1994.

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Page 5, November 15, 1994, (Tape 1), Action Item:

Request for Reconsideration for
Kathy & Wayne Schneider, VC 94-P-100

Mr. Pammel made a motion to deny the applicant's request for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. This application was heard and denied on November 10, 1994.

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Page 5, November 15, 1994, (Tape 1), Action Item:

Request for date and time for Tate Terrace Realty Appeal

Mr. Hammack made a motion to accept the appeal and schedule the public hearing for the morning of January 10, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 6, November 15, 1994, (Tape 1), Action Item:

Request for date and time for George M. Rogers Appeal

Mr. Dively made a motion to accept the appeal and schedule the public hearing for the morning of January 24, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 6, November 15, 1994, (Tape 1), Action Item:

Request for date and time for Nhut Thi Belch Appeal

Mr. Hammack made a motion to accept the appeal and schedule the public hearing for the morning of January 31, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 6, November 15, 1994, (Tape 1), Action Item:

Request for date and time for Richmond America Appeal

Mr. Pammel made a motion to accept the appeal and schedule the public hearing for the morning of January 24, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

Mr. Kelley suggested scheduling this appeal on January 10th since it involved the same issue as the Tate Terrace Realty Appeal. The Chairman agreed. Mr. Dively made a motion to schedule the Tate Terrace Realty Appeal on the morning of January 10, 1995. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 6, November 15, 1994, (Tape 1), Action Item:

Request to do Intent to Defer for Ferguson Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, said the appeal involved a Zoning Ordinance amendment which was scheduled to be addressed by the Board of Supervisors the latter part of November. She said the appellant was requesting a deferral in order to allow the Board of Supervisors to take action which may render the appeal moot. Mr. Hammack said staff was in agreement and made a motion to issue an intent to defer the appeal to December 15, 1994. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 6, November 15, 1994, (Tape 1), Action Item:

Out of Turn Hearing Request for
Franconia United Methodist Church
Variance VC 94-L-149 and Special Permit SP 94-L-063

Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant was only adding a roof over a set of steps but since the church has never been before the BZA it would bring the entire church under special permit. Mr. Pammel made a motion to grant the applicant's request and scheduled the public hearing for December 20, 1994. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: December 13, 1994

APPROVED: December 20, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 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 9:00 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 7, November 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DENNIS M. MCDONALD, VC 94-B-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from rear lot line. Located at 5421 Lehigh Ln. on approx. 14,173 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (21) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis M. McDonald, 5421 Lehigh Lane, Springfield, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, introduced Kristine Zeckman, summer intern, who she said would present the next two staff reports.

Ms. Zeckman stated that the applicant was requesting a variance of 5.0 feet to construct a dining area addition; surrounding lots are also zoned R-3.

In answer to a question from Mr. Pammel, Ms. Zeckman stated that the proposed addition consisted of one story; the applicant interrupted to say that the proposed addition actually consisted of two stories.

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

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

Mr. Pammel moved to grant VC 94-B-119 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 23, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-B-119 by DENNIS M. MCDONALD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from rear lot line, on property located at 5421 Lehigh Lane, Tax Map Reference 80-1((2))(21)22, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 approximately 14,173 square feet.
4. The lot has an unusual configuration.
5. The placement of the dwelling on the lot precludes any logical expansion without obtaining 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 Scott Surveys, Dated August 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 8, November 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS S. CHANNON & LAURA A. WRIGHT, VC 94-L-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.5 ft. from side lot line. Located at 6283 Wills St. on approx. 10,004 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 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. Thomas S. Channon, 6283 Wills Street, replied that it was.

Kristine Zeckman, summer intern, presented the staff report, stating that a variance of 5.5 feet was being requested; surrounding properties are also zoned R-1.

Mr. Channon presented the statement of justification, previously submitted in writing and incorporated into the record. He cited a substandard lot as the reason for requesting a variance.

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

Mrs. Thonen moved to grant VC 94-L-120 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 23, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-L-120 by THOMAS S. CHANNON & LAURA A. WRIGHT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.5 ft. from side lot line, on property located at 6283 Wills Street, Tax Map Reference 91-1((6))21, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 29, 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 10,004 square feet.
4. The property is zoned R-1 but is only 1/3 of an acre and having R-1 standards imposed presents a disadvantage.
5. The lot is very narrow and shallow compared to surrounding lots, making it very difficult to build an addition, but the problem is not so general in nature as to require any action by the Board of Supervisors.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Schools & Townsend, P.C., Dated August 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. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 10, November 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. KYUNG KIM, SPA 84-M-072-2 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 84-M-072 for indoor baseball academy and certain indoor commercial recreation uses to permit additional uses and change of applicant. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21, 22. (Concurrent with VC 94-M-073.) (MOVED FROM 10/25 AT APPLICANT'S REQUEST.)

9:00 A.M. DOME BUILDING PARTNERSHIP/KYUNG KIM, VC 94-M-073 Appl. under Sect(s). 18-401, 11-102 and 13-202 of the Zoning Ordinance to permit parking to remain 0.0 ft. and 1.5 ft. from front lot line and to vary the peripheral parking lot landscaping requirement. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21, 22. (Concurrent with SPA 84-M-072-2.) (MOVED FROM 10/25 AT APPLICANT'S REQUEST.)

Chairman DiGiulian noted that the applicant had requested a deferral. Mr. Dively moved to defer to the morning of February 21, 1995. Mrs. Thonen seconded the motion. Mr. Kelley reminded the Board that this was the applicant's second request for a deferral, the application having already been moved from October 25 at the applicant's request. Mr. Dively advised that the parking analysis was still being conducted by the Department of Environmental Management (DEM). The motion carried unanimously.

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Page 10, November 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RONNIE H. & JULIE A. SISTRUNK, VC 94-B-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 18.4 ft. Located at 5404 Ellzey Dr. on approx. 10,161 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3 ((5)) 89.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronnie H. Sistrunk, 5421 Ellzey Drive, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Middle Ridge Subdivision contain single family detached dwellings and are also zoned R-3 and developed under the Cluster Provision of the Zoning Ordinance. The request for a variance resulted from the applicant's proposal to enclose a two-car carport to be located 8.7 feet from the side lot line, such that total side yards would be 18.4 feet, requiring a variance of 24 feet.

Mr. Sistrunk presented the statement of justification, previously submitted in writing and incorporated into the record. He said the addition would be no closer to the property line than the existing footprint and, on the side where the addition is proposed, they will be within 8.7 feet of the property line, whereas only 8 feet is required. Mr. Sistrunk said they had received no opposition from neighbors.

There were no speakers and the public hearing was closed.

Mr. Ribble moved to grant VC 94-B-117 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 22, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-B-117 by RONNIE H. & JULIE A. SISTRUNK, under Section 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 18.4 ft.,

on property located at 5404 Ellzey Drive, Tax Map Reference 68-3((5))89, 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 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-3 (Cluster).
3. The area of the lot is approximately 10,161 square feet.
4. Because of the placement of the house on the lot, construction of the addition results in side yards totalling 18.4 feet.
5. The variance requested is small and is required because of the placement of the house on the lot and converging lot lines toward the rear of the lot.
6. The applicant plans only to enclose an existing carport and did a very good job of explaining his proposed 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 location of the specific addition shown on the plat prepared by Runyon & Huntley, dated February 24, 1972, 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 carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1994. This date shall be deemed to be the final approval date of this variance.

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Chairman DiGiulian advised that the next case was scheduled for five minutes hence and they would go to the Action Items. He said he would skip over the first item until the arrival of the Deputy Zoning Administrator.

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Page 12, November 29, 1994, (Tape 1), Action Item:

Requested Intent-to-Defer
Genaurio Construction Company Appeal

Mrs. Thonen said she believed the Board should grant this request because the appellant just had heart bypass surgery. Mr. Ribble seconded the motion which carried unanimously, 7-0.

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Page 12, November 29, 1994, (Tape 1), Action Item:

Requested Out-of-Turn Hearing
O. Cleveland Laird, Jr., SP 94-V-060
Now scheduled for February 7, 1995

Mr. Pammel said there really was no hardship and there would not be much difference between the timeframe of the regular scheduled date and an out-of-turn hearing date. The entire Board concurred in denying this request.

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Page 12, November 29, 1994, (Tape 1), Action Item:

Requested Out-of-Turn Hearing
Campden-Main/Sara, SP 94-Y-062
Now scheduled for February 7, 1995

Mrs. Thonen moved to deny the request and the entire Board concurred.

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Page 12, November 29, 1994, (Tape 1), Action Item:

Approval of Minutes from October 25 and November 1, 1994

Mr. Pammel so moved. Mr. Ribble seconded the motion which carried unanimously, 7-0.

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Page 12, November 29, 1994, (Tape 1), Action Item:

Request to change the April 18, 1995 meeting
date to either Thursday, April 13 or
Thursday, April 27, 1995

Mrs. Thonen said she was concerned about the frequency of the BZA getting "bumped" from the Board Room on Tuesdays because the Board of Supervisors' Monday meetings sometimes ran over into Tuesday. She wondered if the BZA could schedule their meetings on Wednesdays. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that this particular change was necessitated by the Budget Hearings, which ran for four days during the week in question. Mrs. Thonen said she wished to learn how the other members of the Board felt about changing the day. Mr. Ribble noted that there was five months time in which to reschedule the April 18, 1995, hearing. A short discussion ensued during which Mrs. Thonen questioned the necessity for night meetings.

Mr. Pammel said that, for discussion purposes, he would like to move that the Board change its meeting dates as soon as practical, after the first of the year, to Wednesdays during the day and delete night meetings. Mrs. Thonen seconded the motion for purposes of discussion. Mr. Kelley said he made appointments around the BZA meetings and had to change another Board meeting because of this particular change.

Page 13, November 29, 1994, (Tape 1), REQUEST TO CHANGE THE APRIL 18, 1995 MEETING, continued from Page 12 )

Chairman DiGiulian asked staff to return with information on what days are more available. Mr. Dively asked for a consensus on which day of the week was preferable. He opted for Tuesdays or Wednesdays. Chairman DiGiulian said he felt the same. Mr. Kelley said Tuesdays were best for him, Wednesdays were okay. Mr. Ribble said he concurred with Mr. Kelley but did not believe that night meetings could be ruled out; Mr. Kelley concurred and the discussion continued. Mr. Dively said he believed it was a public relations issue to have night meetings.

Mr. Pammel said his motion was not meant to preclude Tuesday night meetings. He believed the Board could schedule a night meeting to handle a specific case that is controversial and for which a night meeting has been requested.

Mr. Dively moved to defer the discussion until the following meeting. Mrs. Thonen seconded the motion which carried unanimously, 6-0. Mr. Ribble was not present for the vote. Chairman DiGiulian acknowledged that Thursdays sometimes were not convenient for him. Mr. Pammel suggested April 27, 1995, because that is Easter week. The entire Board agreed to change the April 18 meeting to April 27, 1995. Mr. Ribble was not present for the vote.

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Page 13, November 29, 1994, (Tape 1), 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 AND 9/13 TO ALLOW BOS TO HEAR REQUEST FOR SHARED PARKING AGREEMENT.)

David Hunter, Staff Coordinator, advised the Board that the applicant had submitted a shared parking agreement to the Department of Environmental Management (DEM) and the hearing had not yet been scheduled by the Board of Supervisors. He said that staff suggested deferring the case until February 14, 1995, at 9:00 a.m.

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

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Page 13, November 29, 1994, (Tape 1), Scheduled case of:

9:30 A.M. JOSEPH B. HYMAN, TRUSTEE OF THE A. LINCOLN GREEN TRUST, APPEAL 94-L-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is allowing the filling and grading in a floodplain in excess of 5,000 sq. ft., the operation of a landfill without Special Exception approval, the failure to install interim erosion and sedimentation controls and is allowing the use and occupancy of a storage yard and landfill without an approved site plan or Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 7800 Cinderbed Rd. on approx. 350,380 sq. ft. of land zoned I-5. Lee District. Tax Map 99-2 ((1)) 15.

Joseph B. Hyman, 210 Lee Court, Alexandria, Virginia, came to the podium and introduced himself.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that the appeal involved the appellant's use of the I-5-zoned tract and, since May 1991, three notices of violation had been issued to the appellant regarding activities on the property; the most recent was July 14, 1994. Mr. Shoup said the appellant had been cited for allowing filling and grading on the property, the failure to install erosion/sedimentation controls, the operation of a landfill without special exception approval, and occupying the property for a storage yard and landfill without an approved site plan or Non-Residential Use Permit (Non-RUP).

Mr. Shoup said the fact that the violations exist was not in dispute; the issue was the determination on the prescribed remedies for correcting the violations and, in accepting the appeal, the BZA limited the scope of the appeal to that issue. He said that, as set forth in the staff memorandum dated November 21, 1994, the notice of violation directed the appellant to obtain approval of a grading plan from the Department of Environmental Management (DEM) to install the erosion/sedimentation controls and to remove the fill material and the landfill or, if he wished to continue the landfill operation, to get special exception approval and to obtain site plan and Non-RUP approval for the uses. Mr. Shoup said that those remedies are proper under the applicable provisions of the Zoning Ordinance; what the appellant was really seeking was relief through the appeal process to continue the violations until he is able to sell the property. He said it was staff's position that was not a proper basis for appeal.

Mr. Hyman said he had acquired the property in 1986 as the Executor of the will of Mr. A. L. Green. He said he sold the property a few months after that to someone who gave him a note. Mr. Hyman was told by the prospective buyer's bank that his credit was very good; so good

that the bank lent him $10 million after that; however, he was in financial difficulty when he came to Mr. Hyman at the end of 1990 and told him that he would have to go into bankruptcy and asked him to give him back his note and take back the land, which he did. Mr. Hyman said that, immediately after taking the land back, he began to try to sell it through three agents and had continued to try to sell it up to the present time. Mr. Hyman said that he had never operated a landfill. He said a man had approached him and asked to use the land to park a couple of trucks; he told him he could do that but would first have to clear it with County authorities. About three months later, he was told that he was operating a landfill and a man named James Harris was dumping construction debris on the land. Mr. Hyman said he paid $30,000 in landfill fees to clear the property and Mr. Harris immediately began to dump construction debris on the property again. He said the County proceeded to accuse Mr. Harris of violating certain County ordinances; Mr. Harris pleaded guilty on two counts and was sentenced to jail for twelve months unless he cleared the property. Mr. Harris never cleared the property and the County was still trying to find him; each time he came in, the judge would sentence him to another 30 days, 60 days or six months in which to clear the property.

Mr. Hyman said he had allowed people to store trucks on the property in order to earn money to pay the $8,000 tax assessment by the County. He said he had finally found a serious buyer whose main concern was whether or not there were any environmental problems associated with the property. Mr. Hyman said he had engaged Schnoble Environmental Services to conduct some borings, etc., over the past three or four months, and the question of whether the buyer was satisfied with the location of the bore holes remained. They were in the process of negotiating a contract and Mr. Hyman said he only asked the Board for time to allow him to complete the sale.

Mr. Hyman cited case law to the affect that a trustee of property which is not earning any return must sell it and that was what he had been trying to do for four years. He noted that staff had said that two years was enough time.

Mr. Hammack asked staff if there was any provision under which the site plan requirement could be waived since Mr. Hyman has no use for the land. Mr. Shoup said the reason a site plan was required was that Mr. Hyman was using the property for storage and, at one point, conducting a landfill operation. If the appellant eliminated the storage and landfill activity, there would be no need for site plan approval.

Mr. Hyman said that the people who had been using the property for storage were told to obtain proper County approval and he assumed that some did and some did not. He said that Mr. Harris had caused him a great deal of trouble and expenses of $50,000 for landfill; Mr. Harris told him that he had spoken with a Mrs. Hogue, who later said she had not spoken with him. Mr. Hyman further said he believed that, under the I-5 zoning, it was proper to use the property for storage purposes.

Mr. Shoup responded to Mr. Hyman's request for additional time to sell the property by stating that, as far back as 1991, staff had given him additional time; they had issued three notices to allow him more time. Mr. Shoup said that in 1991 Mr. Hyman indicated that he had a buyer, but that never materialized, and he believed the point had been reached where staff could no longer allow the violations to continue, awaiting the sale of the property, because that would not remedy the violations. Mr. Shoup said staff had serious concerns about environmental issues with the grading and filling operations.

Mr. Dively asked Mr. Shoup for a response to Mr. Hyman's statement that he was not now conducting a landfill operation on the property. Mr. Shoup said that was probably true; what was out there was a mass depository of construction debris and rubble. Mr. Hyman indicated that he had made arrangements to dispose of much of it and some if it was buried on the property. Mr. Shoup indicated that there probably was not an active landfill operation now; however, the grading required to bury the rubble and, prior to that, the filling and hauling in of dirt and fill material resulted in filling and grading within a floodplain and changing contours without any grading plan approval. Mr. Hyman said there never was a landfill operation, only illegal dumping by Mr. Harris; in his opinion, that would not constitute a landfill.

Mr. Pammel asked staff if he was correct in assuming that the present issue was the lack of an approved site plan for the use of the property. Mr. Shoup said that an approved grading plan was also required. Mr. Pammel asked if it was incumbent upon Mr. Hyman or the user of the property to obtain the necessary approvals for use of the property. Mr. Shoup said the user could obtain the site plan approval; however, the reason staff pursued the owner of the property was that, in many instances, when multiple users are involved, staff believes the owner bears the responsibility of ensuring that the uses he is allowing are covered by the necessary approval.

Mr. Hammack asked Mr. Shoup if Mr. Hyman had appealed the issue of the storage yard and landfill operation. Mr. Shoup said that the citation on the landfill preceded the notice that was the subject of this appeal. He said the landfill issue was never appealed and, in this instance, only the recommended remedies were appealed.

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

Mr. Hammack said he believed Mr. Hyman had been very candid in his presentation and was earnestly trying to resolve the situation in which he had found himself. He said that

Page 15, November 29, 1994, (Tape 1), JOSEPH B. HYMAN, TRUSTEE OF THE A. LINCOLN GREEN TRUST, APPEAL 94-L-034, continued from Page 14 )

trustees are required to comply with the ordinances and statutes of the state; the violations cannot be ignored. Mr. Hammack said he did not believe Mr. Hyman was questioning the validity of the issues raised by the Zoning Administrator; although the landfill operation is no longer in existence, it could not be ignored that some of the debris and dumping has been graded into new contours and the fact that trucks and other vehicles are parked and stored on the property without permits. Mr. Hammack said that the owner of the property has the obligation to see that the use complies with the County ordinance and Mr. Hyman has not offered any leases or any written agreements that would shift the burden of obtaining those permits to his lessees and had not offered any satisfactory reasons why the Board should not uphold the determination of the Zoning Administrator.

Mr. Hammack moved to uphold the determination of the Zoning Administrator in Appeal 94-L-034. Mr. Dively seconded the motion.

Mrs. Thonen said she believed the Board had to consider the environment and uphold the zoning ordinances and it was Mr. Hyman's responsibility to resolve the issues.

Mr. Hyman said that he was only asking for some time in which to complete the negotiations for the sale of the property.

Chairman DiGiulian said he did not believe the Board could give him that time.

Mr. Hyman said the buyer had assured the agent that he intends to buy.

The motion carried by a vote of 7-0 and the Zoning Administrator's determination was upheld.

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Page 15, November 29, 1994, (Tape 1), 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 AND 9/13 AT APPELLANT'S REQUEST)

An Intent-to-Defer had been issued on November 15, 1994. Mrs. Thonen made a motion to defer to the morning of December 15, 1994. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Chairman DiGiulian advised that the Board would now return to the Action Items.

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Page 15, November 29, 1994, (Tape 1), Action Item:

Gatehouse Center Limited Partnership Appeal

Mr. Pammel referenced the memo prepared by the Deputy Zoning Administrator in which he stated that the appeal was not timely filed. He said this was the subject of an earlier notice which was subsequently found to have been in error and was rescinded. That appeal was dismissed by the Board in September. A subsequent notice was issued to the individual involving screening of a fence that was in disrepair. It was noted that the appellant had 30 days in which to file an appeal. The appeal came in after the 30-day period with undated letters in support of the appeal; therefore, Mr. Pammel moved to support the Zoning Administrator's position that the appeal was not timely filed and moved to not accept the appeal. Mr. Dively seconded the motion.

Mr. Kelley asked if anyone was present to represent the appellant and it was discovered that no one was. Mr. Kelley asked if the appellant or his agent had been made aware of the scheduling of the item. Mr. Shoup said that he had spoken with the appellant when the memorandum had been sent out and had sent the appellant a copy of the memorandum. When the scheduled date changed, Mr. Shoup said he left two messages at the appellant's office stating the date and time this item was scheduled to come before the Board; he requested a return call, which he never received. Mr. Shoup further stated that, when he spoke with the appellant at the time the memo went out, the appellant stated that he was not sure whether or not he would appear. In answer to a question from Mr. Kelley, Mr. Shoup said that the person he contacted was the Vice President of the management company for the property, serving as the agent for the appellant.

The motion carried by a vote of 7-0.

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Page 16, November 29, 1994, (Tape 1), ADJOURNMENT:

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

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

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 9, 1995

APPROVED: February 14, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 1, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; and Robert Kelley. James Pammel and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 17, December 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. D & K PARTNERSHIP, VC 94-H-109 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 104.86 ft. Located at 12509 Lawyers Rd. on approx. 2.95 ac. of land zoned R-1. Hunter Mill District. Tax Map 35-2 ((1)) 11.

Susan Langdon, Staff Coordinator, stated that the applicant had requested deferral.

Mr. Kelley made a motion to defer VC 94-H-109 to the morning of January 10, 1995. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 17, December 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. H. JEFFREY FOX, VC 94-Y-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. and 6.0 ft. high fence in front yard of a corner lot. Located at 11420 Green Moor Ln. on approx. 23,981 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((18)) 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. Ms. Fox replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting approval of two variances. The first variance was to allow a swimming pool in the front yard of a 23,981 square foot corner lot. The Zoning Ordinance does not allow accessory uses such as a swimming pool in front yards of lots that are less than 36,000 square feet; therefore, a 12,019 square foot variance was requested.

Continuing, he stated the second variance request was to allow a 6 foot high board on board fence in the front yard of a corner lot. The fence would enclose the proposed swimming pool on three sides. The Zoning Ordinance does not allow fences over 4.0 feet high in the front yard; therefore, the applicant was requesting a modification of 2.0 feet.

The applicant's wife, Bethanny A. Fox, 11420 Green Moor Lane, Oakton, Virginia, addressed the BZA. She stated the narrow lot had been purchased in good faith and they had been assured by the builder that the lot could accommodate the swimming pool. Ms. Fox noted the topographic conditions of the lot, the placement of the house on the lot, and the septic field precluded placing the pool elsewhere on the property. She explained that the pipestem lot was further restricted by being classified as having three front yards. Ms. Fox said the pool would enhance the family's quality of life and would increase the property value. She noted that other neighbors have pools, the pool would not have a detrimental impact on the area, and the fence would have no visual impact on the traffic. In conclusion, she said the neighbors supported the request and asked the BZA to grant the variance.

In response to Mr. Dively's question as to whether the community had a Homeowners Association, Ms. Fox said it did not.

Mr. Kelley asked whether she had been aware at the time the property was purchased that a variance would be required in order to install a pool and a six foot high fence. Ms. Fox said they had been encouraged by the builder to purchase the specific lot because it had an ideal flat area for the pool. She said they had no idea a variance would be required for the pool and fence.

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

Mrs. Thonen made a motion to grant VC 94-Y-110 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 15, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-Y-110 by H. JEFFREY FOX, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 square feet and 6.0 foot high fence in front yard of a corner lot, on

property located at 11420 Green Moor Lane, Tax Map Reference 36-4((18))37, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 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 23,981 square feet.
4. It is very hard to build on a lot with two front yards; but when the property has three front yards, it is almost impossible to build anything anywhere on the lot.
5. The lot is one of the more narrow lots in the area.
6. The lot is a pipestem lot which further restricts construction.

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

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

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

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

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

1. This variance is approved for the location of the specific swimming pool and fence shown on the plat prepared by Land Design Consultants dated April 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to construction of the swimming pool 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.

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

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

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Page 19, December 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL L. BARRETT, VC 94-L-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. from rear lot line. Located at 7003 Dreams Way Ct. on approx. 9,061 sq. ft. of land zoned R-5. Lee District. Tax Map 91-2 ((10)) 278.

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. Barrett replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 9,061 square foot subject property is located on a reverse frontage lot located between Telegraph Road and Dreams Way Court within the Lake D'Evereux Subdivision. The property is surrounded by single family detached dwellings on three sides and by townhouses on the north all of which are in the R-5 District.

Mr. Heine stated that the applicant was requesting a variance to allow a sun room addition 19.8 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a 5.2 foot variance to the minimum rear lot line.

The applicant, Michael L. Barrett, 7003 Dreams Way Court, Alexandria, Virginia, addressed the BZA and said he would like to replace the existing wood deck with a sunroom. He explained that, not only does the pipestem lot have an unusual shape, but the house was placed at an odd angle to the back of the property. Mr. Barrett stated the severe topographic conditions with the steep slope on the northern and eastern portions of the property, along with the drainage easement, precluded placing the addition elsewhere on the lot. He noted that the proposed site was the only practical place to locate the addition, and the co-owner of the property has severe allergies and cannot use the outside facilities from March through September. In conclusion, he said the rear of the property is adjacent to Telegraph Road and the nearest townhouse dwelling is approximately 200 feet from his property. Mr. Barrett stated that the Homeowners Association has approved the addition, the neighbors supported the request, and 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 94-L-113 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 15, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-L-113 by MICHAEL L. BARRETT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.8 feet from rear lot line, on property located at 7003 Dreams Way Court, Tax Map Reference 91-2((10))278, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-5.
3. The area of the lot is 9,061 square feet.
4. The application meets the necessary requirements for the granting of a variance.
5. The exceptional shape and topographical conditions of the lot has caused the need for the variance.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific sun room addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 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 sun 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.

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

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

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Page 20, December 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JAMES GUY & JANET L. REYNOLDS, VC 94-V-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing less than 36,000 sq. ft. Located at 1605 Fort Hunt Ct. on approx. 14,230 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-4 ((13)) 1.

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

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to construct a two car garage in a minimum required front yard on a lot containing less than 36,000 square feet.

The applicant, James G. Reynolds, 1605 Fort Hunt Court, Alexandria, Virginia, addressed the BZA and explained that after retiring from the military with a disability in 1992, he moved back into the house. He said the garage would improve the property and would also provide relief during inclement weather. Mr. Reynolds explained that the house on the narrow lot, with its steep slope, was approximately 9.3 feet and 10.3, respectively, from the lot line. He said his architect had advised him not to place the structure in the backyard. Mr. Reynolds explained that to do so would add approximately $40,000 to the cost of construction, and the topographic conditions on the property would require a long driveway which would have a detrimental impact on the neighbors.

Continuing, Mr. Reynolds said that he would modify the request and eliminate the 22.0 foot front yard variance request, and merely request a 2.0 foot side yard variance. He explained that the garage would be well screened, the neighbors supported the request, and used pictures to demonstrate that the garage would not have a detrimental impact on the area.

In response to Mr. Hammack's question as to his plans for the remainder of the asphalt driveway, Mr. Reynolds said the asphalt drive would be removed and a portion would be used as a garden.

Mr. Hunter explained that a front yard variance would still be required if the structure was to be built in the proposed location.

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

Suzanne E. Redding, 1609 Fort Hunt Court, Alexandria, Virginia, addressed the BZA and said she was an abutting neighbor. She stated that no other houses in the area had garages in the front yard, and to install one would create an "alley like" appearance for the pipestem lot. Ms. Redding expressed her belief the application did not meet the required standards and asked the BZA to deny the request.

In response to Mr. Hammack's question as to the location of her house, Ms. Redding said she owned Lot 3A. Ms. Redding said although the applicant had modified the request, she still believed the garage would have a detrimental impact on the appearance of the house and should be placed in the backyard.

In response to Chairman DiGiulian's question as to whether the applicant could construct an addition within 30.0 feet of the front lot line by-right, Mr. Hunter said yes.

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

Mr. Reynolds said the structure on adjacent Lot 17 has a two car garage under the house. He noted the driveway currently looks like a parking lot and expressed his belief that the garage would improve the appearance of the property.

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

Mr. Dively made a motion to deny VC 94-V-101 for the reasons reflected in the Resolution.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley said although he would support the motion to deny, he would like to waive the twelve-month waiting period so that the applicant could return with another proposal.

Mr. Hammack opposed the motion and said he would like the applicant to return with a plat which would show the removal of the asphalt and the exact location of the structure. He noted that the applicant has a narrow, deep lot and the driveway would have to run the entire length of the property if a garage were to be placed in the backyard. He further noted the applicant could build a by-right addition in the front yard to within 30.0 feet of the lot line.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant would have to build an addition which would be part of the house with a roof, foundation, and walls.

Chairman DiGiulian said he supported the motion and agreed with both Mr. Hammack's and Mr. Kelley's comments.

The motion carried by a vote of 4-1 with Mr. Hammack voting nay. Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Kelley made a motion to waive the twelve month waiting period for the filing of a new application. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble 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-V-101 by JAMES GUY AND JANET L. REYNOLDS, under Section 18-401 of the Zoning Ordinance to permit accessory structure in a front yard on a lot containing less than 36,000 square feet, on property located at 1605 Fort Hunt Court, Tax Map Reference 93-4((13))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 December 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-4.
3. The area of the lot is 14,230 square feet.
4. Although the lot is very narrow and a variance would allow the maximum utilization of the property, the Board of Supervisors made it very clear when it passed the Zoning Ordinance that it did not want this type of development to occur.
5. Maybe there is no appropriate place to put the garage. The detached dwelling almost goes beyond a request for a variance, it almost constitutes relegislation.
6. The variance would set a precedent which the BZA is not allowed to set and would be a precedent which could come back to haunt the BZA in this neighborhood.

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

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

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

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

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

Mrs. Thonen seconded the motion which carried by a vote of 4-1 with Mr. Hammack voting nay. Mr. Pammel and Mr. Ribble were absent from the meeting.

The BZA waived the twelve-month waiting period for the refiling of an application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1994.

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

9:00 A.M. WILLIAM C. & TREVA S. TOLLEY, VC 94-M-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line. Located at 5020 Kingston Dr. on approx. 24,315 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((17)) 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. Mr. Tolley replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated the applicant was requesting a variance to construct a two-car carport 10.5 feet from the northern side lot line. The Zoning Ordinance requires a minimum 15.0 foot side yard; therefore, the applicants were requesting a 4.5 foot variance to the minimum side yard requirement.

The applicant, William C. Tolley, 5020 Kingston Drive, Annandale, Virginia, addressed the BZA and stated that he would like to enclose an existing carport. He said the garage addition would increase the property value, and would improve the appearance of the neighborhood. He noted the neighbors supported the request, the character of the zoning district would not be changed, and the variance would be in harmony with the Zoning Ordinance.

In response to Chairman DiGiulian's question as to whether the existing carport would merely be enclosed, Mr. Tolley said yes and confirmed that the garage would not intrude any farther into the side lot line than the existing carport.

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

Mr. Hammack made a motion to grant VC 94-M-111 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 15, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-111 by WILLIAM C. AND TREVA S. TOLLEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.5 feet from side lot line, on property located at 5020 Kingston Drive, Tax Map Reference 71-4((17))4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-2.
3. The area of the lot is 24,315 square feet.
4. The application meets the necessary requirements for the granting of a variance.
5. The applicant will merely enclose an existing carport.
6. The garage would not extend any closer to the side lot line than the existing carport.
6. The photographs show that the back of the carport is enclosed. The variance would allow the enclosure of the side and installation of doors.
7. The request is for a minimal variance.
8. There would 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 of the specific addition shown on the plat prepared by Paul Conklin Quigg, Certified Architect, dated July 20, 1994, and revised through August 17, 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 carried by a vote of 4-1 with Mr. Kelley not present for the vote. Mr. Pammel and Mr. Ribble were absent from the meeting.

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

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

9:00 A.M. KHAI D. LE, VC 94-B-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line and 32.0 ft. from front lot line. Located at 8608 Chapel Dr. on approx. 22,637 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 189.

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. Lee replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated the applicant was requesting variances to construct a two car garage addition 15.0 feet from the side lot line and 32.0 feet from the front lot line. The Zoning Ordinance requires a minimum 20.0 foot side yard and a minimum 40.0 foot front yard; therefore, the applicants were requesting a 5.0 foot variance to the minimum side yard requirement, and an 8.0 foot variance to the minimum front yard requirements, respectively.

The applicant, Khai D. Le, 8608 Chapel Drive, Annandale, Virginia, addressed the BZA and stated that he would like to renovate the property by adding a garage and a bedroom. He explained that the severe drainage problems, which have plagued his house, would be corrected and the variance would allow his family to stay in the neighborhood where they have many friends. In conclusion, Mr. Le stated that he is the oldest son and would have to provide accommodations for his aging mother within the next year. He asked the BZA to grant the request.

In response to Mr. Hammack's question as to whether the request was for a two story addition which would wrap around the house, Mr. Le said yes.

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

Mr. Kelley made a motion to grant VC 94-B-112 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 15, 1994.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that, although he was sympathetic to the applicant, he would oppose the motion. He explained that the requested addition would be obtrusive and too large for the neighborhood. Mr. Hammack said the applicant could modify the application to request 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-112 by KHAI D. LE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from side lot line and 32.0 feet from front lot line, on property located at 8608 Chapel Drive, Tax Map Reference 70-1((2))189, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-1.
3. The area of the lot is 22,637 square feet.
4. The application meets the necessary requirements for the granting of a variance.
5. The applicant testified to the justifications for 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 of the specific addition shown on the plat prepared by Grove Landsurveying dated March 5, 1990, and 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 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 carried by a vote of 4-1 with Mr. Hammack voting nay. Mr. Pammel and Mr. Ribble were absent from the meeting.

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

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

9:00 A.M. PHILLIP H. WESTON, VC 94-P-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1-A having lot width of 69.70 ft. Located at 9827 Five Oaks Rd. on approx. 0.86 ac. of land zoned R-3. Providence District. Tax Map 48-3 ((1)) 9D.

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

David Hunter, Staff Coordinator, presented the staff report. He stated the applicant was requesting a variance to subdivide one existing lot into two lots with proposed Lot 1A having a lot width of 69.7 feet. The Zoning Ordinance requires a minimum lot width of 80.0 feet; therefore, the applicant was requesting a modification of 10.3 feet to the minimum lot width requirement.

Continuing, Mr. Hunter said that both lots would have separate access from Five Oaks Road with proposed Lot 1A consisting of 18,337 square feet and proposed Lot 1B consisting of 19,203 square feet. He noted that the property is relatively flat, the southern half of the site contains a mature stand of hardwood trees, and the existing dwelling on Lot 9D would be removed.

Mr. Hunter said staff believed the application does not meet all of the required standards for a variance. Therefore, should the BZA determine that the variance can be justified, it must then decide the minimum variance which would afford relief and should the BZA intend to approve, staff recommended conditioning the approval subject to the development conditions contained in the staff report dated November 15, 1994.

The applicant's attorney, Robert A. Lawrence, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, addressed the BZA and stated the applicant has lived on the property since 1930. He used the viewgraph to show the size of the surrounding lots and noted that with the exception of two lots, all surrounding lots are equal to, or smaller than the proposed lots. Mr. Lawrence said the proposed use is consistent with the density of the R-3 zoning, and would be a much less intensive use than that allowed by the R-3 zoning. He explained R-3 zoning permitted lots of 10,500 square feet in size, noting that the proposed lots would be 18,300 and 19,200 square feet in size, respectively.

Mr. Lawrence used the viewgraph to explain the history of the area and noted resubdivision, which allowed for smaller lots than that proposed by the applicant, was approved for lots in the immediate vicinity. He said the lots would be compatible with other lots in the area, an extraordinary situation existed in that the lot is large enough to accommodate two or three lots, the narrowness of the lot has caused the need for the variance, and the request is for a minimal variance. Mr. Lawrence noted that the structures would be built within the setback requirements.

In addressing the neighbor's concerns, he stated the applicant would be willing to relocate the proposed structure on Lot 1A to 55.0 feet from the lot line. Mr. Lawrence said to further alleviate concerns, and subject to the approval of the Department of Environmental Management (DEM), the limits of clearing would be moved proportionately closer to the street. He noted there are stringent requirements regarding drainage, erosion, and sedimentation control which must be met when obtaining a building permit.

Mr. Hammack asked how long the applicant had owned the property. Phillip H. Weston, 9827 Five Oaks Road, Fairfax, Virginia, said his parents had purchased the property in 1919. He said in the early 1960s, the Fairfax County School Board acquired a portion of the property for the Mosby Woods Elementary School. Mr. Weston stated, although it was not financially profitable, he was pleased with the results of the school. Continuing, he said all but a three acre portion of the property was then sold to a developer.

Mr. Lawrence stated that Mr. Weston currently resides on the property, but would move when the lot is developed.

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

Thomas Jones, 9823 Five Oaks Road, Fairfax, Virginia, addressed the BZA and said he has been a neighbor for approximately ten years. He expressed concern regarding the development with regards to land erosion. Mr. Jones said his property had experienced continual erosion, and in April 1994 he had spent $10,000 to correct the situation. He stated that he would like to have proper safeguards to ensure the development does not mitigate all the measures he has taken to halt the erosion. Mr. Jones expressed his belief that the removal of the older trees and vegetation, along with the runoff from the new houses, would serve to defeat the present erosion controls and drainage systems. In conclusion, he asked the BZA to deny the request.

In response to Mrs. Thonen's question as to whether he had read the proposed development conditions, Mr. Jones said he had not. Mrs. Thonen noted that the development would be subject to the restrictions dictated by the Chesapeake Bay Preservation provisions and a tree preservation plan would be subject to the approval of the Urban Forestry Branch.

Mr. Jones said although his property had been landscaped by the builder, within two years huge gullies ran through his backyard and the situation had to be corrected by putting in a dry stream bed. He again said, unless he could receive assurance that there would be no detrimental drainage impact on his property, he would oppose the variance.

Richard Leonard, 9825 Five Oaks Lane, Fairfax, Virginia, addressed the BZA. He stated that, while most of his concerns had been addressed, he too would like assurances that there would be no drainage problems.

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

In response to Mrs. Thonen's question as to whether he had represented the contractor who had developed Mr. Jones' and Mr. Leonard's properties, Mr. Lawrence said no. Mrs. Thonen expressed concerns regarding the lack of controls regarding soil erosion and drainage which allowed the situation described by Mr. Jones and Mr. Leonard to occur. Mr. Lawrence noted that the two lots had not been subject to a variance. He said the testimony would alert both the developer and DEM to the situation.

Mr. Hammack asked for clarification regarding Mr. Weston's part in the subdivision of the original property and why the hardship was not self-inflicted. Mr. Lawrence explained had the initial subdivision included all of the property the developer would have been aware that a variance would be needed. He said the problem stemmed from Mr. Weston's desire to keep the homestead.

Chairman DiGiulian said the Fairfax County School Board took a portion of the land for the school, thereby changing the character of the property. He noted the property taken for the entrance of the school further restricted development and created a hardship for the applicant.

In response to the BZA's question as to whether the lots had been created by-right, Mr. Hunter said they were.

Mr. Lawrence noted that the proposed lots would be larger than the R-3 zoning requirements and would be compatible with neighboring lot. He noted that a portion of the applicant's property had been acquired by the Fairfax County School Board by the eminence of public domain.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 94-P-115 for the reasons reflected in the Resolution and subject to the modified development conditions. She stated that the applicant would have to submit a new plat within thirty days.

Mr. Dively seconded the motion. He said the lots would be well in excess of the R-3 requirements.

Mr. Hammack said there had been unusual circumstances in the way the surrounding property had been developed. He asked the maker of the motion to modify Development Condition 4 to read:

4. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director, DEM to meet the requirement of the Chesapeake Bay Preservation Ordinance. The variance of Lot 9D into Lots 1A and 1B shall not exacerbate the water runoff problems being experienced by Lots 12C, 12D, and 12E.

Mrs. Thonen accepted the amendment to the motion. Mr. Dively seconded the amended motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-P-115 by PHILLIP H. WESTON, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1-A having lot width of 69.70 feet, on property located at 9827 Five Oaks Road, Tax Map Reference 48-3((1))9D, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 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 0.86 acre.
4. As a result of condemnation, the applicant was left with a less than perfect division of the lot.
5. Although it may appear that everything will be fine when a portion of the lot is removed, complications caused by the condemnation can occur during development.
6. Fairfax County officials should ensure that the development of the property does not have a detrimental impact on other properties in the area.
7. The BZA is very careful not to approve applications which would detrimentally impact the neighbors. The development conditions are very stringent, and the Chesapeake Bay Ordinance is much stricter than any of the other County Ordinances.
8. The application meets the necessary requirements for the granting of a variance.
9. Several of the existing conditions were not caused by the applicant. If the School Board had not confiscated the land, the applicant would have had the land for 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 subdivision of Lot 5 as shown on the plat prepared by Harold A. Logan Associates, P.C., dated June 14, 1994, revised through December, 1994. All development shall be in conformance with this plat. If the house locations are shifted or changed, they shall be placed within the limits of clearing and grading in order to preserve as many of the existing trees on site as possible.

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. Prior to the approval of the subdivision of the property, 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 site as determined by the Urban Forestry Branch, DEM, and shall meet the tree cover requirements of the Zoning Ordinance.

4. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director, DEM to meet the requirement of the Chesapeake Bay Preservation Ordinance. The variance of Lot 9D into Lots 1A and 1B shall not exacerbate the water runoff problems being experience by Lots 12C, 12D, and 12E.

5. The house on Lot 1A is to be located 55 feet from the front 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 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 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 10, 1995. This date shall be deemed to be the final approval date of this variance.

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

9:30 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 77.2 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. (DEF. FROM 11/1 AT APPLICANT'S REQUEST.)

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

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on the west side of Fox Mill Road and on the north side of Little Difficult Run. The site is 3.30 acres in size and is zoned R-1. Fox Mill District Park is located to the east and the Little Difficult Run Stream Valley Park is located to the south and southwest. Surrounding residential lots in the Folkstone subdivision are located to the north and northwest.

Mr. Hunter stated that the applicants were requesting a variance to permit the subdivision of one lot into two lots, with proposed Lot 12B having a lot width of 77.2 feet. The Zoning Ordinance requires a minimum lot width of 150 feet on a lot zoned R-1; therefore, the applicants were requesting a variance of 72.8 feet. Proposed Lot 12B is 79,520 square feet and Lot 12A is 50,401 square feet in size, respectively.

Continuing, he said staff has several concerns with the application, including land use compatibility, Environmental Quality Control (EQC) preservation, and public park dedication. A large portion of proposed lot 12B would be located within the floodplain of Little Difficult Run. The floodplain area is designated as a Resource Protection Area, and the

Comprehensive Plan also shows that the entire floodplain portion of the property is planned for public park use. The floodplain extends from the southwestern corner of the property to the northeastern corner, and includes 1.47 acres of the site.

Mr. Hunter said the Park Authority was also concerned about the possible degradation of an environmentally sensitive watershed. Notwithstanding, if it is the intent of the BZA to approve this application, the Park Authority requests dedication of a 25 foot wide section of land along the south side of the property adjacent to Little Difficult Run.

He stated that the revised variance plat shows the dedication of the requested 25 foot wide easement which is necessary for the Park Authority to gain access to the stream. The Park Authority also recommended that the rest of the 100-year floodplain be placed in a conservation easement.

Mr. Hunter noted that the Folkstone subdivision to the north and west is a cluster subdivision which preserved much of the Little Difficult Run stream valley, including several tributaries. The Comprehensive Plan states that stream valleys should be preserved, especially all 100 year floodplains. Consequently, staff believed that the proposed subdivision was not in keeping with the Comprehensive Plan's policy of preserving Environmental Quality Corridors, including all 100 year floodplains.

Mr. Hunter said staff recommended that in order to limit curb cuts on a street which carries a significant amount of through traffic, access to both lots be limited to one entrance which provides access to both lots.

In summary, Mr. Hunter said staff believed the proposed variance had not met all of the standards for a variance, would not be in harmony with the Comprehensive Plan, and did not conform to the applicable Zoning Ordinance provisions.

He noted if the BZA should grant the application, the approval should be subject to the development conditions contained in the staff report dated October 25, 1994.

In response to Mr. Kelley's question regarding staff's position that the property should be reserved for parkland, Mr. Hunter said the Comprehensive Plan designated the floodplain area of the subject property as park use. Mr. Hunter explained that Fairfax County has been unable to purchase all of the stream valleys which have been designated for stream valley parks.

Chairman DiGiulian asked if Fairfax County had planned the property for parkland through dedication, Mr. Hunter said he was correct. He explained that most of the parkland had been acquired through dedication. Chairman DiGiulian expressed concern about ensuring the area would be dedicated for public use and expressed his belief that it would be tantamount to confiscating the land without compensation. Mr. Hunter explained that the Park Authority would like a 25 foot strip of land to be dedicated. Chairman DiGiulian noted that the applicant had already been inconvenienced by the County's request and had agreed to the 25 foot strip of land dedicated. Chairman DiGiulian expressed concern regarding staff's recommendation of denial based partly on the fact that Fairfax County officials have decided a portion of the property should be dedicated as a public park without compensation to the owner. Mr. Hunter said the Comprehensive Plan recommended the entire floodplain be dedicated for public park use.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that staff did not believe the application met the necessary standards and would set a precedent in the area.

The applicant, Robert Raspen, 2832 Fox Mill Road, Herndon, Virginia, addressed the BZA. He said he wished to subdivide the property and noted that each of the resultant lots would meet the lot size requirements; however, one lot would be a pipestem lot. Mr. Raspen stated the pipestem lot would be approximately 77.2 feet wide after the dedication of a 25 foot strip of land to the Park Authority; thus, a 72.8 foot variance was requested.

Mr. Raspen said he would not profit from the subdivision explaining that he intended to build a small retirement residence on the lot. He stated the character of the land would be maintained, and although a driveway would be installed, no structure would be constructed within the floodplain.

Continuing, Mr. Raspen said the variance was needed so he and his wife could stay in Fairfax County where they have established a small business, belong to a church, and their children and friends reside. In explaining the circumstances, he stated they no longer needed the large house built in 1976 when they had a large family living at home.

Mr. Raspen explained that they had been working with various Fairfax County officials for over one year and had spent $10,000 on the variance application. He listed some of the measures taken in order to receive County approval and said they have done their utmost to fulfill all the requirements and suggestions of the various Fairfax County departments.

In response to Mr. Kelley's question as to whether the total amount of land involved in the 25 foot strip dedication would be approximately 12,000 square feet, Mr. Raspen said yes. He noted that they were also willing to put the remainder of the floodplain into a conservative easement which would protect the floodplain.

Mr. Raspen said the plat shows the dedicated area, the clearing lines, and the tree area. He stressed that the process had been long, hard, and emotionally and financially draining. Using the viewgraph, he pointed out the many lots in the neighborhood with pipestem lots, and disagreed with staff's position. Mr. Raspen stated they could not afford to donate over 1.5 acres of land to the Fairfax County Park Authority. The extent of the floodplain also presented a hardship because, while the lot has two building sites and adequate space for two drain fields, the proposed new lot would only be accessible by creating a pipestem lot through the floodplain.

Continuing, Mr. Raspen said the Comprehensive Plan has not been strictly enforced in the neighborhood. He used the viewgraph to show the three lots which had been designated for parkland, but had been developed with single family homes. Addressing the installation of the driveway, Mr. Raspen asked that proposed Development Condition 3, which would require a common driveway for both lots, be deleted.

Mr. Raspen stated that not only was a large portion of the property being donated to the Fairfax County Park Authority, but also to the Virginia Department of Transportation (VDOT) for road improvements. In conclusion, he asked the BZA to grant the request. Mr. Raspen presented a letter of support from the adjoining neighbor to the BZA.

In response to Mr. Dively's question as to the request to delete proposed Development Condition 3, Mr. Raspen said the reasons given for the requirement were not valid.

Chairman DiGiulian called for speakers to the request and the following citizen came forward.

The co-applicant, Paula M. Raspen, 2832 Fox Mill Road, Herndon, Virginia, addressed the BZA. She stated they would like to build a small retirement house on the proposed lot. Ms. Raspen said their present house was too large and they were unable to maintain the property. She explained that the house on the proposed lot would be well screened and would not have a detrimental impact on the neighborhood.

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

Anthony Urbanelli, 12104 Westwood Hills Drive, Herndon, Virginia, presented the BZA with a letter in opposition to the request. He said the application did not met the necessary standards for the granting of a variance. Mr. Urbanelli expressed his belief that approximately 1.5 acres of the 100 year floodplain would be destroyed, and adjacent properties and parkland would be adversely impacted. He further stated the application violates the County Comprehensive Plan, and fails to address the Department of Environmental Management issues.

Mr. Urbanelli used the viewgraph to show his property and said further development on the applicant's property would lead to increased flooding and have a detrimental impact on the area. He explained that in making the recent road improvements, the engineers had rechanneled the course of Difficult Run causing increased flooding in the area. Mr. Urbanelli expressed his belief that any additional development would further increase flooding and asked the BZA to deny the request. He noted that the applicant's land assessment of $27,000 per acre was approximately one-half of the assessment applied to adjacent properties and said the low assessment could be because part of the property has been designated as floodplain.

Chairman DiGiulian called for rebuttal. He also expressed his concern regarding Development Condition 6. Chairman DiGiulian noted the condition would require there be no clearing of any vegetation except for dead or dying trees or shrubs in the area and wondered if the Park Authority would also be subject to the restriction on the dedicated land. He further stated that he believed the reference to the Comprehensive Plan should be deleted because the Comprehensive Plan does not offer a definite location of the floodplain.

In rebuttal, Mr. Raspen said the only clearing that would be necessary in the floodplain would be for the driveway. In addressing Mr. Urbanelli's concerns regarding flooding, he said when VDOT made the road improvements they installed three culverts under the road. Mr. Raspen explained that, although the culverts could adequately control the water, VDOT has never cleared debris or maintained the culverts. The water washes the debris into the culverts which basically forms a dam. He said the direction of the Difficult Run stream bed has not been changed and expressed his belief that the drainage problem stems from the lack of maintenance on the part of VDOT and not by the floodplain.

In conclusion, Mr. Raspen said that, although Mr. Urbanelli opposed the variance, his own lot is a pipestem lot with an approximate 15.0 foot entrance and was also targeted as desirable for parkland by the Park Authority. He noted that the two properties are approximately one-quarter mile apart.

In response to Mr. Hammack's question as to why the Park Authority would need the 25.0 foot easement, Mr. Raspen said he did not know. He noted that an easement for maintenance already existed on the property. Mr. Raspen said the steep topographic conditions, as well as existing large rocks, precluded having a common driveway. He also expressed his belief that installing a common driveway through another person's property would lead to future problems.

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

Mr. Dively made a motion to grant VC 94-Y-096 for the reasons reflected in the Resolution and subject to the development condition as contained in the staff report dated October 25, 1994 with the following modifications:

Proposed Development Condition 3. To be deleted and the subsequent paragraphs renumbered.

Proposed Development Condition 6. The language "...or defined by the Office of Comprehensive Planning (OCP) using the Comprehensive Plan." to be deleted.

Mr. Kelley seconded the motion and suggested an additional development condition be added as follows:

A driveway for Lot 12B may be constructed through the floodplain as shown on the approved plat.

The maker of the motion accepted the suggestion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-Y-096 by ROBERT F. AND PAULA M. RASPEN, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 12B having lot width of 77.2 feet, on property located at 2832 Fox Mill Road, Tax Map Reference 36-1((1))12, 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 December 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-1.
3. The area of the lot is 3.30 acres.
4. The applicant's testimony was very convincing.
5. The applicants have been extremely generous in dedicating 12,000 square feet to Fairfax County, largely uncompensated unless the variance is granted.
6. The request is a reasonable use of the property and the applicant has demonstrated that there are many pipestem lots in the area.
7. The large pipestem has been made smaller by the 25 foot frontage dedication to Fairfax County.

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

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

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

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

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

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

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

1. This variance is approved for the subdivision of the existing lot into two (2) lots as shown on the plat prepared by RC Fields, PC & Associates, P.C. dated July, 1994, revised through August 16, 1994, submitted with this application and is not transferable to other land.

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. Prior to the approval of the subdivision of the property, 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 drainageways, steep slopes, and storm channels while connecting to as many woodlands on neighboring lots as possible as determined by the Urban Forestry Branch, DEM, and shall meet the tree cover requirements of the Zoning Ordinance.

4. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director, DEM to meet the requirement of the Chesapeake Bay Preservation Ordinance.

5. In order to preserve water quality in the Little Difficult Run Stream, a minimum Environmental Quality Corridor (EQC) buffer to include all of the 100-year floodplain along the southern property line of Lot 12B shall be provided as shown on the variance plat. There shall be no clearing of any vegetation in this area except for dead or dying trees or shrubs and no grading. There shall be no structures located in the EQC area.

   Pursuant to the Virginia Code Section of 10.1-1700 et seq, at the time of subdivision plan review, an Open Space Easement to the Board of Supervisors shall be recorded among the land records of Fairfax County. The easement shall run with the life of this variance. The easement shall include that land which was depicted as floodplain on the plat submitted with this application. There shall be no clearing of any vegetation in this area, except for dead of dying trees or shrubs and no grading. There shall be no structures located in the EQC area.

6. A driveway for Lot 12B may be constructed through the floodplain as shown on the approved plat.

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

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

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The BZA had a brief discussion with staff to ensure the modifications to the development conditions were clear.

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Page 34, December 1, 1994, (Tape 1), 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 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. DEF. FROM 9/27 AT APPLICANT's REQUEST.)

Chairman DiGiulian noted that the appellant had requested withdrawal.

Mr. Hammack made a motion to allow the withdrawal of A 94-H-006. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Pammel and Mr. Ribble absent from the meeting.

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Page 34, December 1, 1994, (Tape 1), Action Items:

Request for Approval of Revised Plat
Dana M. and Wendy M. Rieger, SP 94-P-042 and VC 94-P-106

Mrs. Thonen made a motion to approve the revised plat. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Dively not present for the vote. Mr. Pammel and Mr. Ribble were absent from the meeting.

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

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

John Ribble
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 3, 1995

APPROVED: January 10, 1995

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 6, 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 9:11 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 35, December 6, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ANNA DALTON LINK, VC 94-D-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.5 ft. from side lot line. Located at 2242 Highland Ave. on approx. 10,006 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((18)) 14. (Concurrent with SP 94-D-048).

9:00 A.M. ANNA DALTON LINK, SP 94-D-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.5 ft. from side lot line. Located at 2242 Highland Ave. on approx. 10,006 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((18)) 14. (Concurrent with VC 94-D-121).

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. Link, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 10,006 square foot subject property is located on the southwestern side of Highland Avenue within the Bryants Addition to Ellison Heights Subdivision. The subject property is surrounded on four sides by single family detached dwellings in the R-4 District. 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 a dwelling to remain 7.5 feet from the side lot line. The Zoning Ordinance requires a minimum 10 foot side yard; therefore, an error in building location for 2.5 feet was requested. The variance request was to allow a detached garage to be located 4.5 feet from a side lot line. The Zoning Ordinance requires a minimum 10 feet; therefore, a variance was requested for 5.5 feet from the side yard requirement. He noted a correction to page 2 of the staff report which reflected the height of the garage as 13 feet rather than 11 feet.

Anna Dalton Link, 2242 Highland Avenue, Falls Church, Virginia, said she purchased the 13 year old house 30 years ago and was the fourth owner of the property. She said the title search at the time of purchase failed to show the discrepancy between what was shown in the County records and that shown on the plat, which is 7 and 1/2 feet. Ms. Link addressed each of the required standards and asked the BZA to allow the house to remain in its present location.

With respect to the variance request, Ms. Link said she would like to build a free-standing garage on the side of the house and addressed each of the required standards. She said to build the garage in the rear of the lot would not be feasible because of the topographic conditions of the lot. Ms. Link said fire regulations prohibit her from attaching the garage to the side of the house because the bedrooms are on that side of the house. She added that 29 of the 34 houses on her street already have either a garage or carport. Ms. Link submitted a letter of support into the record from Dr. Johnson, the neighbor who owns the property next to the proposed garage.

In response to questions from Mr. Dively, Ms. Link explained that the bedrooms are on the side of the house where she proposed constructing the garage. She said because of the topography of the lot, the garage could not be constructed in the rear of the lot.

A discussion took place between the BZA and the applicant with regard to the 30 foot length of the proposed garage. Ms. Link said the garage would only be 22 feet long since she had eliminated the tool shed and the 8 foot reduction would be taken from the rear of the proposed structure.

Mr. Pammel asked staff what the side yard requirements would have been under the 1942 Zoning Ordinance at the time the house was built. Mr. Heine replied that he did not know.

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

Mr. Hammack made a motion to grant SP 94-D-048 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 29, 1994. The applicant was required to submit revised plats showing the length of the garage as 22 feet within thirty days.

Mr. Dively said this type of case made it apparent that there should be a statute of limitation.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-D-048 by ANNA DALTON LINK, 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 7.5 feet from side lot line, on property located at 2242 Highland Avenue, Tax Map Reference 40-4((18))14, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 6, 1994; and

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

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 house was built approximately 43 years ago before the applicant purchased the property.

I. The applicant is the fourth owner.

J. There are no reservations at all about granting the applicant's 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 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 use(s) indicated on the special permit plat, entitled Link House, Proposed Site Plan, prepared by Lawrence G. Deigh, Architect, dated August 20, 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. 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 January 3, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 94-L-121 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 29, 1994. The applicant was required to submit revised plats showing the length of the garage as 22 feet within 30 days.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-121 by ANNA DALTON LINK, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.5 feet from side lot line, on property located at 2242 Highland Avenue, Tax Map Reference 40-4((18))14, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 6, 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 10,006 square feet.
4. This case was a close one, but the applicant's representation that she would reduce the garage to 22 feet was the swaying factor.
5. The applicant testified that the lot has topographical problems, since the rear yard falls away from the house.
6. The garage could be built almost by a matter of right if the trellis was eliminated.
7. There are no windows on the next door neighbor's house that will be impacted by the proposed garage.
8. Because of the fire code restrictions, the proposed garage cannot be attached to the house since there are bedrooms on that side of the house.
9. There are no objections from the next door 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 detached garage shown on the plat prepared by Lawrence G. Deigh, Architect, dated August 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 detached garage shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 3, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 38, December 6, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS M.B. & KIEN KHUC TRAN, VC 94-D-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from side lot line. Located at 1713 Margie Dr. on approx. 16,335 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((12)) 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. The applicant's agent, Ms. Rosati, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said this 16,335 square foot property is located on Margie Drive in the West Lewinsville Heights Subdivision. The subject property and surrounding lots are zoned R-3 and developed with single family detached dwellings. This request for variance resulted from the applicants' proposal to enclose an existing carport into a garage to be located 6.8 feet from a side lot line. A minimum side yard of 12.0 feet is required by the Zoning Ordinance on an R-3 zoned lot. Accordingly, the applicant was requesting a variance of 5.2 feet to the minimum side yard requirement.

Michelle A. Rosati, with the firm of Lawson & Frank, P.C., 4141 N. Henderson Road, Plaza Suite 5, Arlington, Virginia, said the applicants were proposing to enclose an existing carport with no further encroachment into the side yard. She said the applicants purchased the property in 1976 and the lot has an unusual shape since it is narrower at the front than at the rear with the house situated towards the front of the lot. Ms. Rosati said the request will not impact the adjacent neighbor since the structure will be well screened and will not be exposed to the neighbor's side windows.

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

Mr. Pammel made a motion to grant VC 94-D-124 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

Mr. Dively said he believed the "prairie architecture of Frank Lloyd Wright" is now passe in Fairfax County and no one wants to keep a carport.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-124 by THOMAS M.B. AND KIEN KHUC TRAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.8 feet from side lot line, on property located at 1713 Margie Drive, Tax Map Reference 30-3((12))18, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 6, 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 16,335 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance; specifically, the unusual configuration of the lot with converging lot lines from the rear to the front providing a rather narrow frontage and the location of the dwelling on the lot, thus necessitating the need for a variance to enclose the carport.
5. The construction will not involve any further encroachment into the side yard than presently exists with the existing carport.

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by James H. Guynn, Certified Land Surveyor, dated May 12, 1994, revised September 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. 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 December 14, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 40, December 6, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES M. LEEDOM, JR., VC 94-D-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. from rear lot line. Located at 6524 Truman Ln. on approx. 9,643 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((36)) 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, Mr. Leedom, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the 9,643 square foot property is located on Truman Lane in the Marlborough Subdivision. The subject property and lots to the south, east, and north are zoned R-4 and developed with single family detached dwellings. The lot to the west is homeowner association open space for the Westmoreland Square Townhomes. This request for a variance resulted from the applicant's proposal to construct a two-story addition to be located 18.5 feet from the rear lot line. A minimum rear yard of 25.0 feet is required by the Zoning Ordinance on an R-4 zoned lot. Accordingly, the applicant was requesting a variance of 6.5 feet to the minimum rear yard requirement.

Charles Melvin Leedom, Jr., 6524 Truman Lane, Falls Church, Virginia, said he and his wife have aged parents who may require some assisted care in the near future and they made a decision that they will move them into their home. They purchased the house in 1967 not realizing that their family conditions would change and necessitate the need for an expansion. Mr. Leedom said the lot is exceptionally narrow and shallow, with a severe slope in the rear, which only allows them to construct a small addition. He addressed each of the required standards and asked the BZA to grant the request.

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

Mrs. Thonen made a motion to grant VC 94-D-126 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 28, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-126 by CHARLES M. LEEDOM, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.5 feet from rear lot line, on property located at 6524 Truman Lane, Tax Map Reference 40-2((36))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 December 6, 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 9,643 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance especially that the lot is narrow and very shallow and the house is moved back on the lot.
5. The topography is such that there is no other place to put the addition and the lot is so small that the applicant would have trouble building an addition anywhere.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated July 19, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 14, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 41, December 6, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PATRICIA THOMPSON, VC 94-V-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.7 ft. from street line of a corner lot. Located at 1404 Namassin Rd. on approx. 21,909 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((10)) 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, Ms. Thompson, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is zoned R-2 and surrounded by single-family dwellings on land zoned R-2 and R-3. The applicant was proposing to construct a garage addition 26.7 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 35 feet; therefore, the applicant was requesting a variance of 8.3 feet. Ms. Greenlief said the BZA had approved several variances in the neighborhood in the late '40's and '50's and those were outlined on page 1 of the staff report.

Patricia Thompson, 1404 Namassin Road, Alexandria, Virginia, introduced Richard Crist, the contractor, who would present the justification.

Mr. Ribble said he believed the statement of justification submitted with the application was very thorough. Chairman DiGiulian agreed and polled the audience to determine if there was anyone present who wished to speak to the application. Hearing no reply, he closed the public hearing.

Mr. Ribble made a motion to grant VC 94-V-122 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-V-122 by PATRICIA THOMPSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 26.7 feet from street line of a corner lot, on property located at 1404 Namassin Road, Tax Map Reference 1022((10))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 December 6, 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 21,909 square feet.
4. The applicant has met the nine required standards for the granting of a variance.
5. There is a double front yard which the applicant addressed very well in the statement of justification submitted with the application.
6. It is a very old subdivision which was subdivided in the '30's or '40's.
7. Namassin Road is a 50 foot right of way but the actual paved part of it is much less.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc. dated August 9, 1994, and 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 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 December 14, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 43, December 6, 1994, (Tape 1), Scheduled case of:

9:30 A.M. M.T.O. SHAHMAGHSOUDI, SP 94-D-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 11326 Leesburg Pi. on approx. 5.00 ac. of land zoned R-1. Dranesville District. Tax Map 11-2 ((1)) 22B.

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. Salehi, replied that it was.

Mr. Pammel noted a correction to the affidavit wherein it stated the owners lived in "Great Falls, California" rather than Great Falls, Virginia.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is located on the north side of Route. 7 just west of its intersection with the Reston Parkway, contains 5 acres, and is zoned R-1. The properties immediately to the east and west are vacant. The property to the north is developed with a single family detached dwelling. The property to the south is open space associated with Reston.

Ms. Greenlief said the applicant was requesting approval of a special permit to allow a church and related facilities on the property. The church will seat 150 parishioners and will contain 14,000 square feet. There is also a parsonage proposed for the site which will contain 4,000 square feet for a total Floor Area Ratio (FAR) of 0.088. Fifty-six parking spaces are proposed which is 16 over the required amount. Transitional screening and tree save areas are shown around the perimeter of the site. A right turn lane, acceleration lane, and a service drive will be provided.

Staff had no major concerns with this application provided effective stormwater management is provided and effective screening is planted. Staff believed that with the development conditions in Appendix 1, these will be accomplished; thus, staff recommended approval of SP 94-D-049.

May Salehi, 9608 Minstead Court, Burke, Virginia, said the congregation found this five-acre wooded site approximately one year ago and they plan to leave much of the site undisturbed. She agreed with all the development conditions. Ms. Salehi said the building will be 14,000 square feet, but the main worship area space will only be 4,000 square feet. She said it was a very simple one-story building with a very residential design and surrounded by a 4 foot high perimeter wall. The main hours of worship will be basically on Sunday evening between the hours of 4:00 p.m. to 8:00 p.m. with meditation classes being held on Monday and Wednesday evenings beginning at 8:00 p.m. Ms. Salehi said there will be very little traffic impact and noted that the Great Falls Citizens Association has no objections to the proposal.

In response to a question from Mr. Dively with respect to the development conditions, Ms. Salehi said the applicant was in full agreement.

Mr. Hammack and the speaker discussed the number of people who would be attending the week day meditation sessions. Ms. Salehi replied there would be approximately 10 to 15 attendees for each of the three classrooms. In response to a question from Mr. Hammack as to the doctrine of the church, Ms. Salehi said it was Persian Sofism with the basis being Islam

dealing with the reality of religion. Mr. Hammack asked if there would be community activities held in the church and the speaker said there would not.

Mr. Hammack asked staff if there was a problem with the parish house being on the property. Ms. Greenlief said the use is allowed as long as the dwelling is occupied by the priest or the minister.

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

The President of S&R Developers, owner of the nine lot subdivision just east of the subject property, expressed concern with the possible traffic impact which might be generated by the church. He suggested that access to the church be from Leesburg Pike as shown on the plat.

In rebuttal, Ms. Salehi said the proposed building will not accommodate more than 150 attendees and if the church outgrows the proposed building, they will expand to another site.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant SP 94-D-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

Mr. Hammack noted that this was a mosque of sorts and said if there are not seats in the worship area, the applicant could surpass the capacity load. Ms. Salehi stated the church was not a mosque. She explained although there will be no "fixed" chairs in the worship area there will be steps which will define the seating for no more than 150 attendees. Mr. Hammack said since the County had experienced problems with the mosque at Seven Corners regarding the load capacity and parking, he wanted to alleviate any potential problems with this application.

Mr. Ribble pointed out that the development conditions stipulates the "maximum number of seats/worshippers shall be 150."

Mr. Dively said it was his understanding that Sofism was more ancient than Islamic. Ms. Salehi said the doctrine was very ancient.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-D-049 by M.T.O. SHAHMAGHSOUDI, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 11326 Leesburg Pike, Tax Map Reference 11-2((1))22B, 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 December 6, 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 5.00 acres.
4. The plan seems to be well laid out.
5. There does not appear to be a major transportation problem
6. The request seems that it will serve a need in the County.
7. The number of seats and parishioners have been limited to 150.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by MS & Associates dated October 21,

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 maximum number of seats/number of worshippers shall be 150.

6. Fifty-six (56) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on-site.

7. The limits of clearing and grading shall be as shown on the special permit plat.

8. Within a 25 foot wide area along the western lot line and a 29 to 32 foot wide area along the eastern lot line (side lot lines), as shown on the plat, existing vegetation shall be preserved to the greatest extent possible as approved by the County Urban Forester. Existing vegetation in these areas shall be supplemented to a level of screening equivalent to Transitional Screening 1. It is noted that this may or may not include the exact number of Leyland Cypress and Scotch Pine shown on the plat. The type and number of supplemented trees shall be reviewed and approved by the County Urban Forester.

9. The barrier requirement shall be modified to allow the 4 foot high solid architectural wall shown on the special permit plat to satisfy the requirement. The wall shall be placed at a location at least 25 feet in from the lot lines and may line either side of the entrance drive.

10. If a waiver of stormwater management requirements is not granted by the Director, Department of Environmental Management (DEM), on-site stormwater management facilities or a contribution to a regional pond shall be provided as determined by the Director, DEM.

11. Any proposed lighting shall be in accordance with the following:
    The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    The lights shall be focused directly on the subject property.
    Shields shall be installed, if necessary, to prevent the light or glare from projecting beyond the property.

12. Approval of this special permit use shall not be construed to imply an obligation on the part of Fairfax County to provide public sewer to the property.

13. Right-of-way to 120 feet from the centerline of Route. 7 necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements as determined by DEM.

14. A right turn deceleration lane shall be provided as shown on the plat and shall be designed and constructed to a standard as required by DEM and the Virginia Department of Transportation (VDOT).

15. A service drive shall be provided as shown on the plat along the site's frontage and shall be designed and constructed to a standard determined by DEM and VDOT.

16. So as to allow stacking of vehicles on site, the gate at the entrance to the site shall be shifted to the north into the site a minimum of 25.0 feet and shall be marked with reflective panels so as to be easily visible at night.

This approval, contingent on the above-noted conditions, shall not relieve 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.

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 December 14, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 46, December 6, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MCLEAN BIBLE CHURCH, SPA 73-D-151-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to permit an increase in parking spaces. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A. (Concurrent with VC 94-D-118).

9:30 A.M. MCLEAN BIBLE CHURCH, VC 94-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to be located less than 10.0 ft. from a front lot line and accessory structure to remain 9.0 ft. from a front lot line. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A. (Concurrent with SPA 73-D-151-05).

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

Susan Langdon, Staff Coordinator, presented the staff report and said the 5.75 acre site is located on the northeast corner adjacent to the intersection of Balls Hill Road and Georgetown Pike. The property has frontage on Balls Hill Road, Georgetown Pike, and the Capital Beltway. To the east is R-1 zoned property developed with single-family detached dwellings and to the south across Georgetown Pike is the Cooper Intermediate School. The site is currently developed with a 24,162 square foot church structure with 980 seats and a 245 space parking lot. The applicant was requesting approval of a special permit amendment to increase the number of parking spaces on site from the present 245 spaces to 317 spaces. Thirty new spaces were proposed adjacent to the existing detention pond next to Balls Hill Road, 37 spaces were proposed adjacent to Georgetown Pike, and 5 new spaces were proposed adjacent to the Beltway. These 5 spaces were proposed to be located 2 feet from the right-of-way of the Capital Beltway. Additionally, the applicant proposed moving 24 existing spaces adjacent to the Capital Beltway to within 2 feet of the right-of-way. The applicant was requesting the BZA to grant a variance to allow these spaces to be located closer than the 10 feet to the right-of-way as required by the Zoning Ordinance and to reduce the required peripheral parking lot landscaping. Additionally, the applicant was requesting a variance to allow an existing 9.2 foot high storage structure to remain 9 feet from the western lot line adjacent to the Capital Beltway. This storage structure is a green metal structure that is 40 feet in length and 7.9 feet wide. There will be no changes to the existing church building or access.

In 1988, the BZA granted an amendment to the church's special permit. The church had requested an expansion of the building to 1,308 seats and 327 parking spaces. The BZA approved the application, but reduced the number of seats to 980 and reduced the number of parking spaces to 245.

Off-site parking problems have been associated in the past with this use. As a result of the parking problems, the applicant was granted a special permit amendment in April of 1994 to allow off-site parking, and a Shared Parking Agreement was approved by the Board of Supervisors on February 8, 1994. This shared parking agreement resulted in an additional 250 parking spaces being made available for the church at the Cooper Intermediate School.

Staff believed that 495 parking spaces should be adequate for this use. Additionally, staff did not believe that the expansion of parking was in harmony with the general purpose and intent of the applicable Zoning Ordinance regulations nor in harmony with the Comprehensive Plan. Staff believed that the expanded use was too intense for the site and the glare from the headlights would directly affect the residents across Balls Hill Road. On June 20, 1974, Georgetown Pike was officially designated a scenic Virginia Byway by the State of Virginia. Language is contained in the Comprehensive Plan which states, ". . . Scenic and conservation easements should be sought along Georgetown Pike wherever practical for the preservation of the historic and scenic significance and beauty of the corridor." Intensive development along Georgetown Pike without the provision of adequate screening and setbacks could result in the loss of its "Scenic" designation. To help preserve its designation, a Development Condition was approved with the church's expansion in 1988. This Conditions states, "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 . . .". Additionally, the same Condition states, ". . . 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 . . ."

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This application proposed expanding the parking lot within 23.0 feet from the right-of-way of Georgetown Pike and within 43.5 feet from Balls Hill Road, eliminating the previously approved development condition and impacting the transitional screening yards. The increase of run-off as a result of additional pavement may require retrofitting or expanding the existing Stormwater Management Pond to meet the current BMP requirements. The Department of Environmental Management has not yet determined whether the pond can meet the required standards.

Additionally, twenty-four (24) parking spaces were proposed to be relocated closer to the western lot line. By relocating these spaces, the applicant was proposing additional impervious surface on site, but in essence was not providing any additional parking. These spaces were not marked as such, but appeared to be tandem parking spaces which are not permitted by the Zoning Ordinance or the Public Facilities Manual. They were not identified as bus spaces or as any other type of parking space which would require spaces 34.5 feet in length as these are planned.

Based on the above analysis, staff recommended denial of SPA 73-D-151-5 to permit an increase in parking spaces. However, if the BZA chose to approve the application, staff recommended that the BZA condition its approval by requiring conformance with the Proposed Development Conditions contained in Appendix 1 of the staff report.

Staff also recommended denial of VC 94-D-118 to permit parking spaces to be located less than 10.0 feet from a front lot line. However, if the BZA chose to approve the variance application to permit parking spaces, staff recommended that the BZA condition its approval by requiring conformance with the Proposed Development Conditions contained in Appendix 2.

If it was the BZA's intent to approve VC 94-D-118 to allow the accessory structure to remain 9.0 feet from a front lot line, staff recommended that the BZA condition its approval by requiring conformance with the Proposed Development Conditions contained in Appendix 3 of the staff report.

William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, called the BZA's attention to photographs of the subject property depicting the location of the proposed parking spaces. He said there is nothing in the Zoning Ordinance that prohibits tandem parking, if the parking lot is controlled, and noted other sites that have such parking. Mr. Hansbarger added that the only limitation is that it not be used for required parking and in this case it is not. He noted that the neighbors who had expressed concern at previous public hearings regarding the overflow parking were in support of this request. The areas that the church has selected for the additional parking are not ones that will adversely affect the neighborhood.

With respect to the variance request, Mr. Hansbarger said the metal shed is to the rear of the property, in an area that is heavily wooded, and is located near the Capital Beltway sound barrier. He noted there is no adverse visual impact on the neighbors.

Chairman DiGiulian called for speakers in support of the request and hearing no reply he called for speakers in opposition to the request.

Tom H. Brain, 7112 Holyrood Drive, McLean, Virginia, said he lives directly across the street from the church. He said the church has been admirable in their control of the parking situation, since it was brought to the BZA's attention approximately one year ago. Mr. Brain said the church has been using the Cooper Intermediate School for overflow parking as well as a portion of the lawn area, which they would now like to convert into parking spaces. He said this would bring the total number of parking spaces to 695. Mr. Brain said in 1987 when the church first considered expanding the original structure, they asked for a 1,400 seat auditorium with 357 parking spaces. This was later amended by the church to 1,308 seats in the auditorium with 327 parking spaces. In 1988, the BZA approved 988 seats with 245 parking spaces on site. Mr. Brain questioned whether converting the lawn into parking spaces was a legal conversion.

Mr. Ribble asked if the church had already been utilizing lawn parking. Mr. Brain said they had.

In rebuttal, Mr. Hansbarger said the open space required on site was 20 percent and with the increased parking it will be 35.5 percent. He said the applicant was not planning any increase in the facilities now or in the future.

Mr. Hammack asked if it was correct that the church attendees had been parking on the lawn area in violation of the previously approved special permit. Mr. Hansbarger said the church has been parking on the lawn and that is why they now want to pave the area which would allow the church to legally park on the lawn. Mr. Hammack did not agree with the agent's logic and said the church has been knowingly violating the condition of the special permit which was previously approved.

Ms. Langdon said the Office of Transportation had informed staff that tandem parking spaces are not allowed and the Zoning Ordinance specifically states that all off street parking space shall be provided with safe and convenient access to the street. She said in looking at the applicant's plat it actually showed the existing spaces adjacent to the Capital Beltway to be removed and the area for the parking and pavement expanded towards the Capital

Beltway. Ms. Langdon said the scenic byway is Route 123, which is along the southern lot line where the proposed parking spaces will be 23 1/2 feet from the lot line.

Chairman DiGiulian asked if the Zoning Ordinance specifically states no tandem parking, or it is an interpretation on the part of staff. Jane Kelsey, Chief, Special Permit and Variance Branch, said it was also an interpretation of the Zoning Administrator. She said this issue was addressed during another church application.

Mrs. Thonen said she agreed with part of the request, but she was concerned that landscaping would be removed to create parking spaces. She said perhaps the church has overgrown the site and needs to consider relocating; therefore, she could not support the request.

Mr. Hammack said he could appreciate what the church is trying to do, but he was concerned that if the BZA grants the tandem parking for this site it would set a precedent. He said he did not agree with the church parking in locations which are in violation of the approved special permit.

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

Mr. Hammack said he was not inclined to approve all of the request, but that he would support the parking spaces against the Capital Beltway. He said it was difficult to determine the number of parking spaces that were proposed in the 10 foot line precisely from the plat. Mr. Hammack then made a motion to grant VC 94-D-118 in part as he believed the applicant had made a case for permitting the increase in parking within the 10 foot encroachment. Mr. Pammel seconded the motion.

Mr. Kelsey pointed out that tandem parking was not permitted under the Zoning Ordinance. Chairman DiGiulian said the BZA did not have anything in writing to support that determination. Mr. Hammack said if it was based upon an interpretation it should be made a part of the staff report.

Mr. Hammack said he would withdraw his motion and defer action until the next BZA meeting to allow him to study the parking in detail prior to making his motion and to get a response from the Zoning Administrator as to whether tandem parking is permitted. Mrs. Thonen agreed with deferring action.

Following a discussion among the BZA members, Mr. Hammack made a motion to defer decision for one week. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 48, December 6, 1994, (Tape 1), Action Item:

Approval of November 29 and December 1, 1994 Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted by staff. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 48, December 6, 1994, (Tape 1), Action Item:

Out of Turn Hearing Request for
Kids Land Child Care, Inc., SP 94-Y-068

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had just received the application and during a quick review she had discovered that the application had been filed under an incorrect name; therefore, it would need to be amended.

Mrs. Thonen said it appeared from the applicant's letter that she had been given a lot of misinformation. Ms. Kelsey said staff could not support the out of turn hearing request since the application would require input from different County agencies and a site visit. She said the applicant had to revise the plat to show the location of the play area and the parking spaces which had prevented the application from being accepted until this was accomplished.

Following a discussion between the BZA and staff as to how early the application could be heard, Ms. Kelsey said the application was currently scheduled for February 28th. She pointed out that there were public hearings scheduled for February 7th and February 14th.

Mr. Dively made a motion to schedule the public hearing for February 7th. 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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Mr. Pammel asked if staff had determined whether the Board Auditorium was available on a day other than Tuesday for the BZA to meet. Ms. Kelsey said she had discussed alternatives with

the Government Center Office, but she had not yet received a response. She added they had indicated that Wednesdays were not available.

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

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 24, 1995 APPROVED: January 31, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 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 9:15 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 51, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THANH DUC PHAM, VC 94-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7310 Valley Crest Blvd. on approx. 15,422 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((21)) 14.

Chairman DiGiulian said that the notification requirements had not been met and asked staff for a deferral date. Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested January 31, 1995 at 9:00 a.m.

Mrs. Thonen made a motion to defer VC 94-M-128 to the suggested date and time. The Chair so ordered.

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Page 51, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GENE W. HENDRIX, VC 94-V-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 46.0 ft. and 47.0 ft. from front lot line, 10.0 ft. from side lot line and accessory structure 0.0 ft. from side lot line. Located at 5901 Mount Vernon Blvd. on approx. 13,583 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (10) 1, 2, 3, 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. Mr. Hendrix replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the subject property is located on Mount Vernon Boulevard in the Gunston Manor Subdivision. The subject property and lots to the west and south are zoned R-E and developed with single family detached dwellings. To the north and east is the Potomac River.

Ms. Langdon said the applicant was requesting a variance to construct covered stairs 46.0 feet from one front lot line of a corner lot, an 11.5 foot high deck to be located 47.0 feet from one front lot line of a corner lot, an 11.5 foot high deck to be located 10.0 feet from the north side lot line, and an accessory structure consisting of an 8.0 foot high detached deck to be located 0.0 feet from the east side lot line. The Zoning Ordinance requires a minimum 50.0 foot front yard and a minimum 20 foot side yard; therefore, variances of 4.0 feet for the covered stair addition, 3.0 feet for the front yard deck addition, 10.0 feet for the side yard deck addition, and 20.0 feet for the accessory structure were requested.

The applicant, Gene W. Hendrix, 11374 River Road, Lorton, Virginia, addressed the BZA. He stated that the structures would be compatible with the area, and the neighbors and the Gunston Manor Property Owners Association supported the request. Mr. Hendrix said the cantilever deck off the master bedroom would provide a view of the river. Explaining the request for the covered stairs, he said, although the front stoop could be constructed by-right, the covering of the stairs required a variance. Addressing the variance request for the deck, Mr. Hendrix noted that the majority of the deck would be adjacent to the river and the side yard portion would be adjacent to unbuildable waterfront property owned by the Gunston Manor Property Owners Association.

Mr. Hendrix stated that the property was encumbered with two front yards, and even though Mount Vernon Boulevard ends at the top of the river bank, both the yards adjacent to Mount Vernon Boulevard and Darcey Place have a 50.0 foot setback requirement. He noted that the width of the right-of-way precluded the installation of a turn around on Mount Vernon Boulevard.

Continuing, Mr. Hendrix said, even though the property was currently zoned R-E, in 1929 the area had been developed with small lots. He explained the lot sizes were grandfathered, but any new construction would have to meet the current setback requirements. In conclusion, Mr. Hendrix said the structure would be beneficial to the area, and asked the BZA to grant the request.

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

Mr. Pammel said the two letters submitted by the neighbors would be made part of the record.

Mr. Hammack made a motion to grant VC 94-V-125 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-125 by GENE W. HENDRIX, under Section 18-401 of the Zoning Ordinance to permit construction of additions 46.0 feet and 47.0 feet from front lot line, 10.0 feet from side lot line and accessory structure 0.0 feet from side lot line, on property located at 5901 Mount Vernon Boulevard, Tax Map Reference 119-4((2))(10)1, 2, 3, 4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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 13,583 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property is in an unusual location and the road network around it is unusual.
6. The 50 foot setback requirements impose a hardship on the property.
7. The granting of the variance will not change the character of the district.
8. The applicant testified to the justification for 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 structures shown on the plat prepared by Greenhorne & O'Mara, Inc., dated September 6, 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 with Mr. Dively and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 53, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN P. ADRAGNA, VC 94-S-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.8 ft. from rear lot line. Located at 6527 Legendgate Pl. on approx. 3,291 sq. ft. of land zoned PDH-5. Springfield District. Tax Map 88-1 ((26)) 28A.

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. Adragna replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the subject property is located on Legendgate Place in the Old Stone Mill Subdivision. The subject property and surrounding lots to the north, east and west are zoned PDH-5 and developed with single family detached dwellings. The area to the south is Homeowner Association open space.

Ms. Langdon said the applicant was requesting a variance to construct an 8.5 foot high deck 2.8 feet from the rear lot line. The Zoning Ordinance requires a 5.0 foot minimum rear yard; therefore, the applicant was requesting a variance of 2.2 feet to the minimum rear yard requirement.

The applicant, Stephen P. Adragna, 6527 Legendgate Burke, Virginia, addressed the BZA. He stated the adjacent dwelling to the rear was approximately 50.0 feet from the deck. Mr. Adragna said the proposal was based on aesthetic and architectural considerations, and without the variance, the deck would only be 5.0 foot wide. He noted the deck would be compatible with the character of the neighborhood, and asked the BZA to grant the request.

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

Mr. Pammel made a motion to grant VC 94-S-129 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-S-129 by STEVEN P. ADRAGNA, under Section 18-401 of the Zoning Ordinance to permit construction of deck 2.8 feet from rear lot line, on property located at 6527 Legendgate Place, Tax Map Reference 88-1((26))28A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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 PDH-5.
3. The area of the lot is 3,291 square feet.
4. The application meets the necessary standards for the granting of the variance.
5. The request is for a minimal 2.2 foot variance.
6. There is community open space to the rear of the subject property.
7. The adjacent residential lot to the north has a substantial wooded area of solid vegetation which further adds to the transition between the 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 specific deck addition shown on the plat prepared by The BC Consultants, dated September 7, 1994, signed by the engineer September 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 deck 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 54, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES SHUPIENUS, VC 94-L-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8 ft. 8 inches from side lot line. Located at 5916 Jane Way on approx. 13,860 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((2)) (2) 14.

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

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance to construct a garage addition 8.66 feet from the side lot line. The Zoning Ordinance requires a 12.0 foot minimum side yard; therefore, the applicant was requesting a variance of 3.34 feet to the minimum side yard requirement.

The applicant, Charles Shupienus, 5916 Jane Way, Alexandria, Virginia, addressed the BZA. He said the variance would allow him to convert the existing carport into a two-car garage. Mr. Shupienus noted the property was pie shaped and explained that the lot's shape has caused the need for the variance. In conclusion, he stated the garage would be architecturally compatible with the existing dwelling and asked the BZA to grant the request.

Chairman DiGiulian called for speakers to the request and the following citizen came forward.

Robert Marshall, 5918 Jane Way, Alexandria, Virginia, addressed the BZA. He noted the topographic condition of the land and expressed concern regarding existing drainage problems in the area and the possibility that the construction would exacerbate the problems. Mr. Marshall explained that the construction would impede the storm drains which were installed to control the water. In conclusion, Mr. Marshall said the garage would not be compatible with the community and asked the BZA to deny the request.

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

Mr. Shupienus said, while he shared Mr. Marshall's concerns regarding drainage, he believed the two existing drainage intakes to the rear of the property could control the water. He noted that Mr. Marshall's property has a steep slope which would prevent water damage to his structure. He further noted that rain water would be channeled into an existing underground drainage system on his property.

Mrs. Thonen made a motion to grant VC 94-L-130 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994 with an additional development condition:

4. The water runoff on the property shall continue to go into the storm drain and shall not overflow onto the neighbor's property.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-L-130 by CHARLES SHUPIENUS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8 foot 8 inches from side lot line, on property located at 5916 Jane Way, Tax Map Reference 82-3((2))(2)14, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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.
3. The area of the lot is 13,860.
4. The applicant has proven the hardship.
5. The shape and topography of the pie shaped 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 of the specific addition shown on the plat prepared by David Hawke dated August 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.

4. The water runoff on the property shall continue to go into the County storm drain and shall not overflow onto the neighbor's 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 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 December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 56, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM E. & MARGUERITE E. (PELISSIER) SEALE, VC 94-D-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a corner lot containing less than 36,000 sq. ft. Located at 1936 Franklin Ave. on approx. 19,914 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 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. Thomas replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance to allow an accessory structure (pool) to be constructed 10.7 feet from the front lot line of a corner lot containing less than 36,000 square feet. The Zoning Ordinance does not allow an accessory structure in the front yard in this district.

The applicants' attorney, William C. Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne, and Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, addressed the BZA. He said, as the photographs and a site visit depicted, the plat did not accurately illustrate the area. Mr. Thomas explained that the outlet road, which has been a paper only right-of-way for the last fifty years, has been used as the front yard of the property. Mr. Thomas said that, since the mature vegetation and the topographical conditions of the property precluded placing the pool in the actual rear yard, the pool would be installed in the portion of the property which was used as a rear yard. He noted the neighbor and the Citizens Association supported the request, and asked the BZA to grant the variance.

In response to Mr. Dively's question regarding the right-of-way, Mr. Thomas said the right-of-way has never been used. He explained that the original project, which had been planned for the road to provide access from Virginia Avenue to Birch Road, had been abandoned. It now existed as a technical road for a technical park which does not exist.

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

Mr. Ribble made a motion to grant VC 94-D-132 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-132 by WILLIAM E. AND MARGUERITE E. (PELISSIER) SEALE, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a corner lot containing less than 36,000 square feet, on property located at 1936 Franklin Avenue, Tax Map Reference 41-1((8))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 December 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-2.
3. The area of the lot is 19,914 square feet.
4. The application meets the necessary standards for the granting of the variance.
5. The property has two front yards.
6. The applicant's agent has explained the paper right-of-way which is adjacent to the proposed pool site. It is a grassy area which will not be developed.
7. Topographical conditions preclude place the pool elsewhere on the lot.

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

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

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

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

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

1. This variance is approved for the location of the specific accessory structure (pool) shown on the plat prepared by Alexandria Surveys, Inc. dated August 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.

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 and 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 December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 58, December 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DAVID A. RANDALL, VC 94-V-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from side lot line such that side yards total 18.3 ft. Located at 7871 Godolphin Dr. on approx. 14,178 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-4 ((6)) 216.

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. Randall replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to allow the enclosure of a carport into a garage addition 7.4 feet from the side lot line with side yards totalling 18.3 feet. The Zoning Ordinance requires an 8.0 foot minimum side yard with both side yards totalling 20.0 feet; therefore, the applicant was requesting a 0.6 foot variance to the minimum side yard requirement and a 1.7 foot variance to the total minimum side yards requirement.

Mr. Heine said he wanted to correct an error in the staff report and explained that the dwelling on Lot 215 is located approximately 56.0 feet from the shared property line, not 91.0 feet as reflected in the staff report.

The applicant, David A. Randall, 7871 Godolphin Drive, Springfield, Virginia, thanked the BZA for hearing the case.

In response to Chairman DiGiulian's question as to whether he was merely enclosing the existing carport, Mr. Randall said yes. He noted that the garage addition would not intrude any farther into the side lot line.

Mr. Randall stated that they had purchased the house with the intent of enclosing the carport, and explained that eighty percent of the homeowners in the neighborhood have already done so. He said that the exceptional narrowness of the lot has caused the need for the variance. Mr. Randall said the Community Association supported the request, the proposed addition would be aesthetically compatible with the existing structure, and the garage could not be placed elsewhere on the lot. In conclusion, he expressed his belief that the application met the necessary standards and 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 94-V-133 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-133 by DAVID A. RANDALL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.4 feet from side lot line such that side yards total 18.3 feet, on property located at 7871 Godolphin Drive, Tax Map Reference 98-4((6))216, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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 PDH-3.
3. The area of the lot is 14,178 square feet.
4. The application meets the necessary standards for the granting of the variance.
5. The request is for a minimal variance.
6. The addition would not encroach any farther into the side yard than the existing dwelling.
7. The exceptional narrowness of the lot has caused the need for the variance.

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition (enclosed carport) shown on the plat prepared by Alexandria Surveys, Inc. dated June 14, 1993, revised August 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 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 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JUDY & FRANK PARENTE, VC 94-M-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line. Located at 3121 Shadeland Dr. on approx. 11,899 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 153.

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. Parente replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to allow the enclosure of a screened porch addition 10.1 feet from the side lot line. The Zoning Ordinance requires a 12.0 foot minimum side yard; therefore, the applicant was requesting a variance of 1.9 feet to the minimum side yard requirement.

The applicant, Frank Parente, 3121 Shadeland Drive, Falls Church, Virginia, addressed the BZA. He stated that when they purchased the property the house was adequate for their needs. Now, seventeen years later, they have two teen-agers and would like to expand the living space. Mr. Parente said they plan to enclose an existing porch and renovate the dining and kitchen areas. He noted the addition would not intrude any farther into the side yard than the existing porch. Mr. Parente said, because of practical concerns and the narrowness of the lot, there was no other place to put the addition. He noted that many of the neighbors had already enclosed similar porches. In conclusion, Mr. Parente said the addition would be aesthetically pleasing, would conform with other structures in the area, and the neighbors supported the request.

In response to Mr. Dively's question as to whether the existing porch would merely be enclosed, Mr. Parente said yes. He noted that the addition would not extend any further into the side yard than the existing porch.

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

Mr. Dively made a motion to grant VC 94-M-127 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 6, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-127 by JUDY AND FRANK PARENTE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.1 feet from side lot line, on property located at 3121 Shadeland Drive, Tax Map Reference 51-3((11))153, 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 December 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 11,899 square feet.
4. The deep narrow lot has topographic problems.
5. The request is for a minimal variance which will not change the character of the community.
6. The existing porch will merely be covered.

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

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

Page 61, December 13, 1994, (Tape 1), JUDY & FRANK PARENTE, VC 94-M-127, continued from Page 60 )

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 enclosure addition shown on the plat prepared by Christopher J. Comeau, AIA, dated July 29, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 61, December 13, 1994, (Tape 1), Scheduled case of:

9:30 A.M. GOLF PARK, INC., THOBURN LIMITED PARTNERSHIP; JINDO & YOUNGHEE KIM; DAVID L. AND DOROTHY F. THOBURN, APPEAL 94-H-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the use of property as a golf driving range without a Non-Residential Use Permit and that three freestanding signs erected on the property are in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2-5.

Mr. Dively stated that a letter from the appellant requesting withdrawal had been received by the Board of Zoning Appeals. He made a motion to allow the withdrawal of A 94-H-035. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 61, December 13, 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. (DEF. FROM 10/11 AT APPLICANT'S REQUEST.)

Mr. Dively noted that the Board of Zoning Appeals had received a memorandum dated December 5, 1994, from William E. Shoup, Deputy Zoning Administrator, which stated the use has been discontinued and the appellant has verbally advised staff that he did not wish to pursue the appeal.

Mr. Dively made a motion to dismiss A 94-Y-026. Mr. Pammel seconded the motion.

In response to Chairman DiGiulian's question regarding the dismissal, Mr. Shoup said staff was confident the violation had been resolved and a dismissal would be in order. He explained that the appellant had not completed the notification requirements, and although he had indicated he would send a letter requesting withdrawal, he never did.

The motion carried by a vote of 7-0.

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The Board of Zoning Appeal recessed at 10:05 a.m. and reconvened at 10:25 a.m.

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Page 62, December 13, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MCLEAN BIBLE CHURCH, SPA 73-D-151-05 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to permit an increase in parking spaces. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A. (Concurrent with VC 94-D-118). (DEF. FROM 12/6 TO ALLOW THE BZA TO REVIEW THE PARKING LOCATION)

9:30 A.M. MCLEAN BIBLE CHURCH, VC 94-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to be located less than 10.0 ft. from a front lot line and accessory structure to remain 9.0 ft. from a front lot line. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A. (Concurrent with SPA 73-D-151-05). (DEF. FROM 12/6 TO ALLOW THE BZA TO REVIEW THE PARKING LOCATION)

Chairman DiGiulian called the cases which had been deferred from the previous public hearing to allow the Board of Zoning Appeals (BZA) the opportunity to further review specifics of the application and for the Zoning Administrator's response to several issues.

Mr. Ribble noted that the Board of Zoning Appeals (BZA) had received two letters. The first letter was from the Zoning Administrator who had addressed the parking issue, and the second letter was from the applicant's attorney William H. Hansbarger, with the law firm of Baskin, Jackson and Hansbarger, 301 Park Avenue, Falls Church, Virginia, suggesting an additional development condition.

Mr. Hammack stated that the case had been deferred from December 6, 1994. He said since the deferral, the BZA has had the opportunity to consult with staff regarding an analysis of the development plan, had received a memorandum from the Zoning Administrator regarding tandem parking, had reviewed the staff report, and had studied the blueprints in detail. He expressed his belief that the BZA understood the applicant's needs, as well as the impact on the community.

Mr. Hammack explained the Zoning Administrator has ruled that in this case, based on the evaluation and the way the spaces are counted, the applicant would satisfy the minimum required parking. He also noted the BZA has received a letter from Mr. Hansbarger stating the applicant would agree to a condition that no application by the McLean Bible Church requesting further expansion of the parking area on the existing site would be filed or permitted. The applicant would be willing to enter the letter as a matter of record.

Addressing the development conditions, Mr. Hammack said he was not concerned about the location of parking next to the sound barrier wall which separated the site from the Capital Beltway. He noted if the south side of the property, between the existing Georgetown Pike and the existing property line is ever used, it would probably be used for an interchange. He said the area has adequate screening and that he did not believe an interchange needed to be protected by the 100 foot setback requirement.

Mr. Hammack said he was concerned about the 30 parking spaces which are to be constructed along the front of the east side of the property. He explained that he had serious reservations with this aspect of the application, but considering the problems with the particular church and their efforts to resolve the problems, he would make a motion to allow the additional parking spaces. Mr. Hammack noted the additional screening would protect the neighborhood, and the development conditions would ensure there was no further expansion on the site.

Expressing concern about the applicant's failure to comply with the previous development condition regarding shared parking which specifically required an on-site coordinator to divert parking to the Cooper School, Mr. Hammack said the testimony had indicated the parishioners knowingly park on grassy areas, or on areas where parking is not permitted. He asked Mr. Hansbarger to review the development conditions with the applicant, especially Development Condition 6, "... if the parking areas on the church property are full, cars must be parked at a location as approved by the Board of Supervisors...." He expressed his belief that if the development conditions cannot be met, then the applicant should consider reducing the size of the church.

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In conclusion, he said, while the church was very successful and had reached maximum capacity, they have realized the importance of staying compatible with the neighborhood and do not intend any further expansion of the use on the site.

Mr. Hammack made a motion to grant SPA 73-D-151-5 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 29, 1994 with the following modifications to Development Condition 10 and an additional bullet to Development Condition 17:

10. Landscaping shall be provided as shown on the Landscape Plan dated May 17,1994 and approved with the Special Permit Plat. Screening shall be provided along the site's frontage on Balls Hill Road as shown on the Landscape Plan and shall be deemed to satisfy the screening requirement with the following addition:

17. Diseased or dying plant material shall be replaced as necessary to maintain a continuous planting area, particularly between the parking areas and the residential neighborhood.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 73-D-151-5 by MCLEAN BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to permit an increase in parking spaces, on property located at 850 Balls Hill Road, Tax Map Reference 21-3((1))56A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-1.
3. The area of the lot is 5.75 acres.
4. The application meets the necessary standards for the granting of the special permit for the reasons stated by the maker of the motion.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Coldwell, Sikes & Associates, dated May 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. 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 and a maximum of 317 parking spaces. The tandem parking spaces along the western lot are not approved. 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 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. Landscaping shall be provided as shown on the Landscape Plan dated May 17,1994 and approved with the Special Permit Plat. Screening shall be provided along the site's frontage on Balls Hill Road as shown on the Landscape Plan and shall be deemed to satisfy the screening requirement with the following addition:

    The transitional screening area between the parking lot and Balls Hill Road shall be supplemented with evergreen trees and shrubs to prevent glare from car headlights from shining on residential dwellings across Balls Hill Road. The specific number and species of plantings shall be as determined by the Urban Forestry Branch, DEM. This screening may be supplemented on both sides of the stormwater detention pond.

    Diseased or dying plant material shall be replaced as necessary to maintain a continuous planting area, particularly between the parking areas and the residential neighborhood.

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. Stormwater management shall be provided for as determined by DEM. 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 not exceed 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.

17. There shall be no expansion in the seating in the structure or in the load capacity now that there is more than the minimum required parking. This parking lot expansion is granted to accommodate the existing condition, not to allow the church to be expanded. No further expansion of seating in the building for load capacity shall be allowed. The maximum number of seats allowed shall be 980 seats.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless a 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 94-D-118 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 29, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-118 by MCLEAN BIBLE CHURCH, under Section 18-401 of the Zoning Ordinance to permit parking spaces to be located less than 10.0 feet from a front lot line and accessory structure to remain 9.0 feet from front lot line, on property located at 850 Balls Hill Road, Tax Map Reference 21-3((1))56A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 13; and

WHEREAS, 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 application meets the necessary standards for the granting of the variance.
5. The variance requested in a located near the sound barrier, which protects the property from noise of the Capital Beltway, is an unusual condition.
6. Most properties and most churches in Fairfax County do not have a long property line adjacent to the Capital Beltway.
7. The granting of the variance is appropriate under the circumstances.
8. The applicant will provide landscaping along the barrier wall.
9. The barrier wall is almost as big an intrusion on the neighborhood as the parking.
10. To allow parking within 10 feet of the barrier would not have any impact on the community.
11. The lot and the conditions of the use of the lot justify the variance.
12. The shed next to the barrier wall has no practical effect on 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 to permit parking spaces to be located less than 10.0 feet from the front lot line adjacent to the Capital Beltway. This variance is for the location of the parking spaces shown on the plat prepared by Coldwell, Sikes & Associates, dated May 17, 1994, submitted with this application and is not transferable to other land.

2. The width of the peripheral parking lot landscaping strip is modified in accordance with this approval. Peripheral parking lot landscaping may be required as determined by the Urban Forestry Branch, Department of Environmental Management.

3. This variance is approved for the location of the specific storage shed shown on the plat prepared by Coldwell, Sikes & Associates, dated May 17, 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 66, December 13, 1994, (Tape 1), Information Item:

Request for Approval of Resolutions from December 6, 1994

Mr. Hammack made a motion to approve the Resolutions as submitted. The Chair so ordered.

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Page 66, December 13, 1994, (Tape 1), Information Item:

Request for Additional Time forSP 91-D-064, Shiloh Baptist Church
1331 Spring Hill Road, Tax Map Reference 29-1((1))58, 58A

Mr. Pammel made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date will be May 6, 1996.

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Page 67, December 13, 1994, (Tape 1), Information Item:

Request for Additional Time
SP 84-S-079, Rebecca Ann Crump
Ox Road, Tax Map Reference 87-1((1))58, 58A

Mrs. Thonen made a motion to grant the request. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new expiration date will be December 16, 1996.

Mr. Pammel noted that a letter dated December 12, 1994 from B.A. Pieper, 6415 Jumet Court, Fairfax Station, Virginia, had been received. He stated that before taking action on the request, the Board of Zoning Appeals (BZA) had read the letter which requested the extension of the special permit be put in abeyance. During a brief discussion, the BZA noted that Fairfax County had required part of the application be redesigned, the applicant has invested time and money in the application and was currently close to bonding, and the special permit was in existence before Mr. Pieper purchased the property on December 1, 1994. The BZA further noted that Mr. Pieper was aware of the existence of the special permit three weeks prior to purchasing his property.

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Page 67, December 13, 1994, (Tape 1), Information Item:

Request for Additional Time
SP 92-B-009, Ravensworth Baptist Church
5100 Ravensworth Road
Tax Map Reference 70-4((6))A

Mrs. Thonen made a motion to grant the request. Mr. Dively and Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date will be May 13, 1995.

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Page 67, December 13, 1994, (Tape 1), Information Item:

Request for Intent to Defer
Harrington-Lynch Appeal, A 94-P-037

Mrs. Thonen made a motion to issue an intent to defer A 94-P-037 to the morning of February 28, 1995.

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Page 67, December 13, 1994, (Tape 1), Information Item:

Request for Out-of-Turn Hearing
James A. Foster, VC 94-M-159

Mr. Dively made a motion to grant the request and schedule the case for the morning of January 31, 1995. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 67, December 13, 1994, (Tape 1), Information Item:

Memorandum on Meeting Dates for the Board of Zoning Appeals in 1995

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the BZA with a memorandum regarding use of the Board Room during 1995.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

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

John DiGiulian III
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 10, 1995 APPROVED: January 24, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 15, 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 9:18 a.m. 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 69, December 15, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PETE'S GYMNASTIC CENTER, INC., SPA 81-A-059 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 81-A-059 for health club to permit relocation and enlargement of health club and decrease in land area. Located at 6708-B Industrial Rd. on approx. 4.51 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. (MOVED FROM 11/15 FOR NOTICES)

Vice Chairman Ribble called the first scheduled hearing and the Staff Coordinator, Don Heine, informed the BZA that the applicant was not present in the Board Auditorium.

Mr. Kelley made a motion to move the case to the end of the agenda. Hearing no objection, the Vice Chairman so ordered.

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Page 69, December 15, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MID-ATLANTIC SPORTS VENTURES, INC., SP 94-M-044 Appl. under Sect(s). 5-603 of the Zoning Ordinance to permit indoor recreational use. Located at 6714 Industrial Rd. on approx. 4.51 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. (MOVED FROM 11/15 FOR NOTICES)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Foley, President and one of the owners, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the applicant was requesting a special permit to allow indoor batting cages with accessory uses including 5 video games, a food concession, and a proshop. The proposed use is a 12,800 square foot unit within the western part of an existing warehouse building containing 62,400 square feet which is occupied by industrial uses and a health club on a 4.5 acre site. The subject lot is located on the northeastern corner of the intersection of Industrial Road and Commercial Drive within the Shirley Industrial Park and is zoned I-6. It is surrounded by industrial uses on three sides and by a settling pond on the north, all of which are in the I-6 District.

It was staff's position that by imposing the proposed development conditions the requested use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and Standards for Group 5 Uses. Therefore, staff recommended approval of SP 94-M-044 subject to the imposition of the Proposed Development Conditions contained in Appendix 1 of the staff report.

The agent, Mr. Foley, said they would like to add indoor batting cages to accommodate the dense population of young athletes in the area. He said there are no proposed changes to the building or the site, everything in the building is free-standing, and staff recommended approval. Mr. Foley addressed each of the required standards. He said there is approximately 7.6 percent open space on the property with 14 parking spaces available for the use.

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-M-044 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 8, 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-044 by MID-ATLANTIC SPORTS VENTURES, INC., under Section 5-603 of the Zoning Ordinance to permit indoor recreational use, on property located at 6714 Industrial Road, Tax Map Reference 80-2((7))F, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 1994; and

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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-6.
3. The area of the lot is approximately 12,800 square feet of 4.5 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 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 6714 Industrial Road consisting of 12,800 square feet and associated parking and is not transferable to other land. Other by-right and Special Exception uses on the industrial site may be permitted without a special permit amendment.

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 & Associate, dated August 8, 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.

5. The daily hours of operation shall not exceed 3:00 p.m. to 11:00 p.m., Monday through Friday and 8:00 a.m. to 12:00 midnight, Saturday and Sunday

6. The maximum number of employees on-site at any one time for the batting cages use shall be four.

7. There shall be a minimum of fourteen (14) parking spaces.

8. Prior to the issuance of a Non-Residential Use Permit, the School of General Education shall cease.

9. The accessory special permit uses located at 6714 Industrial Road shall be limited to four (5) to five (5) video games, food concession area consisting of 250-300 square feet and pro-shop consisting of 100-150 square feet.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 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. Dively seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. 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 December 23, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 70, December 15, 1994, (Tape 1), Scheduled case of:

9:00 A.M. FREDERICK L. BYRNE, JR., VC 94-V-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit enclosure of structure located 21.2 ft. from front lot line. Located at 5808 Mallow Trail on approx. 15,420 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (17) 30. (Concurrent with SP 94-V-053). (OUT OF TURN HEARING GRANTED).

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9:00 A.M. FREDERICK L. BYRNE, JR., SP 94-V-053 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 29.4 ft. and 21.2 ft. and stairs 17.7 ft. from front lot lines of a corner lot. Located at 5808 Mallow Trail on approx. 15,420 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (17) 30. (Concurrent with VC 94-V-135). (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, Mr. Byrne, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located at the intersection of Potomac Road and Mallow Trail in the Gunston Manor subdivision in Mason Neck. The site is 15,420 square feet in size, is zoned R-E, and is developed with a single family detached dwelling. Surrounding lots in the Gunston Manor subdivision are also zoned R-E. He said the applicant had submitted concurrent special permit and variance applications. The special permit request was to allow reduction to minimum yard requirements based on error in building location to permit the dwelling to remain 29.4 feet and 21.2 feet, and stairs 17.7 feet from front lot line of a corner lot. The variance request was to permit the enclosure of the existing front porch located 21.2 feet from the front lot line.

Mr. Hunter noted that, while not included in the staff report, VC 93-V-026 was approved adjacent to the subject property in 1993.

Frederick L. Byrne, Jr., 5808 Mallow Trail Drive, Lorton, Virginia, said he has lived on the property since 1975 and attempted to improve the property in 1984 by removing an existing deck and glass enclosed porch on the front of the house. In June 1994, Mr. Byrne said he attempted to obtain a building permit to enclose the porch and was told there was a discrepancy in the plat that was submitted in 1984 and the one submitted in 1994. He asked that the BZA grant his request and allow the 1994 plat to stand as the one of record. With respect to the variance, Mr. Byrne said the granting of the variance would allow him to enclose the existing porch.

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

John Clark, an adjacent property owner, said he has lived next door to the applicant for 18 years and was in support of the request.

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

Mr. Kelley made a motion to grant SP 94-V-053 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 6, 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-053 by FREDERICK L. BYRNE, JR., 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 29.4 ft. and 21.2 ft. and stairs 17.7 ft. from front lot lines of a corner lot, on property located at 5808 Mallow Trail, Tax Map Reference 119-4((2))(17)30, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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;

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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 and stairs 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 Franca Surveys, Inc., dated April 26, 1993, revised June 30, 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. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meting.

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

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Mr. Kelley made a motion to grant VC 94-V-135 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 6, 1994.

Mr. Pammel noted for the record that the BZA had received letters from the neighbors in support of the request.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-135 by FREDERICK L. BYRNE, JR., under Section 18-401 of the Zoning Ordinance to permit enclosure of structure located 21.2 ft. from front lot line, on property located at 5808 Mallow Trail, Tax Map Reference 119-4((2))(17)30, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 1994; and

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

1. The applicant us the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is approximately 15,420 square feet.
4. The applicant has met the nine required standards for the granting of a variance in this particular case.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 enclosure of structure shown on the plat prepared by Franca Surveys, Inc., dated April, 1993, revised June 30, 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 enclosure shall be architecturally compatible with the existing dwelling.

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

Mr. Dively seconded the motion which carried by a vote of 5-0. 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 December 23, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 73, December 15, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PETE'S GYMNASTIC CENTER, INC., SPA 81-A-059 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 81-A-059 for health club to permit relocation and enlargement of health club and decrease in land area. Located at 6708-B Industrial Rd. on approx. 4.51 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. (MOVED FROM 11/15 FOR NOTICES)

Since the applicant in SPA 81-A-059 was still not present in the Board Auditorium, Mr. Dively suggested moving the case to the end of the agenda. Hearing no objection, Vice Chairman Ribble so ordered.

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Page 74, December 15, 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. DEF. FROM 10/25. MOVED FROM 11/10 FOR NOTICES)

Vice Chairman Ribble asked if it was correct that the notices were not in order in this case. Mr. Kelley asked staff for a clarification.

William Shoup, Deputy Zoning Administrator, said included in staff's December 2nd memorandum was another deferral request from the appellant. He said the BZA had granted the appellant's request to defer the appeal from December 6th to this date. A notice package was immediately forwarded to the appellant, who returned it unopened.

Vice Chairman Ribble called the BZA's attention to a verbatim transcript of a portion of the BZA's discussion at the December 6th public hearing.

Mr. Shoup said he believed the appellant was trying to take advantage of the system and based upon the outlined chronology of events, staff recommended that the appeal be dismissed. He added he had placed numerous telephone calls to the appellant and received no response, which has been the history of his dealing with the appellant.

Mr. Kelley said it was his intention to move for dismissal, but before making the motion he asked staff what recourse was available to the appellant if the appeal was dismissed. Mr. Shoup said the appellant could appeal the BZA's action to dismiss.

Mr. Hammack asked if there was any merit in the deferral request and asked what was meant by the appellant's reference to the storm sewer easement. He said the reference was unclear from the appellant's letter and said if the appeal had any merit, the appellant should have appeared to explain the issue to the BZA. Vice Chairman Ribble said he believed the appellant has had ample opportunity to make his case before the BZA.

Mr. Shoup said the site plan involved redeveloping the property to allow the appellant to build a new office building on his lot through consolidation with another lot, but that has been in the process since 1992. He added that the plan has been held up on the storm drainage issue, because the appellant has been slow in responding to staff's requests. Mr. Shoup said the Department of Environmental Management (DEM) worked with the Virginia Department of Transportation (VDOT) in order to reach another solution and he believed that was what the appellant was referring to in his letter. He said the appellant has now submitted revisions to DEM in order to resolve the storm drainage issue, but because the plan has been in the process for so long there are now other issues to deal with such as the Chesapeake Bay Ordinance. Mr. Shoup said the "ball is still in the appellant's court", with the largest issue being the fee package that will need to be paid.

Mr. Kelley said he did not believe that the BZA needed to get into the merits of the case and that he believed the appellant was totally ignoring the BZA and staff. He made a motion that the BZA dismiss the appeal. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 74, December 15, 1994, (Tape 1), 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, 9/13, AND 11/29 AT APPELLANT'S REQUEST)

Mr. Pammel made a motion to allow the withdrawal of A 94-Y-021 as requested by the appellant. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 74, December 15, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PETE'S GYMNASTIC CENTER, INC., SPA 81-A-059 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 81-A-059 for health club to permit relocation and enlargement of health club and decrease in land area. Located at 6708-B Industrial Rd. on approx. 4.51 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. (MOVED FROM 11/15 FOR NOTICES)

Page 75, December 15, 1994, (Tape 1), PETE'S GYMNASTIC CENTER, INC., SPA 81-A-059, continued from Page 74)

In response to a question from Mr. Kelley, Jane Kelsey, Chief, Special Permit and Variance Branch, said she had been unable to contact the applicant but that she had talked with the applicant's sister-in-law who had no idea why the applicant was not present, although he had been experiencing car problems. Staff recommended that the case be deferred to December 20th, at 8:00 p.m.

Mr. Dively so moved. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 75, December 15, 1994, (Tape 1), Scheduled case of:

Out of Turn Hearing Requests
Faith United Methodist Church/Office for Children
Woodlawn United Methodist Church/Office for Children

Marilyn Anderson, Assistant Branch Chief, said the Board of Supervisors had recommended the BZA grant out of turn hearings to both applicants. She said the applications involved two Head Start Programs operated by Fairfax County which must be relocated. She said staff suggested January 31, 1995.

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen 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 9:50 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 24, 1995

APPROVED: January 31, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 20, 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 called for the first scheduled case.

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Page 77, December 20, 1994, (Tape 1), Scheduled case of:

8:00 P.M. FRANCONIA UNITED METHODIST CHURCH, SP 94-L-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities and child care center. Located at 6037 Franconia Rd. on approx. 2.58 ac. of land zoned R-1 and R-2. Lee District. Tax Map 81-4 ((2)) 1-4. (Concurrent with VC 94-L-149). (OUT OF TURN HEARING GRANTED)

8:00 P.M. FRANCONIA UNITED METHODIST CHURCH, VC 94-L-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit waivers of interior parking lot landscaping, peripheral parking lot landscaping and parking too close to a front lot line and to permit structure to remain 33.7 ft. from front lot line. Located at 6037 Franconia Rd. on approx. 2.58 ac. of land zoned R-1 and R-2. Lee District. Tax Map 81-4 ((2)) 1-4. (Concurrent with SP 94-L-063). (OUT OF TURN HEARING GRANTED)

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

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located on the south side of Franconia Road, is split zoned R-1 and R-2, and contains 2.58 acres. The property is surrounded to the east by another church which is under special permit, to the west and south by a public school, and to the north across Franconia Road by single-family detached dwellings on land zoned R-3. Ms. Greenlief said the request before the BZA was to enclose an existing outdoor stairway on the east side of the church. The church is currently not under special permit so this request will bring the entire church use and the existing child care center under special permit. She said there are 354 seats in the existing sanctuary and 40 children per day in the day care center.

Ms. Greenlief said during the review of the special permit application, the need for the variance request arose. The variance was needed to vary the requirement for interior and peripheral parking landscaping and to allow parking too close to the front lot line. Given the nature of the specific request, staff did not raise any significant concerns about the application, but did bring to the applicant's attention that with any future expansion several aspects of the current development might be required to be brought into compliance with current Ordinance requirements. Staff believed that the application met the required standards for the approval, thus staff recommended approval of SP 94-L-063.

Dana Kauffman, 4520 Lantern Place, Alexandria, Virginia, represented the church and said he was also a member of the church. He said the special permit request was primarily to allow them to continue operating the church and related facilities and to add a 10 foot x 20 foot exterior stair case. The church has been in the community since 1896, at this particular site since 1947 and the current size and bulk of the church has been the same since 1965. Mr. Kauffman said the church site has shrunk over the years as Franconia Road has gone from two, to four, and finally to six lanes. The special permit would also allow the church to continue operating a child care center on the site, which currently has 30 children and is open three days a week. He said the church would like, at some time in the future, to expand the number of children to 40 and be open five days a week.

With respect to the variance, Mr. Kauffman said the variance was necessitated by the church's non-conformance with current zoning. He said one variance was for interior parking lot landscaping and noted that the church provides parking for the abutting school. Mr. Kauffman agreed to abide by the development conditions contained in the staff report.

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

Mr. Hammack made a motion to grant SP 94-L-063 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 13, 1994. The BZA waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-L-063 by FRANCONIA UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities and child care center, on property located at 6037 Franconia Road, Tax Map Reference 81-4((2))1-4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-1 and R-2.
3. The area of the lot is 2.58 acres.
4. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit and the additional standards for this use.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-303 and 3-305 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 Thomas V. Bee, dated October 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. 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 364.

6. The maximum daily enrollment of the child care center shall not exceed 40 children.

7. One hundred and fourteen (114) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on-site.

8. There shall be no more than 25 children on the playground at any one time.

9. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening and barrier requirements.

10. The vegetation displaced by the construction of the stairway shall be replanted or replaced along the eastern wall of the new stairway so as to provide visual relief along the proposed wall of the stairway.

11. The hours of operation for the child care center shall be Monday through Friday, 9:00 a.m. to 4:00 p.m.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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. 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 December 20, 1994. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 94-L-149 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 23, 1994. The BZA waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-L-149 by FRANCONIA UNITED METHODIST CHURCH, under Section 18-401 of the Zoning Ordinance to permit waivers of interior parking lot landscaping, peripheral parking lot landscaping and parking too close to a front lot line and to permit structure to remain 33.7 feet from front lot line, on property located at 6037 Franconia Road, Tax Map Reference 81-4((2))1-4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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-1 and R-2.
3. The area of the lot is 2.58 acres.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, some of these waivers have been required by the expansion of Franconia Road from a two lane road to a six lane over a period of time.
5. The construction and operation of the facility over a number of years predates some of the stricter terms of the current 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 lots and structure shown on the plat prepared by Thomas V. Bee., dated October 17, 1994 and is not transferable to other land.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1994. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley made a motion that the BZA waive the eight day waiting period on all applications granted at this public hearing since its next scheduled meeting was January 3, 1995. Hearing no objection, the Chairman so ordered.

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Page 80, December 20, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PETE'S GYMNASTIC CENTER, INC., SPA 81-A-059 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 81-A-059 for health club to permit relocation and enlargement of health club and decrease in land area. Located at 6708-B Industrial Rd. on approx. 4.51 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((7)) F. (MOVED FROM 11/15 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 agent, Pete Novgrod, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The applicant was requesting a special permit amendment to relocate a health club from one unit and a proposed indoor batting cage use to another unit within a 62,400 square foot warehouse building containing industrial uses. The applicant was also requesting to increase the gross floor area from 6,400 square feet to 8,000 square feet. The proposed relocated use is on a 4.5 acre lot located on the northeastern corner of the intersection of Industrial Road and Commercial Drive within the Shirley Industrial Park and is zoned I-6. It is surrounded by industrial uses on three sides and a settling pond on the north, all of which are in the I-6 District.

Mr. Heine said it was staff's position that by imposing the proposed development conditions the requested use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and Standards for Group 5 Uses. Therefore, staff recommended approval of SPA 81-M-059 subject to the imposition of the Revised Proposed Development Conditions distributed by the staff.

Pete Novgrod, 6708-B Industrial Road, Springfield, Virginia, said he was asking to amend an existing special permit in order to relocate the use to a larger space within the building and to allow it only to apply to the designated space. Mr. Novgrod said the gym has been in existence for 13 years and has not adversely impacted the neighboring properties. He asked that the hours of operation be amended to reflect "no restrictions on the hours of operation" as shown in the original permit.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing. The Chairman said although his name is on the plat he had not participated in the preparation of the application and noted that the date on the plat was 1973.

Mr. Pammel made a motion to grant SPA 81-A-059 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 6, 1994. He amended Condition Number 4 to read as follows:

"4. There shall be no restriction on the hours of operation."

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 81-A-059 by PETE'S GYMNASTIC CENTER, INC., under Section 5-603 of the Zoning Ordinance to amend SP 81-A-059 for health club to permit relocation and enlargement of health club and decrease in land area, on property located at 6708-B Industrial Road, Tax Map Reference 80-2((7))F, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 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-6.
3. The area of the lot is approximately 8,000 square feet of gross floor area within a 4.5 acre industrial complex.
4. The applicant presented testimony indicating compliance with the required standards for the granting of a special permit and the additional standards for the use.

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 which is 6708 Industrial Road consisting of 8,000 square feet of gross floor area and associated parking and is not transferable to other land. Other uses on the industrial site may be permitted without a special permit amendment.

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 John P. DiGiulian, Certified Land Surveyor, dated September, 1973 and approved with this application, as qualified by these development conditions.*

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

4. There shall be no restriction on the hours of operation.

5. The maximum number of employees on-site at any one time shall be three.

6. There shall be a minimum of 53 parking spaces for this use.

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

This approval, contingent on the above-noted conditions, shall not relieve 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 written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1994. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 81, December 20, 1994, (Tape 1), Scheduled case of:

8:00 P.M. CHANG KIM, SP 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit golf driving range and accessory uses. 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. (DEF. FROM 10/11 TO ALLOW APP. TO SUBMIT REVISED APPL. AND ADDRESS NEIGHBORS' CONCERNS.)

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, Lynne Strobel, reaffirmed the revised affidavit that was before the BZA.

Susan Langdon, Staff Coordinator, presented the staff report. The subject property is located on the south side of Braddock Road, east of its intersection with Shirley Gate Road. The site consists of 47.72 acres, is vacant and heavily wooded. The property is zoned R-C (Residential Conservation) and is located within the Water Supply Protection Overlay District (WSPOD). Across Braddock Road to the north is a vacant 85 acre parcel belonging to George Mason University. East of the property is a large-lot cluster subdivision and a vacant 15-acre parcel on Bentonbrook Road. To the south is another large lot residential development, accessed from Popes Head Road, and to the west are five large lots, four of which contain dwellings.

Ms. Langdon said the public hearing for this application was originally scheduled for October 11, 1994, but was deferred to allow the applicant time to address staff's issues. The applicant has amended the application to delete the request for a nine-hole golf course and was now requesting approval of a special permit to allow a golf driving range and accessory uses. The applicant proposed 60 tees, 50 of which were proposed to be lighted. Twenty tees will be covered and forty tees will be open. A 6,200 square foot combination clubhouse/pro shop/snack bar/maintenance building was proposed northeast of the driving range. Adjacent to the clubhouse is an area which may include up to three (3) practice golf holes and a putting green. An irrigation pond providing water for the driving range and a containment area for loose aggregates such as sand, lime and fertilizers were proposed near the clubhouse.

The parking area will be reduced from 90 spaces to approximately 47 spaces and will be lighted. Twenty-five feet of transitional screening with two rows of evergreen trees was proposed along the northeastern lot line adjacent to Braddock Road. Two stormwater management ponds were located partially within the eastern and western portions of the driving range. The two wet ponds and a dry pond proposed under the previous application were eliminated. Sixty (60) percent of the site was proposed to be preserved in undisturbed open space, an increase of 15 percent over the previous application. The Environmental Quality Corridor (EQC) will be preserved.

Staff believed that for a non-residential use to result in impacts equivalent to those of a five acre lot subdivision, which would be allowed by right on this site, about 60 percent of the land should be left in its natural state. This undisturbed open space would provide natural infiltration and help maintain high water quality in the Occoquan Reservoir.

With the amended application, and as shown on the revised Plat dated October 11, 1994, the applicant has eliminated the nine hole golf course and has increased undisturbed open space on site to 60 percent. Two wet BMP ponds and one dry BMP pond have been deleted, resulting in an increase in tree save and preservation of the integrity of the EQC. A 300 foot buffer of trees will be preserved between the driving range and the southeastern lot line. The proposed drainfield is the only intrusion into this vegetative buffer. Approximately 190 feet of vegetation will be preserved between the driving range and residential property to the south and southwest. The parking spaces will decrease from 90 spaces to approximately 47 spaces, thereby decreasing impervious surface on site. The applicant still proposed lighting the driving range and had submitted an Illumination Plan prepared by Federated Lighting dated December 2, 1994 which depicted maximum off-site lighting to be less than one foot candle at the center of the southeastern lot line.

Staff believed that with the elimination of one of the proposed uses, the deletion of the stormwater management ponds and the increase of undisturbed open space to 60 percent, the applicant had addressed most of the issues identified by staff. The remaining issues have been addressed in the Revised Proposed Development Conditions, including Condition Number 8 pertaining to the driving range lighting. Condition Number 8 requires that the site conform with the findings of the Illumination Plan in foot candles of light, requires a 9:00 p.m. cut-off time for the driving range lights, and requires that there be no off-site nuisance or glare lighting.

Based on the preceding analysis, staff concluded that the application, as amended, met all the standards for a Special Permit as required by the Zoning Ordinance and would be in harmony with the applicable recommendations of the Comprehensive Plan. Staff, therefore, recommended approval of SP 94-S-033 subject to the Revised Proposed Development Conditions included as Appendix 1 of the Addendum and dated December 13, 1994.

Lynne Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said the application property was the subject of a public hearing before the BZA on September 15, 1992 and after a series of deferrals the application was denied on March 16, 1993. She said the applicant in this case is the contract purchaser of the property who has no affiliation with the prior applicant and was proposing a plan that was very different from the previous submission. The original submission was for a 18 hole golf course and driving range, but now has been reduced to a driving range and several accessory uses. Ms. Strobel said the entire site has been replanned in an effort to reduce any adverse impacts from the proposed use. The applicant has agreed to construct a chain link fence along the eastern property line to discourage unauthorized entries, and those features that may have been considered noisy or offensive to the adjacent neighborhood have been oriented to the western side of the property away from

the low density residential development to the east and south. The site entrance is located opposite the Shirley Gate Road and Braddock Road intersection and the entrance drive now leads to a parking lot located in the northwest portion of the property. She said the site will have 93 percent open space, which far exceeds the County requirements, and the applicant has agreed to preserve a minimum 60 percent of the site in either undisturbed or reforested area. The applicant proposed setbacks to the lot lines of 70 feet, 190 feet, and 310 feet around the perimeter of the golf driving range. Ms. Strobel entered an exhibit prepared by Gordon Associates showing the driving range in relation to the adjacent homes into the record. She said the applicant's proposal was a reasonable use and the limited number of perk sites in the area constrain development.

With respect to the development conditions, Ms. Strobel suggested that Condition 6 be revised to reflect that additional parking spaces can be added as long as the parking lot is not enlarged. She asked that Condition 8 be revised to clarify that "six lights" refer to light poles and noted that more than one light fixture may be attached to one pole.

Mr. Ribble asked the speaker to reiterate her earlier comments with respect to the setbacks and Ms. Strobel did so.

In response to questions from Mr. Kelley, Ms. Strobel replied the driving range would be approximately 300 yards. She said the applicant believed a 6,200 square foot club house was appropriate since he planned to also use it for storage. Ms. Strobel said there would not be outside activities held in the clubhouse.

Chairman DiGiulian called for speakers in support of the application.

David Johnson, one of three general partners who owned the property, said there are currently twelve individuals owning varying percents of interest in a limited partnership which owns the property. He said they are all small investors who have held the property since 1978, all are long term residents of Fairfax County with the exception of two who have now moved out of the area, and they are not developers. Mr. Johnson said the opposition has made statements indicating that the owners have been before the BZA on a yearly basis, when in fact over the 16 year period there have only been three instances that an application has been presented to the BZA. He said he believed the applicant, through his willingness to invest in design changes to the property, has already demonstrated he will make an excellent neighbor. Mr. Johnson said he believed the neighbors would oppose anything that was developed on the property.

There were no further speakers in support of the application, and Chairman DiGiulian called for speakers in opposition.

Stephanie Mackintosh, 11330 Lafferty Lane, Fairfax, Virginia, noted her concerns with the impact on her property from the lights and noise generated by the proposed use. She said although six of the nine three-par holes have been eliminated, the number of tees on the driving range has been increased from fifty to sixty and she believed this showed dishonesty on the part of the developer. Ms. Mackintosh believed the intensity of the use would be much higher than that projected by the applicant. She also expressed concern with people from the driving range trespassing onto her property to retrieve golf balls that are knocked over the fence.

Mr. Kelley said the people using the driving range would be using the golf balls furnished by the driving range; therefore, they would not be trespassing onto the neighbors' property to retrieve golf balls. He pointed out that the development conditions stipulate there will be no ball retrieval prior to 9:00 a.m. or after 9:00 p.m. Ms. Mackintosh said she did not trust the applicant to abide by the conditions. Mr. Kelley said if they did not adhere to the conditions, the use could be closed. He added that this application bore no resemblance to the application previously submitted to the BZA.

Mrs. Thonen said it appeared there was approximately 500 feet between the speaker's property and the driving range. Ms. Mackintosh believed her privacy would be invaded when using her pool that is located in the rear of her lot.

Richard Kilday, 4807 Bentonbrook Drive, Fairfax, Virginia, represented 63 homeowners from the Breckenbridge Woods area and said the use was redundant since there is one facility 2.3 miles and another facility 6.7 miles away. He was opposed to the light impact and the noise impact. Mr. Kilday expressed concern with the fertilizers that would be used to maintain the driving range and the negative impact from those on the neighbors' wells.

Mr. Kelley asked if the speaker had received a copy of the staff report addendum dated December 14th. Mr. Kilday said he had not. Staff provided him with a copy. Mr. Kelley said the speaker's concerns with respect to fertilizers had been addressed in Development Conditions 14 through 17.

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The BZA recessed at 8:55 p.m. to allow the speaker an opportunity to review the development conditions and reconvened 9:03 p.m.

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Chairman DiGiulian asked Mr. Kilday if he had any comments regarding the development conditions.

Mr. Kilday asked for an explanation as to the process to be followed if the applicant does not comply with the development conditions. He said the 190 foot setback on the west side of the property appeared to be inadequate since the lights would be pointed directly towards the residential area. Mr. Kelley said if that occurred the neighbor could contact Zoning Enforcement and file a complaint.

Ms. Strobel apologized to the homeowners for any confusion her letter may have caused, but that she did believe the use had been redesigned to be less intense. She said the applicant's lighting consultant was present should the BZA have any questions.

In response to a question from Mrs. Thonen, Ms. Strobel said the applicant will comply with the Chesapeake Bay requirements.

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

Mrs. Thonen made a motion to grant SP 94-S-033 for the reasons noted in the Resolution and subject to the Revised Development Conditions December 14, 1994 with Conditions to read as follows:

"6. A minimum of 47 parking spaces shall be provided. All parking for this use shall be on site as shown on the Special Permit Plat. Additional parking spaces may be provided as long as the size of the parking lot shown on the Special Permit Plat is not increased. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

8. Illumination of the driving range shall consist of a maximum of six (6) light poles, each no greater than 30 feet in height above ground level. The driving range lights shall be extinguished by 9:00 p.m. each night. All other lighting on site shall be extinguished by 9:30 p.m. each night. Parking lot lights shall be no more than twelve (12) feet in height and shall be directed onto the parking lot. All lights shall be equipped with shields to assure that glare and nuisance light do not impact adjoining properties. Lighting on the driving range shall conform in foot candles with the Illumination Plan prepared by Federated Lighting, dated December 2, 1994, which is attached to these development conditions. This lighting shall be approved and inspected by the Department of Environmental Management to determine conformance with foot candles readings as illustrated on the Illumination Plan. Accessory uses such as the practice holes and putting green, and the entrance driveway shall not be lighted."

Mr. Kelley seconded the motion and added that there was no comparison between this application and the previous one.

Mr. Pammel pointed out that the land could not be developed residential because there is only one location on the site where a septic field could be located and meet the health standards. He said the request is a low intensity use and staff has recommended approval.

Mr. Hammack agreed with Mr. Pammel's comments, but noted that he would like to see the hours of operation changed to 9:00 a.m. from 9:00 p.m. since it will be in a residential area.

Mr. Kelley said he took exception to Mr. Hammack's request because the development conditions stipulate that any noise generated activities cannot begin until 9:00 a.m. He said hitting a golf ball does not generate much noise.

The motion carried by a vote of 6-1 with Mr. Hammack voting nay. The BZA waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-S-033 by CHANG KIM, under Section 3-C03 of the Zoning Ordinance to permit golf driving range and accessory uses, on property located at 11475 Braddock Road, Tax Map Reference 56-4((1))31, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 20, 1994; and

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

1. The applicant is the contract purchaser of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 47.72 acres.
4. The applicant has gone the extra mile to have this application meet the standards for the granting of a special permit.
5. The location is within the adopted Comprehensive Plan and will be in harmony with the zoning district.
6. The fact that the applicant has revised the conditions to meet the neighbors' concerns is good and the conditions seem to be written to protect the neighborhood.
7. If the applicant does not adhere to the development conditions, all the neighbors have to do is notify Zoning Enforcement and a Notice of Violation will be issued.

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 8-603 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Gordon Associates dated March 1994, revised through 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. 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. In the event the site is developed in phases, all of these Development Conditions shall be satisfied with the Phase I development.

5. There shall be a maximum of 60 tees for the driving range, 20 covered tee and 40 uncovered tees.

6. A minimum of 47 parking spaces shall be provided. All parking for this use shall be on site as shown on the Special Permit Plat. Additional parking spaces may be provided as long as the size of the parking lot shown on the Special Permit Plat is not increased. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

7. There shall be no more than 15 employees on site at any one time.

8. Illumination of the driving range shall consist of a maximum of six (6) light poles, each no greater than 30 feet in height above ground level. The driving range lights shall be extinguished by 9:00 p.m. each night. All other lighting on site shall be extinguished by 9:30 p.m. each night. Parking lot lights shall be no more than twelve (12) feet in height and shall be directed onto the parking lot. All lights shall be equipped with shields to assure that glare and nuisance light do not impact adjoining properties. Lighting on the driving range shall conform in foot candles with the Illumination Plan prepared by Federated Lighting, dated December 2, 1994, which is attached to these development conditions. This lighting shall be approved and inspected by the Department of Environmental Management to determine conformance with foot candles readings as illustrated on the Illumination Plan. Accessory uses such as the practice holes and putting green, and the entrance driveway shall not be lighted.

9. The hours of operation of the driving range and accessory uses shall be limited to 7:00 a.m. to 9:00 p.m., seven days a week, except that the clubhouse and maintenance building may be used until 9:30 p.m. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering prior to 9:00 a.m. or after 9:00 p.m.

10. Existing vegetation between the driving range and the western, southern and eastern lot lines shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 3. Two rows of evergreen trees shall be provided along the northeastern lot line adjacent to Braddock Road. Interior and peripheral parking lot landscaping shall be provided. Size, species and number of all plantings shall be determined by the Urban Forestry Branch, DEM, at the time of site plan review.

The barrier requirement shall be waived along the western and northern lot lines. The drainfield may extend into the transitional screening yard provided a minimum of ten (10) feet remains between the drainfield and lot line and is planted with evergreen trees a minimum of six (6) feet in height at the time of planting.

11. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual shall be provided as approved by the Director, DEM. If required by DEM, the undisturbed open space shall be preserved in a conservation easement to meet BMP requirements.

12. The limits of the EQC shall be as shown on the special permit plat. There shall be no clearing or grading within any portion of the EQC. In addition, all areas shown on the plat and designated "tree save areas" shall be preserved. If necessary and no other alternative exists, clearing may be allowed as determined by the Urban Forestry Branch, DEM, to permit the location of utilities such as sanitary sewer or water lines within tree save areas. If utilities are allowed within tree save areas, replacement plantings shall be provided. The size, variety and number of replacement plantings shall be determined by the Urban Forestry Branch. There shall be no other removal of any trees or vegetation from within the EQC or tree save areas, except that dead, diseased or dying trees may be removed as approved by the Urban Forestry Branch, DEM.

13. Notwithstanding Note #10 on the Special Permit Plat, a limit of clearing and grading and tree preservation plan shall be submitted to the Fairfax County Urban Forestry Branch for review and approval prior to Site Plan approval. Except as specified in Development Condition #12, no modifications to the limits of clearing and grading shall be made at site plan approval except for the provision of any trails shown on the Fairfax County Trails Plan.

14. The applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides which shall be submitted to, and approved by the Director, DEM, prior to site plan approval and shall be implemented as approved. The IPM Plan shall be developed using principals consistent with the guidelines established by the Virginia Cooperative Extension Service Pest Management Guide (PMG) and shall be designed to manage the application of fertilizer, herbicides and other chemicals to protect water quality in the Occoquan Watershed and to encourage the application of fertilizers primarily during the fall months of the year when impacts of nutrients in the reservoir are less severe. The IPM Plan shall include an on-going monitoring and reporting method that will document the progress of the plan. The monitoring and reporting method for the IPM shall be used to document the intent and success of the IPM program and shall be made available if required by the Director, OCP.

15. In order to prevent groundwater contamination, all surfaces used for chemicals; machines; vehicle storage, cleaning and maintenance; and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a pipe which connects to a subsurface drainage catchment system or a BMP with an impervious geotextile or clay liner designed to remove contaminants and pollutants and shall be approved by the Director, DEM and shall be implemented as approved. A written maintenance plan for the system shall be developed by the applicant and shall be approved by the Director, DEM and shall be implemented as approved. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The written emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

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

17. The site shall be served by public water and a private septic system. The septic field shall be of a size and design approved by the Fairfax County Health Department. If a private water irrigation system is used to irrigate the driving range and practice area, it shall be designed to include utilization of the wet ponds noted as Number 5 on the plat and its design shall be developed and submitted to DEM for approval; otherwise, public water shall be utilized for the irrigation system.

18. Ancillary easements, deemed necessary for road improvement purposes by DEM or VDOT, shall be provided for the future Shirley Gate Road Extended along the full frontage of the property upon demand by the Director, DEM or VDOT.

19. Prior to issuance of a Non-Residential Use Permit, the applicant shall modify the traffic signal at the intersection of Braddock Road and Shirley Gate Road to accommodate in-bound and out-bound traffic from the site to the satisfaction of the Virginia Department of Transportation.

20. If the site develops prior to widening of Braddock Road, prior to the issuance of any Non-Residential Use Permit (Non-RUP), right/left turn and deceleration lanes shall be provided at the site's temporary entrance on Braddock Road as approved by the Director, DEM and VDOT. If the site develops subsequent to VDOT's widening of Braddock Road, the applicant shall contribute, at the time of site plan approval, the cost of the construction of right/left turn and deceleration lanes, and such costs shall be as determined by the Director, DEM. Any temporary driveway shall be designed and constructed in accordance with the Public Facilities Manual as approved by the Director, DEM and shall be revegetated at the time of construction of the permanent entrance and driveway as approved by the Director, DEM.

21. The applicant shall provide the permanent entrance to the site to meet minimum VDOT median break separation. This entrance shall be relocated and provided by the applicant at such time as Shirley Gate Road Extended is constructed.

22. Notes 16 and 22 on the Plat shall be deemed null and void.

23. Any sign erected in conjunction with this use shall meet the provisions of Article 12 of the Zoning Ordinance.

24. Driveways and parking areas shall be paved with a dustless surface.

25. The barrier requirement shall be waived along the northeastern and northwestern lot lines adjacent to the future Shirley Gate Road and Braddock Road. The barrier along the southwestern and southeastern lot lines shall be located so as not to damage existing vegetation and the EQC.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless 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 6-1 with Mr. Hammack voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1994. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 87, December 20, 1994, (Tape 1), After Agenda Item:

Approval of Resolutions for December 13 and December 15, 1994

Mrs. Thonen made a motion to approve the Resolutions as submitted.

Mr. Hammack noted corrections to Condition 10, Bullet 3, and Condition 17 of the McLean Bible Resolution. Those Conditions now read as follows:

- Diseased or dying plant material shall be replaced as necessary to maintain a continuous planting area, particularly between the parking areas and the residential neighborhood.

17. There shall be no expansion in the seating in the structure or in the load capacity now that there is more than the minimum required parking. This parking lot expansion is granted to accommodate the existing condition, not to allow the church to be expanded. No further expansion of seating in the building for load capacity shall be allowed. The maximum number of seats allowed shall be 980 seats."

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

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Page 88, December 20, 1994, (Tape 1), After Agenda Item:

Approval of November 15, 1994 Minutes

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

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Page 88, December 20, 1994, (Tape 1), After Agenda Item:

Request for Additional Time for
William Carter Reynolds, VC 92-V-091

Mrs. Thonen made a motion to approve the applicant's request. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date is April 21, 1997.

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Page 88, December 20, 1994, (Tape 1), After Agenda Item:

Acceptance In Part of Jeanne Gardes Appeal

William Shoup, Deputy Zoning Administrator, said there were two issues that needed to be considered. The first being, the Zoning Administrator's determination, and the second being a request by the appellant for the granting of a "stay." He called the BZA's attention to the December 13th memorandum which set forth staff's position. Mr. Shoup said the appellant identified two decisions which were subjects of the appeal, one involving density and the second stating that the Comprehensive Plan recommendations were not applicable to the proposed development. He said the appellant cited two dates for the date of the decision, September 26, 1994 and October 25, 1994. The Zoning Administrator mailed letters to the appellants on those dates. He said the appeal was filed within 30 days of the October 25th letter, but not the September 26th letter. Mr. Shoup said it was staff's position that the decision on density was made in the September 26th letter and that the October 25th letter just reiterated that decision. He noted that the Zoning Administrator prefaced her comments by saying, "as previously determined" and then elaborated on the density issue. It was staff's position that the appeal of the density determination is not timely, but the issue regarding the decision of the applicability of the Comprehensive Plan and the decision that an old covenant has no effect on the density issue were timely filed as noted in the October 25th letter. Therefore, staff recommended that the scope of the appeal be limited to just those two decisions. With regard to the request for a "stay", it was staff's position that the "stay" provisions set forth in 18-307 of the Zoning Ordinance only preclude further enforcement action on the part of the Zoning Administrator. Staff's position was based on the definition in Black's Law Dictionary and some Virginia Court cases which have stated the term "proceed" means a judicial proceeding; therefore, staff believed the "stay" provision only applies to enforcement. Mr. Shoup noted that the issue was the subject of appeal A 87-V-009 under the name of Jack Baker with respect to a towing operation on Richmond Highway. In that appeal, the BZA upheld the Zoning Administrator's decision and the Circuit Court affirmed that decision. He also noted that the "stay" issue was not the subject of this appeal, but was raised in the appellant's statement and it was staff's position that if the appellant wished to challenge the determination regarding a stay, a separate appeal application must be filed based on staff's December 13, 1994 memorandum to the BZA. The appellant submitted a letter dated December 16, 1994, which responded to staff's determination to limit the scope of the appeal and several issues were raised. He asked that the BZA give him an opportunity to address those issues after the appellant has formally presented her response. Mr. Shoup noted that Robert Lawrence, attorney for the owner of the subject property, was also present and wished to address the BZA.

The appellant, Jeanne Gardes, said the subject property is a wooded four acre parcel, which is completely surrounded by developed property. She said she and the other homeowners do not wish to stop development but merely want to ensure that it is done in conformance with the County codes.

Chairman DiGiulian said the BZA was only addressing what portions of the appeal to accept.

Ms. Gardes said the issues as outlined in her letter to the BZA dated December 16th dealt with whether the appeal was timely filed or whether a "stay" should be granted. She believed the appeal was timely since the September 26th letter did not have a notice of finality attached to it as required by Section 15.1, Section 486.1 of the Virginia Code which supersedes the County Ordinance. Ms. Gardes said under the Code any final decision, order, or other proceeding by the Zoning Administrator has to carry a notice of finality and the appellant's right to appeal. She said she is still awaiting a response to her September 21st letter which specifically requested if a final decision had been made.

Mr. Hammack said based on a recent ruling by Judge Wooldridge that bears directly on the enforcability of a Zoning Administrator's decision he believed the BZA should accept the whole appeal, have staff provide to the BZA a copy of the Circuit Court's decision on whether the decisions are binding or not and to what extent, and the BZA could then hear the entire issue and make a decision at that time.

Chairman DiGiulian said he would like to hear from Mr. Lawrence and then make a decision.

Ms. Gardes asked if the BZA wished to hear arguments with regard to the "stay" issue and it was the BZA's decision to forgo discussion until such time as the appeal came before the BZA.

Robert Lawrence, attorney for the subject property, said Section 15.1-496, the provision requiring written notice of the 30 day appeal period, does not apply to all decisions of the Zoning Administrator. He said it applies only to any written notice of a zoning violation or a written order of the Zoning Administrator. With respect to the "stay", Mr. Lawrence said the property owner has a site plan permit, is ready to begin operation on the site, has posted a $490,000 bond, and a "stay" would be economically devastating. He said he did not believe a "stay" was appropriate in a situation where a permit has been issued because, in effect, the permit would have to be revoked which requires going through a court proceeding.

Mr. Hammack asked if the appellant appealed the issuance of the site plan permit and Mr. Shoup replied that she had not. Ms. Gardes said she had been told by the Department of Environmental Management (DEM) that the site plan issue was not appealable to the BZA. She said based on Mr. Lawrence's testimony that the work is ready to proceed is exactly why a "stay" should be issued in order to protect the 100 year old trees that are on the site and to protect her property.

In response to a question from Mr. Hammack with regard to the density calculations, Ms. Gardes said the calculations were quite erroneous because the owner had failed to take into account existing apartment structures within the same subdivision of the overall subdivision. She said based on her engineer's calculations only 28 to 30 townhouses could be constructed as opposed to the 36 indicated by the property owner.

Mr. Shoup said the County Attorney had determined that the State requirement for notification applied only to notice of violations and orders, not to determination letters. He said it was staff's position that the question on density was made September 26th and the appeal was not filed within 30 days of that date, and any subsequent issue that was raised after that date is appealable but not the determination relating to density.

Mrs. Thonen asked if the appellant's engineer had done his calculations based upon the Jefferson Manor subdivision. Ms. Gardes said not the entire subdivision, only Block 7. Mrs. Thonen said that subdivision was created 50 years ago and the setbacks and density have certainly changed over that period of time. Ms. Gardes said the property that is the subject of the appeal was the playground and recreation facility at the time Jefferson Manor was created.

Mr. Lawrence said he had not known they would be discussing the merits of the appeal and was not prepared to address the issue in full, but one thing that he believed was quite obvious was that Jefferson Manor is a very old subdivision. The Board of Supervisors rezoned the property in 1978, which is the basis for the density as computed now, and you cannot go outside that zoning district to determine the density for the site. He said if it were a newer subdivision and this was open space it would make Jefferson Manor a non-conforming use, but the zoned property that the Board of Supervisors acted upon subsequent thereto is where the density was calculated and is not the issue being considered. The issue being considered is whether you have to go back 50 years ago to Jefferson Park and try to determine what the intent was with regard to open space and density. Mr. Lawrence said there will be no damage done to the appellant's property.

Mr. Kelley asked what the consequences would be if the BZA accepted the appeal in its entirety as opposed to accepting it in part. Mr. Lawrence said he did not believe the BZA could grant a "stay" on an approved site plan. Mr. Hammack agreed.

Mr. Pammel made a motion to reject the Jeannemarie Gardes appeal with respect to the issue relating to the density, but accept the portion of the appeal dealing with the Comprehensive Plan and the covenant which the Zoning Administrator indicated was timely filed. Mr. Kelley seconded the motion.

Chairman DiGiulian said he was not prepared to make a decision without sufficient time to review the material submitted to the BZA. Mr. Hammack agreed. The Chairman suggested that the BZA forego action on the appeal until the next scheduled meeting.

Following a discussion among the BZA members, Mr. Pammel made a motion to defer scheduling the appeal until the morning of January 3, 1995. The motion carried by a vote of 5-2 with Mrs. Thonen and Mr. Pammel voting nay.

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Page 89, December 20, 1994, (Tape 1), After Agenda Item:

Approval of Revision to the Special Permit Mistake Resolution Form

Mr. Ribble made a motion to approve the revision as submitted. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Request Date and Time for Public Hearing
Francis J. Prior and Sharon L. Prior Appeal

Mr. Pammel made a motion to accept the appeal and schedule a public hearing for the morning of February 9, 1995 as suggested by staff. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Expiration of James Pammel's Term on the
Board of Zoning Appeals

Mrs. Thonen made a motion that staff forward a letter to the Circuit Court indicating the BZA's unanimous support of the reappointment of Mr. Pammel. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Heritage Chrysler/Plymouth Sales Inc., VC 94-V-161

Mrs. Thonen said the subject property was rezoned in 1987, the applicant obtained a waiver, built the wall, and when the applicant applied for a site plan amendment they were told they needed a variance for the parking.

Following a discussion among the BZA members, Jane Kelsey, Chief, Special Permit and Variance Branch, suggested February 9, 1995, at 9:00 a.m. Mr. Dively made a motion to grant the applicant's request and schedule the public hearing for February 9, 1995. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Earl E. Elliott, Jr., SP 94-L-069 and VC 94-L-160

Mr. Pammel made a motion to grant the applicant's request and schedule the public hearing for February 14, 1995. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Request to Reschedule Richmond American Homes Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of March 7, 1995. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 90, December 20, 1994, (Tape 1), After Agenda Item:

Request for Out of Turn Hearing
Balmoral Golf Course, SPA 92-S-026

Mr. Pammel made a motion to grant the applicant's request and schedule the public hearing for February 14, 1995. 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 10:00 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 9, 1995

APPROVED: February 14, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 3, 1995. 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.

The first item of business was the election of officers. Mrs. Thonen recommended the following slate of officers: John DiGiulian for Chairman; Paul Hammack and John Ribble for Vice Chairman; and, Betsy Hurtt for Clerk. Mr. Pammel made a motion that the nominations be closed. Mrs. Thonen seconded the motion.

Mr. Pammel made a motion to accept the slate as offered by Mrs. Thonen. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

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Page 91, January 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN C., JR. & MARGARET M. PEARSON, VC 94-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure to exceed 200 sq. ft. Located at 8306 Cedardale Dr. on approx. 13,050 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (1) 3. (Concurrent with SP 94-V-054).

9:00 A.M. JOHN C., JR. & MARGARET M. PEARSON, SP 94-V-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.4 ft. from rear lot line and 1.6 ft. from side lot line. Located at 8306 Cedardale Dr. on approx. 13,050 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (1) 3. (Concurrent with VC 94-V-137).

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, John Pearson, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 13,050 square foot subject property is located on the west side of Cedardale Drive within the Collingwood on the Potomac Subdivision. The subject property is surrounded on four sides by single family detached dwellings in the R-3 District. The applicants were requesting approval of concurrent special permit and variance applications. The special permit was a request for error in building location to allow an existing accessory storage structure to remain 1.6 feet from the side lot line and 2.4 feet from the rear lot line. The Zoning Ordinance requires a minimum 12 foot side yard and a minimum 14 foot rear yard. Therefore, errors in building location were requested for 10.4 feet from the side yard and 11.6 feet from the rear yard requirements.

The variance request was to allow an accessory storage structure containing 247.7 square feet of gross floor area to remain in the required minimum side and rear yards. The Zoning Ordinance requires that accessory storage structures not exceed 200 square feet in gross floor area. Therefore, a variance was requested for 47.7 square feet from the maximum gross floor area allowed for accessory structures.

John Pearson, Jr., 8306 Cedardale Drive, Alexandria, Virginia, said they purchased the property in good faith and were unaware of the County regulations at the time the structures were built. He said the structure does not adversely impact the neighbors, there is sufficient landscaping and fencing in place, and the owner of Lot 78 has voiced no objections to the structure. He submitted a letter from the owner of Lot 78 into the record. Mr. Pearson said if the application was not granted, it would require him to demolish the structure since it cannot be moved.

With respect to the variance, Mr. Pearson said they were not aware that the size of the structure did not meet the requirements and pointed out that other houses in the neighborhood have adequate storage. He said the topography of the lot made it unreasonable to build elsewhere on the lot and submitted five additional letters in support of the request into the record.

Mr. Kelley asked staff why it had taken so long to bring the applications before the BZA. Mr. Heine said the applicant had experienced problems with submitting a correct application.

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

Mr. Pammel made a motion to grant SP 94-V-054 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 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-V-054 by JOHN C., JR., AND MARGARET M. PEARSON, 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 2.4 feet from rear lot line and 1.6 feet from side lot line, on property located at 8306 Cedardale Drive, Tax Map Reference 102-4((6))(1)3, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 3, 1995; and

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

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 storage 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 Special Permit & Variance Plat, Lot 3, Section Two, Block 1, Collingwood on the Potomac, prepared by Dove & Associates, dated January 25, 1994, revised October 4, 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 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 January 11, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 94-V-137 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 27, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-137 by JOHN C., JR., AND MARGARET M. PEARSON, under Section 18-401 of the Zoning Ordinance to permit an accessory structure to exceed 200 square feet, on property located at 8306 Cedardale Drive, Tax Map Reference 102-4((6))(1)3, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 3, 1995; 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 13,050 square feet.
4. The applicants presented testimony indicating compliance with 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 and the specified accessory storage structure shown on the plat prepared by Dove & Associates, dated January 25, 1994, revised October 4, 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. Hammack 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 January 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 94, January 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BRYAN BLACKWELL, VC 94-S-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line. Located at 6329 Hillside Rd. on approx. 36,279 sq. ft. of land zoned R-1. Springfield District. Tax Map 79-3 ((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, Mr. Blackwell, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 36,279 square foot property is located on the northeastern side of Hillside Road within the Fairfax Park Subdivision. The subject property is surrounded on three sides by single family detached dwellings in the R-1 District and on the southwest by townhouses in the R-5 and R-8 Districts. The applicant was requesting a variance to allow a carport addition to be located 10.5 feet from the side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, a variance was requested for 4.5 feet. Mr. Heine said the applicant had discovered an error on the variance plat that he would address in his presentation.

Bryan Blackwell, 14571 Golden Oak Road, Centreville, Virginia, explained that the plat originally submitted with the application had not reflected the location of the septic field and revised plats had been submitted. He said the property was acquired in good faith in 1984 and noted that the odd siting of the house on the narrow lot limited the placement of any addition to the side of the lot. Mr. Blackwell said they would like to construct a two-car carport and added that it would be difficult to build a carport elsewhere on the lot. He said the other houses in the neighborhood have only one septic field in the rear of the lot as opposed to his lot, which has one in the front and one in the rear of the lot. Mr. Blackwell said the dwelling on adjacent Lot 4 sets 10.5 feet from the shared lot line and the existing landscaping and trees will lessen the visual impact.

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-134 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 27, 1994.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-S-134 by BRYAN BLACKWELL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.5 feet from side lot line, on property located at 6329 Hillside Road, Tax Map Reference 79-3((3))5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 3, 1995; and

WHEREAS, 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 36,279 square feet.
4. This was a very close case because it seems in looking at the plat that perhaps conceivably there are other places to construct the two car carport. But at the same time, there are septic fields immediately to the rear and to the front of the dwelling, which do impose some constraints, as well as the narrowness and depth of the lot.
5. The applicant testified to enough hardships to justify the granting of the variance.

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

1. That the subject property was acquired in good faith.

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

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

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

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

6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of the specific carport addition shown on the plat prepared by Dewberry and Davis, dated April 21, 1994, revised December 28, 1994, and 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 11, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 95, January 3, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DORIS KNIEF, VC 94-D-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.1 ft. from side lot line. Located at 1230 Providence Terrace on approx. 14,599 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((6)) 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's agent, John Coyle, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 14,599 square foot property is located on Providence Terrace in the Providence Forest Subdivision. The subject property and surrounding lots are zoned R-3 and developed with single family detached dwellings. This request for variance resulted from the applicant's proposal to construct a sunroom addition to be located 7.1 feet from a side lot line. The minimum required side yard in the R-3 Zoning District is 12.0 feet. Accordingly, the applicant was requesting a variance of 4.9 feet to the minimum side yard requirement.

John Coyle, 6723 Whittier Avenue, McLean, Virginia, said the owner would like to provide an one story addition for a sunroom adjacent to the master bedroom. He said the lot is exceptionally narrow and the layout of the house with the elevation of the rear yard preclude the addition being constructed elsewhere. Mr. Coyle said the existing trees and the character of the neighborhood will be preserved and the zoning will not be changed.

Mr. Pammel noted for the record that a letter had been received from Scott and Teresa Harper in opposition to the request.

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

Mrs. Thonen made a motion to grant VC 94-D-136 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 27, 1994. The BZA waived the eight day waiting period as requested by the applicant.

Mr. Coyle asked that the eight day waiting period be waived. The BZA did so.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-136 by DORIS KNIEF, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.1 feet from side lot line, on property located at 1230 Providence Terrace, Tax Map Reference 30-1((6))19, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 3, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,599 square feet.
4. There was a lot of hardship on this particular piece of property that was not brought out in the agent's testimony, such as the lot is a long narrow lot.
5. A 4.9 foot variance is minimal compared to some others that have come before the BZA.
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,
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

or

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 sunroom addition shown on the plat prepared by Dove & Associates, dated June 22, 1994, signed August 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 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 January 3, 1995. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 91, January 3, 1995, (Tape 1), Scheduled case of:

9:30 A.M. COOL HANDS CAFE, INC., SP 94-M-052 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit a billiard parlor. Located at 6196 Arlington Blvd. on approx. 5.94 ac. of land zoned C-7. Mason District. Tax Map 51-3 ((18)) 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's attorney, Jonathan Rak, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 10,050 square foot area is located within a 5.94 acre shopping center located on Arlington Boulevard, northeast of the Seven Corners Shopping Center. The site is zoned C-7 and SC and is developed with the Willston Centre I Shopping Center which was built in 1952. The property to the north of the site is zoned R-20 and developed with apartment buildings, to the south across Arlington Boulevard are condominiums zoned R-30 and C-3, to the east is the Willston Centre II shopping center, zoned C-7 and the property to the west is zoned R-20 and contains an elementary school.

The applicant was requesting approval of a special permit to allow establishment of a billiard parlor within the existing Shopping Center. The applicant proposed leasing 10,050 square feet of area for the billiard parlor within the shopping center which is developed with approximately 97,000 square feet of gross floor area and 459 parking spaces. The applicant proposed operating a full service kitchen until 10:00 p.m. with a limited menu from 10:00 p.m. to closing. One-eighth of the floor space will be converted into a dance floor. No additional exterior construction was proposed. The hours of operation proposed by the applicant were 11:00 a.m. to 2:00 a.m. daily with a maximum of 15 employees.

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 will satisfy all the General Standards and Standards for all Group 5 Uses. For these reasons, staff recommended approval of SP 94-M-052 subject to the adoption of the Proposed Development Conditions, dated December 27, 1994.

Jonathan Rak, with the law firm of Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, agreed with the staff report and accepted the development conditions. He said he was not aware of any opposition and noted that he believed the proposed use will contribute positively to the revitalization of the Seven Corners area. Mr. Rak asked that the eight day waiting period be waived, if it was the intent of the BZA to grant the application.

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

Mr. Ribble made a motion to grant SP 94-M-052 for the reasons noted in the Resolution and subject to the Development Conditions in the staff report. Following a discussion among the

BZA members, Mr. Ribble made the following revision to the Conditions:

"8. Entry is prohibited to anyone under the age of 18 except during supervised league play and/or when occupied by an adult after 7:00 p.m."

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-M-052 by COOL HANDS CAFE, INC., under Section 4-703 of the Zoning Ordinance to permit a billiard parlor, on property located at 6196 Arlington Boulevard, Tax Map Reference 51-3((18))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 January 3, 1995; and

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

1. The applicant is the lessee of 10,050 square feet of the 5.94 acres.
2. The present zoning is C-7.
3. The area of the lot is 5.94 acres.
4. There is no opposition to the request.
5. The proposal is a good use for the area and will aid in the revitalization of the area as set forth by the applicant's attorney.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application which is 6196 Arlington Boulevard, consisting of 10,050 square feet of gross floor area and is not transferable to other land. Other by-right, Special Permit or Special Exception uses on the site may be permitted without an amendment to this special permit.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley Nyce & Associates, P.C. dated October 7, 1987, revised through November 28, 1994 and approved with this application, as qualified by these development conditions. This approval shall only govern the 10,050 square foot area to be occupied by the approved billiard parlor.

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

4. The hours of operation shall not exceed 11:00 a.m. to 2:00 a.m., daily.

5. Any signage erected on the building shall be of a size and materials which is compatible with existing signage in the shopping center and shall be subject to the requirements of Article 12 of the Zoning Ordinance.

6. Parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as determined by the Department of Environmental Management.

7. The eating establishment and dance floor shall comply with the provisions of the Zoning Ordinance and Chapter 27 of The Code.

8. Entry is prohibited to anyone under the age of 18 except during supervised league play and/or when occupied by an adult after 7:00 p.m.

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

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

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 January 3, 1995. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 99, January 3, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MR. & MRS. EDWARD G. GROSSMAN, SP 94-D-051 Appl. under Sect(s). 8-914, 3-307 and 2-412 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.4 ft. from side lot line and roof overhang 0.0 ft. from side lot line. Located at 6158 Kellogg Dr. on approx. 10,560 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((12)) 22.

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

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on the north side of Kellogg Drive, west of Kirby Road in the Potomac Hills subdivision. The site is 10,560 square feet in size, is zoned R-3, and is developed with a single family detached dwelling. Surrounding lots in the Potomac Hills subdivision are also zoned R-3 and are developed with single family detached dwellings.

The special permit request was to allow a reduction to minimum yard requirements based on an error in building location to permit a detached garage to remain 1.4 feet from the side lot line and to permit the roof overhang to remain 0.0 feet from the side lot line. Section 3-307 of the Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 District; therefore, an error of 10.6 feet or 88.3% and 12 feet or 100% to the minimum side yard requirement was made at the time of construction. The garage was constructed by the previous owner.

Mr. Hunter noted that Section 2-412 of the Zoning Ordinance does not apply in this case because the garage is nine feet high and extensions are only permitted for accessory structures which are at least ten feet high.

Hunter Harrison, 1485 Chain Bridge Road, McLean, Virginia, said the garage was constructed by the original developer in approximately 1959 or 1960. He said 23 years later the applicants purchased the property without being given notice that the garage did not meet the requirements of the Ordinance. Mr. Harrison said the hardships he believed were obvious since it is a brick garage and cannot be moved.

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

Chairman DiGiulian asked what prompted the applicants to file the special permit application. Mr. Hunter said the applicants submitted the application on their own in order to bring the garage into compliance. Mr. Harrison said both applicants are attorneys and when they became aware of the violation they realized that if they decided to sell the property they would have a problem. Based on that determination, the applicants decided to file the special permit application to bring the structure into compliance.

Mr. Kelley made a motion to grant SP 94-D-051 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 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-D-051 by MR. AND MRS. EDWARD G. GROSSMAN, 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 1.4 feet from side lot line and roof overhang 0.0 feet from side lot line, on property located at 6158 Kellogg Drive, Tax Map Reference 31-3((12))22, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 3, 1995; and

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

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 Dove & Associates, dated September 14, 1993, revised through December 19, 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.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 11, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 100, January 3, 1995, (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.

Page 101, January 3, 1995, (Tape 1), BRUCE L. HECOX, APPEAL 94-L-002, continued from Page 100 )

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. DEF. FROM 9/27 TO ALLOW BOARD OF SUPERVISORS TO HEAR SPECIAL EXCEPTION.)

William Shoup, Deputy Zoning Administrator, explained that the appellant's special exception had been scheduled to be heard by the Planning Commission on February 16, 1995 and the Board of Supervisors on February 27, 1995; therefore, staff recommended the BZA defer the appeal to June 13, 1995.

Mrs. Thonen said the site had been orderly for awhile, but was now looking messy again. Mr. Hecox explained there was ongoing townhouse construction behind the property and the builder had asked that the items be relocated to allow the developer to construct a fence. He said now that the construction is complete the items will be moved back to the rear of the lot.

Mrs. Thonen made a motion to defer the appeal to the morning of June 13, 1995 as suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 101, January 3, 1995, (Tape ), Scheduled case of:

9:30 A.M. GENUARIO APPEAL (DEF. REQ.) (INT. TO DEF. TO 3/7/95 ISSUED

Chairman DiGiulian said the BZA had issued an intent to defer this appeal at its November 29, 1994 meeting. Mrs. Thonen made a motion to defer the appeal to the morning of March 7, 1995. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Mrs. Thonen made a motion to go into Executive Session to consult with legal counsel and briefing by staff members, consultants, and attorneys, pertaining to actual and probable litigation and to other specific legal matters requiring the provisions of legal advise by counsel pursuant to Va. Code 21-344(A)(7). Mr. Pammel seconded the motion which carried by a vote of 7-0.

Upon returning to the Board Auditorium, Mrs. Thonen made a motion that the Board members certify that to the best of their knowledge only public business matters lawfully exempt from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board during Executive Session. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 101, January 3, 1995, (Tape 1), Scheduled case of:

Acceptance in part of Jeannemarie Gardes Appeal

Mr. Hammack made a motion to accept the entire appeal, schedule it for public hearing, and reserve ruling on the issue raised by the Zoning Administrator until after hearing the arguments of all parties involved. Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mr. Kelley was not present for the vote.

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Page 101, January 3, 1995, (Tape 1), Scheduled case of:

Approval of Revised Plats for
Anna Dalton Link, VC 94-D-121
Heard on December 6, 1994

Mr. Pammel made a motion that the BZA accept the revised plats which reflect the depth of the garage as 22 feet as opposed to 30 feet. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

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

John H. Ribble III
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 9, 1994

APPROVED: February 14, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 10, 1995. The following Board Members were present: Vice Chairman John Ribble; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian; Mary Thonen; and Robert Dively were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:30 a.m. and Mr. Hammack gave the invocation.

Mr. Kelley said Chairman DiGiulian and Mrs. Thonen had expressed interest in the Tate Terrace Realty Investment, Inc. Appeal, A 94-Y-039, but were absent from the meeting because of illness. He stated that he intended to make a motion to defer the case. Mr. Kelley said he would also make a similar motion to defer the Jerry A. Ogden Appeal, A 94-V-031.

Vice Chairman Ribble called for the first scheduled case.

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Page 103, January 10, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MARY ANN NASON GRECO & GEORGE G. GRECO, SP 94-B-056 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification on the limits on keeping of animals to permit fowl on a lot containing less than two acres. Located at 4437 Glenn Rose St. on approx. 18,410 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-2 ((17)) 114.

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

Don Heine, Staff Coordinator, presented the staff report. He said the 18,410 square foot lot is located on the southeast side of Glenn Rose Street within the Surrey Square Subdivision. The property is surrounded on three sides by single family detached dwellings and on the south by the Long Branch Stream Valley Park.

Mr. Heine said the applicants were requesting a special permit to keep twelve domestic fowl consisting of six domestic geese and six domestic ducks on the property. The Zoning Ordinance requires a minimum lot size of 2 acres for the keeping of domestic fowl. He noted that the applicants had submitted a management plan which was included as Appendix 4 of the staff report.

Citing staff's concerns regarding the use, Mr. Heine said if the BZA intends to approve the special permit staff believed the use should be subject to the development conditions contained in the staff report dated January 3, 1995. He noted there was a petition in opposition, as well as letters in opposition, to the request.

The applicant, Mary Ann Nason Greco, 4437 Glenn Rose Street, Fairfax, Virginia, addressed the BZA and stated she had purchased the property in July 1978. She explained that both she and her husband had experienced recent health problems and had acquired the fowl as a form of therapy during convalescence. Ms. Greco said the staff report was misleading and she actually had three domestic geese and nine domestic ducks.

Using the viewgraph to show slides of the area, Ms. Greco noted that there was an abundance of wildlife which included many types of wild birds and small wild animals. She referred to the pond on the adjoining parkland and said wild fowl lived in the park and roamed the area. Ms. Greco indicated she was trying to find homes for the domestic fowl, and asked the BZA to grant the special permit for a period of one year.

Continuing, she expressed her belief that rodents had been a problem long before she acquired the fowl, and that her pets and their accommodations were well maintained. Ms. Greco noted that sanitation and diet, along with loving care, were the key elements to raising healthy pets. In conclusion, she stated she would strive to ensure there was no detrimental impact on the neighbors and asked the BZA to grant the request.

In response to Mr. Hammack's question regarding the discrepancies in the development conditions regarding the species of fowl, Ms. Greco said the Game Warden had reported there were three geese and nine ducks. She noted that the disparity in the staff report was caused because the large white duck could easily be identified as a goose by someone who is not familiar with fowl. She mentioned her management plan and said they already complied with most of the development conditions and intended to come into compliance with the Zoning Ordinance.

Vice Chairman Ribble noted the staff report indicated the use did not meet the special permit standards, but did not recommend approval or denial. He asked for staff's position. Mr. Heine explained that staff does not make recommendations on animal cases.

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

Richard Backley, 4439 Glenn Rose Street, Fairfax, Virginia, addressed the BZA and said he was an adjoining property owner and that he was also representing another adjoining property owner, Mrs. Lynch. Addressing the legal, environmental, economic, and public health and safety issues, he noted the applicants had been in violation for approximately six months; the bird droppings have created an odor problem; the runoff into the nearby pond has created an environmental problem; the droppings and feed has created an increase in the rodent and insect population; and the use has caused a decrease in value of the neighbors' property. In conclusion, Mr. Backley asked the BZA to deny the request.

In response to Mr. Kelley's question as to whether a short term special permit would be acceptable, Mr. Backley said if the BZA granted the special permit, he would ask that it be limited to a six month period.

John Cronkleton, 4433 Glenn Rose Street, Fairfax, Virginia, submitted a letter for the record. Citing the dramatic increase in the number of large rats, he said he was opposed to the application and was opposed to a short term special permit. Mr. Cronkleton stated that, although he has lived on the property for twenty-two years, he had never seen rats until this past Fall. In conclusion, he said the presence of the fowl has caused a decrease in the value of his property, and asked the BZA to deny the request.

Wilma Cronkleton, 4433 Glenn Rose Street, Fairfax, Virginia, submitted a petition of opposition to the BZA. She expressed her belief that the entire neighborhood was opposed to the presence of fowl on the applicants' property. Ms. Cronkleton showed a picture of a truck delivering food for the fowl and explained the food was being stored in a van which was parked on the property. She noted that it was by the storage van that the rat was seen and said she believed the applicants could improve on the maintenance of their property. Ms. Cronkleton referred to the applicants' health problem and expressed her belief they were unable to properly care for the fowl and asked the BZA to deny the request. In conclusion, she said the presence of the fowl has cause allergy problems for her husband.

Nathalie H. Backley, 4439 Glenn Rose Street, Fairfax, Virginia, addressed the BZA and said she has been living on the property for approximately 23 years. Ms. Backley said the applicants have disregarded the Homeowners Association's recommendations and have also caused problems for the neighbors. She explained that when the applicants kept five dogs and approximately 200 rabbits on the property, the neighbor had to appeal to the Braddock District Supervisor, the Health Department, Zoning Enforcement and Animal Control for assistance in resolving the situation. Ms. Backley asked the BZA to deny the request.

In response to Vice Chairman Ribble's question as to when the applicants acquired the fowl, Ms. Backley said the ducks and geese were purchased approximately ten months ago.

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

Ms. Greco stated that she first acquired the fowl in April 1994. She explained there had been no violation of the Zoning Ordinance with regards to the rabbits and that she had resolved the issue of the dogs by destroying some and having the others debarked. She further explained that, although she had surgery early in 1994, she was good health.

In addressing property values, Ms. Greco said she purchased her house for $84,000 and it is presently valued at approximately $200,000. She noted that in 1989, she had been advised of rat problems in the neighborhood.

In response to Mr. Hammack's question regarding the Zoning Ordinance regulations on domestic fowl, Mr. Heine said the Zoning Ordinance requires a two acre lot for the keeping of fowl.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant SP 94-B-056 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 3, 1995 with the following modifications:

4. The modification to the limitation on the keeping of animals to allow domestic fowl to be kept on a lot less than two (2) acres shall be approved for a period not to exceed four (4) months from the approval date of this special permit.

5. This approval shall be for the applicant's existing three (3) domestic geese and nine (9) domestic ducks. If any of these specific ducks or geese die, are sold, moved or given away, they shall not be replaced.

Mr. Kelley seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Pammel expressed concern regarding sanctioning the use even for a short period of time. He said he would rather deny the request and ask staff to allow a reasonable amount of time for the applicant to comply.

Mr. Kelley asked staff if the request were denied, how promptly action would be taken to require the applicant to comply with the Zoning Ordinance. Mr. Heine noted that Mr. Shoup was present in the Board Room. William E. Shoup, Deputy Zoning Administrator, stated that staff would move for enforcement, but might have to initiate an injunction to require the removal of the fowl. He speculated that if it was not done voluntarily, it could take approximately one year to enforce compliance.

Mr. Hammack said although he agreed with some of Mr. Pammel's statements, he also believed there may be some circumstances where fowl could be kept on a lot which was under two acres. He noted though that the applicants had far too many birds for the residential area in which they lived.

Vice Chairman Ribble said he though Mr. Hammack had made a fair motion in a fowl case.

Mr. Pammel said he would support the motion in the hope that the applicants would resolve the issue within four months. Vice Chairman Ribble expressed his hope that the applicant would voluntarily comply with the Zoning Ordinance.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-B-056 by MARY ANN NASON GRECO AND GEORGE G. GRECO, under Section 8-917 of the Zoning Ordinance to permit modification on the limits on keeping of animals to permit fowl on a lot containing less than two acres, on property located at 4437 Glenn Rose Street, Tax Map Reference 69-2((17))114, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 10, 1995; 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 18,410 square feet.
4. The applicant shall have four months to bring the property into compliance which gives her to about May 10, 1995.
5. Clearly, the number of animals kept on the property is too great for an 18,000 square foot lot.
6. If an applicant came in with a request to keep two or three ducks on a similar size property, the BZA might grant it. Some domestic fowl many be accommodated on a lot over one-half acre if properly maintained, but twelve is certainly too many.

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 2-512 and 8-917 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, dated June 13, 1978, revised by Mary Ann Greco on October 10, 1994 and approved with this application, as qualified by these development conditions.

3. This special permit shall be made available to all Departments of the County during working hours.

4. The modification to the limitation on the keeping of animals to allow domestic fowl to be kept on a lot less than two (2) acres shall be approved for a period not to exceed four (4) months from the approval date of this special permit.

5. This approval shall be for the applicant's existing three (3) domestic geese and nine (9) domestic ducks. If any of these specific ducks or geese die, are sold, moved or given away, they shall not be replaced.

6. Managing of the domestic fowl on the subject property shall be in accordance with the following Management Plan:

   During the hours of darkness, the fowl should be kept in the enclosed area beneath the deck or inside the dwelling,

   During the daylight hours, when the applicants are not at home, the fowl shall be kept inside of the area enclosed by the six foot high stockade fence or inside the dwelling,

   During the daylight hours, the domestic fowl shall only be permitted in the fenced runs located on the southeastern end of the property when there is at least one applicant at home. The property line fences enclosing the runs shall be five foot high chain link fences with one foot extensions,

The motion sensing light used to control pests during the hours of darkness shall be maintained,

The fowl shall be given fresh bathing water daily,

Fresh water shall be used daily to wash down the water dishes, swimming pond, area inside of the stockade fence, and runoff area,

Twice a week the areas used by the fowl shall be sprayed with a mild bleach spray and once a month lime shall be spread over the site,

Once a week a stronger disinfectant such as a kennel wash shall be used on the hard surfaces. All cleaning agents shall be environmentally safe, and

Uneaten food shall be removed and disposed of every evening.

This approval, contingent on the above-noted conditions, shall not relieve 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. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Dively absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 106, January 10, 1995, (Tape 1), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A.

Mr. Kelley stated that he intended to make a motion to defer the appeal because two members of the Board of Zoning Appeals (BZA) who had a keen interest in the case were not present at the hearing.

Vice Chairman Ribble called for speakers to the deferral.

The appellant's attorney, Lynne J. Strobel, with the firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the BZA. She said the appellant had no objection to the deferral, but asked it be as brief as possible because of the pending land use application associated with the issue.

Mr. Kelley made a motion to defer A 94-Y-039 to the morning of February 9, 1995. Without objection, the Chair so ordered.

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Page 106, January 10, 1995, (Tapes 1 and 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. (DEF. FROM 11/1 AT APP.'S REQUEST)

Vice Chairman Ribble called for speakers to the deferral.

The appellant's attorney, James E. Pinkowski with the law firm of Pinkowski and Flanders, 3900 University Drive, Suite 200, Fairfax, Virginia, addressed the Board of Zoning Appeals (BZA). He said the appellant would not oppose a deferral provided there was no conflict between the date and his schedule.

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and said the appellant was in violation and noted there had been citizen opposition to the November 1, 1994 deferral.

Via Taylor, President of the Fair Haven Civic Association, 2506 Fairhaven Avenue, Alexandria, Virginia; and Ronald Carrolls, 6023 Brickly Drive, Alexandria, Virginia; addressed the BZA and stated they were adamantly opposed to a deferral and believed the case should be heard as scheduled.

Mr. Hammack noted the appeal had one deferral and said he would like to hear the case as scheduled. Vice Chairman Ribble agreed with Mr. Hammack and asked if the appellant was present. The appellant, Jerry Ogden, 4111 Danville Road, Brandywine, Maryland, stated he was ready to precede with the case.

William E. Shoup, Deputy Zoning Administrator, stated that the 6,791 square foot lot is located at 6021 Rixey Drive, Tax Map Reference 83-3((9))(8)8, and is zoned R-4. He said the appeal concerns three dwelling units on one lot. Sect. 2-501 of the Zoning Ordinance precludes more than one dwelling unit on the lot and inspection of the property revealed there is an independent living facility existing in the free standing structure originally constructed as a garage. Mr. Shoup noted the BZA had approved a variance for the garage. He explained there were two separate living units in the main structure, one upstairs and one downstairs. Mr. Shoup stated that staff believed the units satisfy the criteria of the dwelling unit definition as set forth in the Zoning Ordinance and the three units constitute a violation of Sect. 2-501.

Mr. Shoup explained there was no dispute regarding the existence of three dwelling units on the property, but at issue is whether the three units are legal nonconforming uses. He said there were never any provisions which would have allowed for the three units which exist on the property, nor is there any evidence the units were lawfully established as a nonconforming use; therefore, staff believed the appellant is in violation.

In conclusion, Mr. Shoup said the appeal had been deferred from November 1, 1994 to allow the appellant and staff the opportunity to meet on site to try to resolve the issue. At the meeting on November 8, 1994, staff advised the appellant the main structure would have to be converted back into a single family dwelling unit and the free standing unit converted back into a garage. Mr. Shoup stated the appellant has chosen to go forward with the appeal.

Mr. Pinkowski referred to the staff report and explained the house was constructed in 1942, and from 1944 to 1946 many homeowners were asked to accommodate returning military personnel by providing housing. He noted that the BZA had previously heard four similar appeals. In the Michael Fanshel Appeal heard in February 1982, and the Theresa Brown Veverka Appeal heard in November 1991, the BZA found there was tacit approval of the housing even though it might not have been in compliance with the Zoning Ordinance. He noted in the cases which the BZA decided against the appellant, there was no evidence there was any kind of approval or submission to the County for this type of use on the property.

Continuing, Mr. Pinkowski stated that in 1968 Fairfax County issued a Notice of Violation to the original property and noted there was an affidavit from the original property owners, Ancil and Evelyn White, certifying that upon construction, they had used the property as a three family unit. He explained that there was no further action on the violation which indicated the County had accepted the White's explanation and the use was allowed to continue. Subsequently, in 1981 and 1984 when Fairfax County inspectors investigated and found that several families reside on the property, no violation was issued. Mr. Pinkowski expressed his belief that the action in 1968, based on the affidavit submitted by Mr. and Mrs. White, established tacit approval by Fairfax County for the use on the property. He said the BZA should consider the action tacit approval and recognize it as a nonconforming use. He noted that the Board of Supervisors had asked staff to research the issue to see if a Zoning Ordinance Amendment was needed to allow such uses.

Mr. Pinkowski submitted a copy of the multiple listing, the settlement sheet, and the tax assessment, all of which recognized the duplex use and indicated there were three tenants on the property. He said that he realized it was a difficult case, but the facts were compelling and the appellant purchased the property with the understanding all units were legal under the grandfather clause. He expressed his belief that Fairfax County action has raised the issue of Constitutional taking of property without due process when there should be just compensation paid. Mr. Pinkowski said he realized zoning was part of the police powers of the State, but that the use posed no threat to the public health, safety, and welfare.

In response to Mr. Hammack's question as to how long the property has been taxed as a duplex, Mr. Pinkowski said, although his records only go back to 1977, he believed that it was taxed as a duplex for at least 20 years and Mr. and Mrs. White's affidavit indicated the duplex use existed on the property for approximately 50 years. He said, although the use alone was not justification for noncompliance, the BZA should recognize the use was permitted in the public interest and it would not serve the public interest to curtail the use.

Continuing, Mr. Pinkowski said the Deputy Zoning Administrator had asked the Board of Supervisors to include in the Kate and Allie Legislation an amendment to the Zoning Ordinance to recognize the use as nonconforming. He noted his research had shown that seven other properties in the immediate area are in a similar situation and he did not believe the "Notice of Violation" was appropriate.

Mr. Pammel said that in the Building Permit Application dated February 1948 to finish an attic on the property, Mr. White indicated the structure was used as a single family residence. Mr. Pinkowski said Mr. White had lived on the property and had rented out the other unit. He again noted that Fairfax County had given tactic approval of the duplex use.

The BZA and Mr. Pinkowski had a brief discussion regarding the history of the property and the validity of tactic approval for the use.

In response to Mr. Hammack's questions, Mr. Ogden said the real estate agent had listed the property as a duplex use, but he had not contacted Fairfax County to verify the legality of the use.

Mr. Hammack noted that although the property has been taxed as a duplex, the appellant had exceeded the use by establishing the garage as a unit. Mr. Pinkowski said the garage had been constructed in 1946 and the affidavit in 1968 indicated that the garage was being rented as an accessory unit.

Mr. Kelley noted that Mr. and Mrs. White had given conflicting testimony which was tantamount to perjury. Mr. Pinkowski explained that he did not know why the forms were not filled out correctly, but emphasized the fact that Fairfax County had ample opportunity to rectify the situation and had not done so.

Vice Chairman Ribble called for staff comments.

Mr. Shoup noted the BZA had upheld the Zoning Administrator in three of the four appeals referenced by Mr. Pinkowski, including the Michael Fanshel Appeal. In addressing the Board of Supervisors' suggestion that staff research the feasibility of amending the Zoning Ordinance to legalize such uses, he said the County Attorney's Office questioned the appropriateness of legalizing an otherwise illegal use, and the Board of Supervisors chose not to authorize such an amendment. Mr. Shoup said there were no records which indicated approval was granted in 1968, and expressed his belief there would have been no basis on which to make such a determination. Most likely there had been a failure on the part of staff to follow-up on the violation. He noted that, although the Office of Assessments might have taxed the property as a duplex, it would not be considered a basis on which to legalize the use. To establish a nonconforming use, the appellant must be able to prove the use was legally established. Referring to the Kate and Allie Amendment currently before the Board of Supervisors, he said the legislation dealt with the occupancy of a single dwelling unit, and does not involve multiple dwelling units.

Vice Chairman Ribble called for speakers to the appeal and the following citizens came forward.

Via Taylor, President of the Fair Haven Civic Association, 2506 Fairhaven Avenue, Alexandria, Virginia; and Ronald Carrolls, 6023 Brickly Drive, Alaxandria, Virginia; addressed the BZA. They said that in 1979, the community was identified for single family homes and dedicated as a conservation area and Federal assistance had helped to improve the area. They expressed concern regarding the group of investors which have purchased properties in the area. Noting the disrepair of the property, they said Mr. Ogden's tenants had solicited help from the Civic Association and from the Board of Supervisors to compel the owner to better maintain the property. In conclusion, they said the use did not conform with the character of the community and asked the BZA to deny the request.

During the course of her testimony, Mr. Kelly asked if there were several other houses in the immediate area with multiple uses, Ms. Taylor said the community and Zoning Enforcement were working together to resolve the situation.

Vice Chairman Ribble assured Mr. Carrolls that the letters of opposition had been made part of the record.

Vice Chairman Ribble called for rebuttal.

Mr. Pinkowski said there had been no testimony in opposition regarding the police powers of the Zoning Ordinance which involved the public health, safety and welfare. He expressed his belief that the citizens moved into the neighborhood with full knowledge of the use. He noted that after moving into an established neighborhood, with established uses, the citizens now want to change the neighborhood. Again, he stated that the problem was created because of a public need for additional housing and expressed his belief that there is a current need for low cost housing. Mr. Pinkowski explained that the government created the problem and the government should solve the problem through legislation. In conclusion, he said Mr. Ogden should be given the benefit of the doubt, and asked the BZA to overturn the Zoning Administrator's determination.

Mr. Hammack and Mr. Shoup discussed the issue of taxation and the need to establish coordination between the Office of Assessments and Zoning Administration.

Mr. Pammel said although staff had concluded the use of the property did not comply with the Zoning Ordinance, staff did not enforce compliance. He explained that he did not want to compound an error with an error. In referring to the records, he noted on the 1948 Building Permit Number 14873, which was issued by Fairfax County for modification to the structure to fix the attic and add dormers, the Whites represented the number of living units as one. Mr. Pammel further noted that the Whites did not utilize the special permit procedure which would have allowed them to legally create the use. He said Mr. Ogden had relied on the real estate agent's information that there were documents establishing the nonconforming use, but he had not obtained an official interpretation from the Zoning Administrator.

Mr. Pammel made a motion to uphold the determination of the Zoning Administrator in A 94-V-031. Mr. Hammack seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Kelley said when an individual buys an income producing property, the prudent individual investigates to ensure the use is legal.

Mr. Hammack noted that the evidence does not conclude that the use was a nonconforming use. He explained that, although the affidavits are troublesome and there was inaction on the part of staff, it does not prove tacit approval.

The motion carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Dively absent from the meeting.

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The Board of Zoning Appeals recessed at 11:15 a.m. and reconvened at 11:20 a.m.

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Page 109, January 10, 1995, (Tape 2), Scheduled case of:

9:30 A.M. D & K PARTNERSHIP, VC 94-H-109 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 104.86 ft. Located at 12509 Lawyers Rd. on approx. 2.95 ac. of land zoned R-1. Hunter Mill District. Tax Map 35-2 ((1)) 11. (DEF. FROM 12/1 AT APPLICANT'S REQUEST)

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

Susan Langdon, Staff Coordinator, presented the staff report. She said the property consists of 2.95 acres and is located on the east side of Lawyers Road northeast of its intersection with West Ox Road. 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 104.86 feet. The Zoning Ordinance requires a minimum lot width of 150 feet in the R-1 Zoning District; therefore, a variance of 45.14 feet was requested.

Ms. Langdon noted that the property is currently vacant and is surrounded by properties zoned R-1 and R-2. To the north, are single family detached dwellings and Homeowner Association open space, and to the south is a single family detached dwelling and a synagogue. To the east and west are single family detached dwellings.

She noted it was staff's judgement that six of the nine required standards have not been met. Ms. Langdon said if the BZA should grant the request, staff recommended the approval be subject to the proposed development conditions contained in the staff report dated November 15, 1994.

The applicant's attorney, Grayson P. Hanes, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, addressed the BZA. He said the application was a sequel of the case which came before the BZA in 1988. Mr. Hanes said the property had contained approximately 3 acres and when the owners tried to subdivide it into 3 lots, the neighbors had opposed the application.

Mr. Hanes explained that the applicant has diligently tried to develop the property, and had worked with the Synagogue to gain access to the property. He noted the applicant had also worked closely with the community and had gained the Home Owners Association support. In conclusion, Mr. Hanes said the lots would be compatible and harmonious with the area, the application meets the necessary standards, and there would be no detrimental impact on the community. He asked the BZA to grant the request.

In response to Vice Chairman Ribble's question regarding the standards, Mr. Hanes said he agreed with staff's findings that the application was harmonious and compatible with the Comprehensive Plan.

Ms. Langdon said there was an error in the staff report, and the lot width of 105.7 feet would require a lesser variance of 44.93 feet.

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

Mr. Kelley made a motion to grant VC 94-H-109 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated November 15, 1994.

Mr. Pammel seconded the motion and noted the application would be in complete harmony with the development within the area.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-H-109 by D & K PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having lot width of 104.86 feet, **(CORRECTED ON THE RECORD TO BE 105.07 FEET)** on property located at 12509 Lawyers Road, Tax Map Reference 35-2((1))11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 10, 1995; and

WHEREAS, 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 2.95 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The letter, dated January 9, 1995 from the law firm of Hazel and Thomas, lists many of the justifications for the granting of 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 subdivision of Lot 11 as shown on the plat prepared by Huntley, Nyce & Associates, P.C., dated May 30, 1994, revised through October 19, 1994. All development shall be in conformance with this plat.

2. Only one (1) entrance to both lots shall be allowed from Lawyers Road. This entrance shall be provided within a twenty-four (24) foot wide easement from Lawyers Road. The driveway easement shall be recorded with the deeds to the property to ensure future access to these lots via the common driveway.

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

Page 111, January 10, 1995, (Tape 2), D & K PARTNERSHIP, VC 94-H-109, continued from Page 110 )

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. Additional trees may be required by the Urban Forestry Branch to satisfy the tree cover requirements of Sect. 13-401 of 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 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. Dively absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 18, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 111, January 10, 1995, (Tape 2), Action Item:

Request for Approval Resolutions from January 3, 1995

Mr. Hammack made a motion to approve the Resolutions as submitted. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Dively absent from the meeting.

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Page 111, January 10, 1995, (Tape 2), Action Item:

Request for Approval Minutes from December 1, 1994

Mr. Hammack made a motion to approve the Minutes as submitted. Mr. Kelley seconded the motion which carried by a vote of 3-0-1 with Mr. Pammel abstaining from the vote. Chairman DiGiulian, Mrs. Thonen, and Mr. Dively were absent from the meeting. Mr. Pammel abstained from the vote because he had not been present at the December 1, 1994 public hearing.

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Page 111, January 10, 1995, (Tape 2), Action Item:

Request for Date and Time
Rafat and Nusrat Mahood Appeal
Memorandum from William Shoup, Deputy Zoning Administrator

The appellant's attorney, William Thomas, 1733 King Street, Alexandria, Virginia, addressed the Board of Zoning Appeals (BZA). He stated the appellants had contacted Zoning Enforcement to try to resolve the issue. Mr. Thomas explained that the appellants thought by cooperating with staff, and meeting with their Board of Supervisors member, they had complied with the time requirements. He noted that when the issue was not resolved and he received the second notice, he filed the appeal. Mr. Thomas asked the BZA to accept the case.

Mr. Fagelson said he, too, was representing the appellant and although he did not want to be put in a position to contest the County, it was not unreasonable to assume the County did not want to be unfair to the appellant and asked the BZA to accept the appeal.

Mr. Hammack discussed the November 2, 1994 letter, which extended the deadline for compliance, with William E. Shoup, Deputy Zoning Appeals. Mr. Hammack noted the letter had informed the appellant that he could appeal the notice, and asked whether extending the deadline for compliance would constitute a waiver. Mr. Shoup explained there was a distinction between the deadline for compliance and the deadline for filing the appeal. Mr. Shoup said when a violator takes some action, a determination has to be made as to whether the action constitutes compliance or if the violation continues.

Mr. Kelley made a motion to accept the appeal and schedule it for the morning of March 28, 1995. Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Dively absent from the meeting.

Page 112, January 10, 1995, (Tape 2), RAFAT AND NUSRAT MAHOOD APPEAL, continued from Page 111 )

During a brief discussion with Mr. Hammack regarding the second Notice of Violation letter, Mr. Shoup stated that staff was legally required to include the statement in the letter, but realized it could confuse a citizen. He indicated that staff was going to confer with the County Attorney to see if the language in the statement could be modified to a specific situation.

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Page 112, January 10, 1995, (Tape 2), Action Item:

Request for Approval of Revised Resolution and Plat
Phillip H. Weston, VC 94-P-115
December 1, 1994 Hearing Date

Without objection, the Chair so ordered.

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Page 112, January 10, 1995, (Tape 2), Action Item:

Request for Intent-to-Defer
Evelyn Reid Syphax, VC 94-M-138

Vice Chairman Ribble noted the Clerk suggested a deferral date for the morning of February 28, 1995.

Mr. Hammack made a motion to defer VC 94-M-138 to the morning of February 28, 1995. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Dively absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

Helen C. Darby, Deputy Clerk
Board of Zoning Appeals

John F. Ribble III
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: March 21, 1995

APPROVED: March 28, 1995

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 17, 1995. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; James Pammel; and John Ribble. Robert Kelley 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 113, January 17, 1995, (Tape 1), Scheduled case of:

8:00 P.M. EVELYN REID SYPHAX, VC 94-M-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of five lots into nine lots and one outlot, proposed Lots 7 and 8 having lot widths of 10.0 ft. Located at 3432, 3433, 3436, 3437 Bannerwood Dr. on approx. 4.76 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 22; 59-2 ((2)) 3, 4A, 4B, 5. (MOVED FROM 1/10 AT APPLICANT'S REQUEST.)

Mrs. Thonen made a motion to defer the application to February 28, 1995 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 113, January 17, 1995, (Tape 1), Scheduled case of:

8:00 P.M. LUTHER F. & SHARON A. MANNIS, SP 94-L-057 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 5610 Cornish Way on approx. 8,446 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 100-2 ((2)) 352A.

Mrs. Thonen made a motion to defer the case to allow the Planning Commission to administratively review the application. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 113, January 17, 1995, (Tape 1), Scheduled case of:

8:00 P.M. TRUSTEES OF THE BETHLEHEM LUTHERAN CHURCH, SPA 89-M-033 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 89-M-033 for church and related facilities to permit building additions and change of development conditions. Located at 8922 Little River Trnpk. on approx. 3.64 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((1)) 61.

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 representative, Mr. Sharp, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located on the north side of Little River Turnpike west of its intersection with Guinea Road. The subject property is 3.64 acres in size and is zoned R-1. The Annandale Volunteer Fire and Rescue Squad adjoins the subject property to the east, and the Ridgelea Hills subdivision surrounds the site to the east, north and west. The Lee Forest subdivision is located across Little River Turnpike to the south. The property is developed with an existing 9,000 square foot church structure, and access is by way of a 26 foot wide service drive. Access to the service drive is available at two points; one at the Guinea Road/Rt. 236 intersection and the other at the intersection of Rt. 236 and Ridgelea Hills Drive.

Mr. Hunter added that the application was requesting approval of SPA 89-M-033 in order to amend SP 89-M-033 for church and related facilities to permit three separate building additions, totalling 12,810 square feet and including a two story sanctuary addition to be located in front of the existing church structure on the south side of the site. The seating capacity will increase from 175 to 243. The proposed FAR is 0.144. An increase in parking from 59 spaces to 103 spaces was also requested. The new parking spaces will be located behind the existing church structure and within 35 feet of the northern lot line. Sunday school is held on Sundays at 8:30 a.m. and morning service is held at 10:00 a.m. Weekday office hours and week night meetings are scheduled as needed.

Mr. Hunter also said that on June 29, 1982, S-82-M-031 was granted to the Center for Early Learning and this special permit expired on June 29, 1989. An amendment, SPA 82-M-031-1, was granted to the Center for Early Learning and Bethlehem Lutheran Church. The maximum daily enrollment for the nursery school was limited to 75 children and the use was granted without term. The nursery school is no longer operating and the special permit has expired. The applicant's statement indicates that the church has no plans for a child care facility.

On October 18, 1989, the BZA approved SP 89-M-033 for a church and related facilities to permit the addition of a pavilion. Additional parking spaces were originally requested with this application but the applicant amended the application to delete the previously proposed parking area. This approval brought the church under special permit for the first time.

Transitional Screening was required along the northern and western lot lines with the approval of SP 89-M-033. However, because the proposed parking lot will be located 36 feet from the northern lot line, staff recommended that Transitional Screening 2 be provided along the northwestern lot line from the parking lot to the western lot line.

In addition, because the entrance drive and parking spaces encroach into the transitional screening yard, less than 25 feet of screening has been provided along the western lot line. The proposed sanctuary addition will add a substantial amount of mass and bulk to the site, and parking spaces and a travel aisle are located within 13 feet of the western property line.

Consequently, staff was of the opinion that the transitional screening yard along the western lot line should be supplemented with additional evergreen trees in order to provide the equivalent of Transitional Screening 1. A modification was recommended to allow a corner of the parking lot and travel aisles within transitional screening yards.

Mr. Hunter stated staff had concluded that the subject application would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions dated January 17, 1995 which were passed out to the BZA tonight. These revised conditions contain minor corrections to Conditions No. 7 and 8 regarding transitional screening along the western lot line and the provision of stormwater Best Management Practices.

Mr. Hunter said that staff recommended approval subject to the Proposed Development Conditions dated January 10, 1995 and revised January 17, 1995.

Mr. Hunter noted that as a result of meetings with neighboring property owners, the applicant had submitted additional Development Conditions which were also handed out. The applicant's proposed conditions include alternative language for Development Conditions No. 7, 8, and 10 regarding transitional screening, and the height of the light poles. Staff's standard condition for the height of light poles is 12 feet.

Mr. Hunter said that it was also noted that a concern has been raised regarding stormwater management and any off-site impacts that may result with this application. This issue will be addressed at the time of site plan review.

Jay Sharp stated that Bethlehem Lutheran Church was formed in September 1961 as a mission congregation and has continued at the same site since that time. As the congregation grew, it became a multi-purpose room in 1968 and the congregation has worshipped in that space ever since. In 1993, the members voted to build a sanctuary and to renovate dated areas of the building in order to offer handicapped capability and modernized upgrades. They began this permit process so that a vision which began 32 years ago could be realized. He said the building project would not only provide Bethlehem Lutheran Church with a dedicated sanctuary for the first time for worship, but would better serve its members and the community with an updated facility. The updated and still modest facilities will be used by the congregation and current church-sponsored activities such as Boy Scouts, Girl Scouts, weddings and funerals, AA and the Ridgelea Homeowners Association. He stated that it is and will continue to be their written policy to not rent out their facilities for commercial purposes.

Mr. Sharp further explained that as a result of a recent meeting with interested parties and adjacent homeowners, the proposed development conditions under SPA 89-M-033 dated January 10, 1995 have been accepted by the congregation with the following notations:

Item 7 Transitional Screening

The church will work with the County Arborist and each abutting homeowner to determine the screening to be provided which meets or exceeds those requirements as stated in the proposed development conditions.

In Item 8, insert a slash BMP, "/BMP", after the words "Stormwater Management" in the first line.

Item 10, bulletin 1, should read:

Light poles shall not exceed 10 feet in height unless the Fairfax County Police Department finds that the height specified would not be adequate for securing the property at which time the minimum height specified by the Fairfax County Police Department will guide what is provided on site.

Mr. Sharp indicated that it has been requested by the community representatives that he address the two following items:

A. To define the meaning of the word "nursery" on the floor plan drawings. The room designated as nursery on the submitted architectural drawing will be used for the care of infants and small children during congregational and community program events; and

B. To support the request of the Ridgelea Hills Homeowners' Association representatives that the County provide a downstream off-site study of existing pipe capacity for use during the site plan approval process.

Mr. Sharp in response to Mr. Ribble's question stated that the church was asked to define what it meant by "nursery". There was concern that nursery eluded to a commercial operation. It was stated that the room designated as nursery on the submitted architectural drawings will be used for the care of infants and small children during congregational and community program events.

Chairman DiGiulian asked if Ridgelea Hills Homeowners Association was requesting that a condition with respect to the screening be added. Mr. Sharp said that Bethlehem Lutheran Church was just supporting the Ridgelea Hills Homeowners Association in their stating the need for a downstream study.

Francis B. Van Nuys, 3904 Ridgelea Drive, Fairfax, Virginia, President of the Ridgelea Hills Homeowners Association, addressed the BZA. He stated Ridgelea Hills is a subdivision of 176 homes which borders the property of the Bethlehem Lutheran Church on its western, northern and part of the eastern boundaries. Mr. Van Nuys said that he was at the meeting to speak in support of the granting of Special Permit Amendment Application, SPA 89-M-033, to the Bethlehem Lutheran Church, provided certain amendments are made to the Proposed Development Conditions contained in Appendix 1 to the Staff Report, which amendments, he believed were agreeable to the applicant.

He went on further to say that he became aware of certain concerns and misinformation relative to this application. As a result, he arranged a meeting Sunday afternoon with the members of the Bethlehem Lutheran Church at the church. While written invitations were hand delivered to the Ridgelea Hills Homeowners Association Board of Directors and all abutting landowners, all interested parties were invited. Mason District Supervisor, Tina Trapnell, graciously attended this meeting. Mr. Van Nuys continued that the meeting between the Bethlehem Lutheran Church and Ridgelea Hills Homeowners Association went on for a couple of hours and numerous questions were raised and answered by the church. The parties came to a number of agreements and placed them in their amendments to the Proposed Development Conditions, which was previously read by Mr. Sharp with the following additional item:

D. Add a new Item 13, which reads:

13. The Bethlehem Lutheran Church will notify and coordinate with the adjacent homeowners and also the Ridgelea Hill Homes Association, both prior to the first submission of the site plan ad prior to the final submission of the site plan to permit a determination of the drainage problems, if any, that may result from this project.

Mr. Van Nuys concluded that Ridgelea Hills Homes Association is supporting the application of Bethlehem Lutheran Church, that the church has been a good neighbor, and they look forward to the completion to the church's project.

Mr. Hammack expressed concern about Mr. Van Nuys' proposal for Item 7. He believed they wanted to allow each homeowner to be able to determine the screening that is adjacent to their property.

Mr. Hammack also asked Mr. Van Nuys if he knew what the requirements for transitional screening were under the Proposed Development Conditions. Mr. Van Nuys said he did as he had gone to the Fairfax County library and xeroxed the particular proposals, read them and was familiar with them. Mr. Hammack inquired as to what ways the Ridgelea Hills Homes Association felt that the Proposed Development Conditions were not acceptable. Mr. Van Nuys stated that it was not that they weren't acceptable, but that there must be a way in which the individual homeowners would be able to see exactly what trees were going to be implemented under these standards.

Mr. Hammack said that the BZA cannot approve a special permit and development conditions that are conditional. He suggested that the homeowners could possibly express preferences, but would not be allowed veto power and that it was important to determine whether the church has satisfied the requirements at present and not in the future. Mr. Hammack recognized the community's concerns about screening, however, he said the BZA could not accept Ridgelea Hills Homes Association Item 7 as written. In an attempt to clarify the issue, Mr. Van Nuys stated that the wording in Item 7 was at the suggestion of the church. The only item added was the Ridgelea Hills Homes Association as a third party.

In response, Mr. Hammack said the BZA is the entity that must decide whether the Proposed Development Plan meets the standards of the community. It cannot be delegated to meet or exceed those requirements. It was determined that the County Arborist would have final determination.

Susie Goldhammer, 9720 Ceroline Drive, Fairfax, Virginia, President of the Jewish Community Center of Northern Virginia (JCCNV), came to speak in support of the Bethlehem Lutheran Church. The JCCNV is delighted to see the growth of the church and offered their parking facilities should it ever be needed in an overflow situation when not in use by JCCNV. They only asked for assurance from the church that increased church activity will not impact with the JCCNV's attempt to comply with conditions placed upon them by Fairfax County vis-a-vis the traffic intersection at Guinea Road and the Little River Turnpike. It was stated that this intersection is the only entrance and exit for the JCCNV. They also asked that the church assume all responsibility financially or otherwise for any adverse impact their

Continued from Page 116



increased activities may have on this intersection at some future date. It was the JCCNV's request that this issue be included as one of the development conditions and that the JCCNV be consulted should modification be needed to the intersection.

Fran Wallingford, 3311 Mantua Drive, Fairfax, Virginia, represented the Mantua Civic Association, and thanked the church for working with the surrounding community and addressing their concerns. She also said that the efforts of the church and the cooperation of Supervisor Trapnell were appreciated. Ms. Wallingford continued that Mantua has a number of special permits and special exceptions and institutional uses surrounding them and commented on how the Civic Association tries to be consistent and treat all in the same manner. The Mantua Civic Association found that the Proposed Development Conditions were consistent with their usual requests. In conclusion, Ms. Wallingford expressed her wishes that the BZA approve this application. She also mentioned that the Pine Ridge Civic Association supported the position that the Mantua Civic Association had taken.

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

Debra Kunin, 3913 Ridgelea Drive, Fairfax, Virginia, an abutting homeowner, spoke in opposition. Ms. Kunin said that she attended the two and a half hour meeting on Sunday, January 15, 1995. She stated that she was an immediate neighbor of the church and was deeply concerned about the adverse impacts the proposed changes would have on her property value and her ability to enjoy the quiet of her property. She found the wording on Page 7 of the Staff Report, section "Waiver/Modifications Requested," difficult to understand. Mrs. Kunin requested that the full 25-foot border between her property and the church be allowed so that the proper transitional screening could be planted. She also wanted to be assured that the church would maintain its property and replace dead trees as necessary on a prompt basis.

Jerrold Budiansky, 3927 Benwood Court, Fairfax, Virginia, spoke in opposition to this application. Mr. Budiansky asked that the transitional screening be required to be put in place prior to construction and that there be adequate amounts of it.

Chairman DiGiulian asked Mr. Sharp if he had any rebuttal.

Mr. Sharp said that he was surprised at some of the comments based on previous conversations he had had with some of the individuals, some of whom were at the meeting, and what was said in front of the BZA was not the same as at the church's meeting. He left it at that for the time being. Mr. Sharp also said that the issue of the screening seems to be coming up a lot. He clarified that when the church built the pavilion they had worked with the County Arborist and each abutting homeowner to identify the required screening and at that time some homeowners wanted screening other than the required and were willing to pay for their choice of trees and that the County Arborist agreed to the arrangement and it was done. Some of the trees had died and Mr. Sharp said that the church realizes their responsibility for the proper upkeep of their property, that some trees had been replaced and so would the others.

Mr. Sharp said he had discussed with Mrs. Kunin the possibility of planting as required by the County. He believed she understood and graciously had accepted this idea at Sunday's church meeting. Mr. Sharp did not want to plant trees that would not reasonably survive the weather at this time of the year.

Chairman DiGiulian closed the public hearing.

Mr. Hammack concluded that twelve (12) foot light poles have always been the standard and he did not support the church's Item 13, that the County Arborist would have the final determination of transitional screening. He felt that the church had satisfied the BZA's standards and that the church was not asking a lot. He moved to grant the application subject to the Proposed Development Conditions and its modifications. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 89-M-033 by BETHLEHEM LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 89-M-033 for church and related facilities to permit building additions and change of development conditions, on property located at 8922 Little River Turnpike, Tax Map Reference 58-4((1))61, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 17, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.64 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 Group Standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bengtson, DeBell & Elkin, LTD dated June 17, 1994, Page 1 revised through December 14, 1994, Page 2 revised through September 23, 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 amendment shall be in conformance with the approved Special Permit Amendment Plat and these development conditions.

5. The maximum seating capacity of the sanctuary shall be limited to 243 seats.

6. One hundred and three (103) parking spaces shall be provided in the location shown on the special permit plat. All parking shall be on-site.

7. Transitional Screening 2 shall be provided along the northwest portion of the northern property line from the parking lot to the western property lot line adjacent to the expanded parking lot. Existing vegetation may be used to satisfy this requirement provided the vegetation is supplemented to be equivalent to Transitional Screening 2 to the satisfaction of the County Urban Forestry Branch.

   Transitional Screening 1 shall be provided along the northeastern, and eastern property lines which adjoin residential properties. The existing vegetation may be used to satisfy this requirement provided the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Urban Forestry Branch.

   A modification of Transitional Screening 1 is permitted along the western and southern property lines provided landscaping of the building and driveway from the adjacent residential properties and street system is provided which will soften the visual impact as determined by the County Urban Forestry Branch. To this end, evergreen trees shall be provided along the western property line. A modification shall be permitted to allow the parking lot and travel aisles within the transitional screening yards.

   The barrier requirement shall be waived.

   The church will work with the County Urban Forestry Branch, abutting homeowners, and the Ridgelea Homes Association to determine the screening requirements that will satisfy this development condition.

8. Stormwater management/Best Management Practices (BMPs) shall be provided on site as shown on the Special Permit Plat in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, as approved by the Director, DEM.

9. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.

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

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

The 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.

11. The pavilion shall be used for church and related uses only and shall not be rented to other non-profit organizations.

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

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

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.

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

These conditions incorporate and supersede all previous conditions.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 118, January 17, 1995, (Tape 1), Action Item:

Approval of January 10, 1995 Resolutions

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

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Page 118, January 17, 1995, (Tape 1), Action Item:

Approval of November 10, 1994 Minutes

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

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Page 118, January 17, 1995, (Tape 1), Action Item:

Request for Acceptance of William Sumner Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, said there was a memo before the BZA from William Shoup, Deputy Zoning Administrator, indicating that the zoning violation has been resolved and the appeal will be withdrawn. The request was not available at this time. The applicant asked that the BZA defer it for a week.

Mr. Hammack made a motion to defer action on the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 119, January 17, 1995, (Tape 1), Action Item:

Acceptance of Robert and Ilara Thomas Appeal

Mrs. Thonen said she believed the appeal was complete and timely filed; however, they were past the ninety (90) day approval noting that the appellant had verbally agreed to move the hearing to April 27, 1995.

Chairman DiGiulian suggested that it could possibly be moved up to replace the appeal that was going to be withdrawn.

Mrs. Thonen made a motion to schedule the request for April 27, 1995. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 119, January 17, 1995, (Tape 1), Action Item:

Out-of-Turn Hearing Request for
Graham Road United Methodist Church, SPA 91-P-040-2

Mrs. Thonen noted that the hearing was scheduled for March 28, 1995 and inquired of Jane Kelsey, Chief, Special Permit and Variance Branch, if it would be possible to move it to February 28, 1995. Ms. Kelsey replied that it would be difficult to schedule it for February 28, 1995. Mrs. Thonen recommended February 21, 1995 and Ms. Kelsey said that was a night meeting with one case on it and that would be possible.

Mrs. Thonen made a motion to move the hearing to February 21 1995. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 119, January 17, 1995, (Tape 1), Action Item:

Out-of-Turn Hearing Request for
Nancy C. Wright, SP 94-L-074

Mrs. Thonen made a motion to move the hearing to March 21, 1995. Mr. Dively seconded the motion which carried by a vote of 5-1. Mr. Hammack was opposed. Mr. Kelley was absent from the meeting.

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Page 119, January 17, 1995, (Tape 1), Action Item:

Boehlert, et al., v. Board of Zoning Appeals

Chairman DiGiulian asked Jane Kelsey, Branch Chief, Special Permit and Variance Branch, to refresh his recollection of the Boehlert case.

Ms. Kelsey said the BZA denied a subdivision variance and Mr. Boehlert took the BZA to court and the court upheld the BZA. Mr. Boehlert appealed the decision to the Supreme Court of Virginia, which declined to hear the appeal.

Chairman DiGiulian asked what the variance request had involved. Ms. Kelsey replied it was a subdivision variance that would have allowed some lots to be divided into a greater number.

Mr. Hammack said that the BZA had felt Mr. Boehlert had created his own hardship since he had cut the number of lots back and then came in to subdivide further.

Mr. Kelsey continued that Mr. Boehlert had brought in another lot and there were to be no changes.

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

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

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 28, 1995

APPROVED: April 4, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 24, 1995. 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 121, January 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GREG T. & KATHLEEN K. SPRISSLER, VC 94-S-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 5916 Boothe Dr. on approx. 27,860 sq. ft. of land zoned R-1. Springfield District. Tax Map 78-4 ((3)) 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. The applicants' agent, Wayne F. Cyron, Esquire, 2334 Wilson Boulevard, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Homewood Subdivision; surrounding lots are also zoned R-1 and developed with single family detached dwellings. The accessory structure under consideration is a storage shed.

Mr. Cyron presented the statement of justification, previously submitted in writing and incorporated into the record. He further advised that Mrs. Sprissler had visited all of her neighbors and seventeen had signed a petition stating that they do not oppose allowing the existing accessory structure to remain; of those seventeen, all but one required notification of the hearing, according to the Zoning Ordinance. Mr. Cyron said that, since filing the application, the applicants have put in an additional $3,000 worth of screening in the area of the shed. He said that Mrs. Sprissler had consulted the County before constructing the shed and had been advised that there were no limitations, other than the height limitation, with which they had complied. Mr. Cyron said that nothing was said to Mrs. Sprissler about having a double front yard resulting in front yard requirements on both sides of a corner lot. Mr. Cyron highlighted the reasons why the applicants could not build in any other area of the property and presented photos for review by the Board.

There was no one to speak in support of the application.

The owner of neighboring, vacant Lot 41, Alfred Overstreet, 7216 Wesley Road, Springfield, Virginia, came forward to speak in opposition to the present location of the shed because he plans to build a dwelling on the lot in the near future. Mr. Overstreet cited aesthetics and a resulting decrease in his property value as reasons for his opposition to the location of the shed. He claimed that there was ample space in other areas of the lot where the shed could be located; that the applicants were aware at time of installation of the fence that they were in violation of the height limitation; and portions of the fence were installed on his property. Before relocating the fence, the applicants had requested a waiver letter from Mr. Overstreet to allow the fence to remain on his property.

There were no other speakers and Mr. Cyron came back to the podium for a brief rebuttal. He said that Mr. Overstreet had expressed opposition when Mr. Cyron represented the owner of property to the northeast of the applicants in 1986 and said at that time that he was going to build on the property in the near future. Now, some ten years later, he is making the same argument, but no construction has occurred. Regarding the area where Mr. Overstreet proposed that the applicants should locate the shed, that area is where the pipes from the capped well are located that service the house if necessary, precluding any construction in that area. Mr. Cyron said the Long Fence Compay constructed the fence with an 0.5-inch encroachment onto Mr. Overstreet's property and they later came back and moved it. The issue of the waiver letter resulted from the fact that the Sprisslers were contemplating building a sunroom off the back of their house and, with the setback that was required, they could not do it without Mr. Overstreet's approval; it had nothing to do with the shed or the fence.

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

Mr. Ribble moved to grant VC 94-S-097 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 17, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-S-097 by GREG T. & KATHLEEN K. SPRISSLER, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 square feet, on property located at 5916 Boothe Drive, Tax Map Reference 78-4((3))42, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 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 27,860 square feet.
4. Testimony revealed that there is no other place on the property to place the accessory structure.
5. The lot has a double front yard, precluding the area of the structure from otherwise being considered the rear of the property.
6. Testimony revealed that a capped well and pipes further limited the location of the structure.
7. The applicant's addition of screening will help significantly to buffer the view from Lot 41.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 structure shown on the plat prepared by James H. Guynn, dated May 3, 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. Pammel seconded the motion which carried by a vote of 6-0. Ms. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 123, January 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. QUINN, VC 94-M-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.1 ft. from side lot line. Located at 3239 Taney Ln. on approx. 21,786 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((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. Robert A. Quinn, 3239 Taney Lane, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Anna Lee Heights Subdivision to the east are also zoned R-4 and developed with single family detached dwellings. He said it was noted that the eave of the proposed carport will also be located 2.1 feet from the side lot line; Sect. 2-412 does not allow eaves to extend closer than 2 feet from a lot line.

Mr. Quinn presented the statement of justification, previously submitted in writing and incorporated into the record. He advised that the proposed location is the only place where the carport can be built; there is a storm drain on the left side. He said his neighbor does not object to his proposed construction; the area is very wooded and only the right side will be visible; the architecture will be compatible with the existing dwelling.

Mr. Hammack said the Board is always concerned when citizens propose construction within as little as 2 feet of a shared lot line because that was too close. Mr. Hammack said it appeared from the photographs that the applicant could move the carport forward and asked why the applicant believed the carport had to be pushed so far back and adjacent to the porch; he said there would be more clearance if it were moved forward. Mr. Quinn said that moving the carport forward would block the bedroom windows and interfere with the flower bed which has vents to allow air beneath the crawl space. In answer to a question from Mr. Hammack, Mr. Quinn said he intended to use 4' x '4 columns; he said the carport would remain open.

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

Mr. Hammack moved to deny VC 94-M-139 for the reasons set forth in the Resolution.

Mr. Pammel seconded the motion.

Mr. Kelley said he would vote against the motion because, although 2.1 feet is close, only 5.0 feet are required. He said he would not like to see this denied. Mr. Kelley mentioned the possibility of the applicant cutting down the size of the garage.

Mr. Pammel noted that, in reading the staff report and the justification presented, he did not find any reason other than convenience to construct in the proposed location. He said he saw no problem with constructing the carport in the area where there are windows which would look out onto the carport area because that frequently occurs when carports are built and, in this case, it would reduce the amount of variance being requested.

The motion to deny failed by a vote of 2-3; there being no other motions, the application was denied.

Mr. Kelley moved to waive the twelve-month limitation on refiling a modified application. Mr. Pammel seconded the motion which carried unanimously.

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**MOTION TO DENY FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-139 by ROBERT A. QUINN, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.1 ft. from side lot line, on property located at 3239 Taney Lane, Tax Map Reference 60-2((1))4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1995; and

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

1. The applicant is the owner of the property.
2. The present zoning is R-4.
3. The area of the lot is approximately 21,786 square feet.
4. This type of case is difficult to decide.
5. The carport could be moved forward and require less of a variance, notwithstanding the applicant's representation that the proposed location is more convenient.
6. The applicant did not provide a compelling reason for the carport to be pushed as far to the rear of the property as proposed.

7. The Board might support the carport being moved forward or to some other location on the site.
8. The proposed location of the carport does not satisfy the Zoning Ordinance.
9. The Zoning Ordinance does not allow eaves to extend closer than 2 feet from a 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.

Mr. Pammel seconded the motion which **FAILED** by a vote of 2-3. Chairman DiGiulian, Mr. Dively and Mr. Kelley voted nay. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

THEREFORE, the subject application was **DENIED**.

Mr. Kelley moved to waive the twelve-month limitation on refiling. Mr. Dively seconded the motion which carried unanimously. Mr. Ribble 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 February 1, 1995.

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Page 124, January 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PHILIPPA AMIRI, VC 94-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.2 ft. from street line of a corner lot and fence 5.4 ft. high to remain in a front yard. Located at 1825 Barbee St. on approx. 12,035 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philippa Amiri, 1825 Barbee Street, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Chesterbrooke Garden Subdivision are also zoned R-3 and developed with single family detached dwellings. He said the applicant proposed a room addition, requiring a variance of 3.8 feet along the front lot line.

Ms. Amiri presented the statement of justification, previously submitted in writing and incorporated into the record. She also submitted letters of support from neighbors. Ms.

Amiri said they had installed the fence themselves and were totally unaware at the time that it was in violation. She said the proposed addition will replace the existing carport to create a dining/family room and the proposed location is the only place for this construction from an aesthetic and practical point of view.

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

Mr. Pammel moved to grant VC 94-D-141 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 17, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-141 by PHILIPPA AMIRI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 26.2 ft. from street line of corner lot and fence 5.4 ft. high to remain in a front yard, on property located at 1825 Barbee Street, Tax Map Reference 40-2((13))28, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 12,035 square feet.
4. The lot is unusual; it is a corner lot.
5. The location of the dwelling on the property precludes placing the addition anywhere else but where the applicant has proposed.
6. The variance requested is minimal and a 26-foot setback will still be maintained.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 and fence shown on the plat prepared by Kenneth W. White, Land Surveyor, dated October 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 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. Mr. Ribble 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 February 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 126, January 24, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JERRY W. & RUTH E. CHESHIER, VC 94-L-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 6.8 ft. from side lot line. Located at 3222 Groveton St. on approx. 7,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (3) 12 and 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' agent, Scott Sexauer, Esquire, 1504-B Mt. Vernon Avenue, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that surrounding lots are also zoned R-2 and developed with single family detached dwellings. She said that the request for a variance of 7.2 feet resulted from an error in building location. The existing house was constructed in 1950 on Lots 12 and 13; in 1981 a building permit was approved to allow the construction of an addition at the rear of the house; it was noted on the building permit that Lots 10, 11, 12 and 13 were under the same ownership, which would not have allowed the proposed addition to be in conformance with the yard requirements. Ms. Langdon said the applicant stated that he purchased only Lots 12 and 13 from the previous owner in 1984 and, at the time of purchase, he received a deed for an easement to allow part of his driveway to remain on Lot 11. She said it appeared that Lots 10 and 11 were sold at the same time in 1984 to a different owner. Ms. Langdon said that special permit and variance applications are now pending on Lots 10 and 11 to allow the construction of a dwelling. She said staff became aware that the reason this application, VC 94-L-144, was filed was because the owners of Lots 10 and 11 could not obtain a building permit because the lots were encumbered by the existing construction on Lots 12 and 13. Since a building permit was issued in 1981 which connected the four lots together as one building lot, as defined by the Zoning Ordinance, the lots should not have been severed unless the structures on the remaining lots met the provisions of the Zoning Ordinance.

Mr. Sexauer presented the statement of justification, previously submitted in writing and incorporated into the record. He said the property is in the same condition as when it was transferred to the applicants by Charles and Barbara Jones. Further, he provided the Board with copies of documents from the land records, including the Deed in which Mr. and Mrs. Jones conveyed Lots 12 and 13 to the applicants. At the time of the sale, the only question that arose resulted from the fact that the driveway and a patio encroached onto Lot 11 and a Deed of Easement was granted. A few days after the conveyance of Lots 12 and 13 to Mr. and Mrs. Cheshier, the Joneses then sold the property to Lenclair Corporation and, in 1988, the Corporation conveyed Lots 10 and 11 to Mr. Elliott, the current owner. The applicants acquired the property in 1984 in good faith, having had no notice whatsoever that there were any zoning problems; for ten years they have enjoyed the use of the property and the addition which is the subject of the variance. Mr. Sexauer surmised that, when the Joneses sold the property in 1984, no one consulted the Zoning Division of the County.

B. G. Stevens came forward to state that he represented Mr. Elliott, the current owner of Lots 10 and 11. He said he had just that day entered the picture and had not been a party to the Elliott application for a variance which is scheduled to be heard on February 14, 1995. Mr. Stevens attempted to convince the Board that the Cheshier and Elliott applications should be heard together and disposed of together.

There were no other speakers and Chairman DiGiulian called on Mr. Sexauer for two minutes of rebuttal. Mr. Sexauer pointed out that the eight-foot side lot on the opposite side was not the issue because it was in conformance with the zoning requirements at the time the dwelling was built in 1950; what is at issue is the addition which is at the back of the house. Mr. Sexauer said he understood Mr. Stevens' position; however, he believed it would be appropriate for the Board to grant the variance that day because the applications gained nothing from being combined.

Chairman DiGiulian closed the public hearing.

Mr. Dively asked for clarification that the only issue before the Board was whether or not to permit the dwelling to remain 6.8 feet from the lot line. Chairman DiGiulian acknowledged that was the only issue, as he saw it. Mr. Hammack said there was the underlying issue of how to deal with the transfer of lots from an original owner which then put the property into non-conformance. The Board concurred that Mr. Dively assumption was correct.

Mr. Kelley moved to grant VC 94-L-144 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 17, 1995.

Mr. Hammack said he would oppose the motion because he believed that both applications should be handled as a single issue for review because they both suffer from the fact that they were part of a common ownership and, apparently, the owner sold two lots to one party and two lots to another party, in violation of the Zoning Ordinance. He said both violations arise from that action because all four lots were in conformance when the dwelling was constructed, when they were connected, contiguous, and under common ownership. Mr. Kelley asked Mr. Hammack why he would penalize the Cheshiers for that and Mr. Hammack said he was not sure he was necessarily penalizing the Cheshiers and asked Mr. Kelley why he would penalize the Elliotts. Mr. Kelley said that one piece of property is undeveloped by the owners; whereas, the owners of the other piece of property would have to tear down part of their house to come into conformance if the application were denied. Mr. Hammack said he would choose only to defer it, but would oppose the motion as it stands. Chairman DiGiulian said they had not yet heard the other application, but they had heard this one. Mr. Kelley said he could not believe the Board would ever deny the present applications and Chairman DiGiulian concurred. Mr. Kelley said it would make no sense to cause the Cheshiers to incur additional expenses and have to return before the Board for something that will be ultimately approved anyway. Mr. Dively said it was fairly clear who had the greater reliance; the Cheshiers have an existing dwelling and are in this position through no fault of their own; whereas, the other lot is undeveloped, which is very significant. Mr. Hammack said he believed both applicants had equal reliance, although one may suffer a greater economic impact. He noted the Board had not yet heard everything.

Mr. Pammel noted that the Board heard a similar case several weeks previously and a great deal of concern had been expressed at that time. The situation had been created in much the same way. He said that the County should have provisions for precluding this type of situation from occurring.

Mr. Dively stressed the fact that the current applicants were totally blameless in this situation.

The motion carried by a vote of 4-1. Mr. Hammack voted nay. Mr. Ribble 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-L-144 by JERRY W. & RUTH E. CHESHIER, under Section 18-401 of the Zoning Ordinance to permit structure to remain 6.8 ft. from side lot line, on property located at 3222 Groveton Street, Tax Map Reference 92-2((18))(3)12 and 13, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1995; 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 7,000 square feet.
4. Denying the application would require tearing down a portion of the existing dwelling.
5. The existing situation resulted 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 of the specific structure (one-story residence) shown on the plat prepared by Dove & Associates, dated July 12, 1994, revised October 27, 1994, submitted with this application and is not transferable to other land.

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 4-1. Mr. Hammack voted nay. Mr. Ribble 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 February 1, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 128, January 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. STUMP DUMP, INC., SP 94-D-058 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit zoological park. Located at 830 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, 15C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. M. S. Crippen, 11395 Seneca View Way, Great Falls, Virginia, replied that it was.

Mr. Dively noted that there was a legal notice problem. Lori Greenlief, Staff Coordinator, advised that the problem was that one property owner was not notified within the fifteen-day requirement; they were notified eventually, but not within the fifteen days required by the State Code. Ms. Greenlief said that staff believed the notices were not in order.

In order to meet the notice requirement, Ms. Greenlief recommended February 28, 1995, at 9:30 a.m. for the new hearing date and Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 129, January 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE M. ROGERS, APPEAL 94-L-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles and equipment for an asphalt business in C-3 District constitutes a storage yard in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5419 Oakwood Rd. on approx. 87,120 sq. ft. of land zoned C-3. Lee District. Tax Map 81-2 ((3)) 33.

George M. Rogers, 5419 Oakwood Road, came forward to identify himself.

William E. Shoup, Deputy Zoning Administrator, presented the staff report set forth in a memorandum dated January 17, 1995. He said the property is unimproved and the appellant is the lessee of the property. Mr. Shoup said that, in response to a complaint, staff inspected the property and found that the appellant was using the property for the storage of dump trucks, a trailer, asphalt roller, and other vehicles and equipment related to his Southern Asphalt Contracting business. He said that the Zoning Ordinance defines a storage yard in part as the use of any property for the storage or keeping of construction equipment, machinery, vehicles, or parts thereof. Given the type of vehicles and equipment the appellant was storing, it was Mr. Shoup's position that the use of the property was a storage yard. Mr. Shoup said that storage yards are permitted only in the I-5 and I-6 Zoning Districts; they are not allowed in any manner in the C-3 Zoning District. He said that, since the use is not allowed in the C-3 District, it was his determination that the appellant was in violation of Par. 5, Sect. 2-302. Mr. Shoup said the appellant had indicated that the property previously was used for a storage yard by a landscaping company; as noted in the memorandum, staff had no record of such a use; there never has been a site plan or a Non-Residential Use Permit approval to establish any type of principal use on the property; there would be no provisions to allow for a storage yard use. Mr. Shoup said that, if there was a previous, similar use on the property, it was staff's position that it was established illegally and should not be used as a basis to legitimize the appellant's use.

Mr. Rogers said Oakwood Road is undeveloped, with mixed uses of different zonings, some I-4, I-I, and C-3. He said he leased the property with the understanding that it was used as a storage yard for a landscape company for ten to fifteen years. Mr. Rogers has been there for approximately five years and the road is used by others for the same use as his; he did not know he was in violation until a complaint was received.

Mr. Pammel asked Mr. Rogers if there was any reason why he could not make application for rezoning the property. Mr. Rogers said he does not own the property; the owner is Jeff Snow who was expected to be present for the hearing but was not there. Mr. Pammel said he believed rezoning to be a key element of the issue, if the use is permitted in an Industrial District and the uses are Industrial; he believed the Comprehensive Plan specified the area for Industrial type activities. In answer to a question from Mr. Pammel, Mr. Shoup said he was not sure what the Plan called for for this property.

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

Mr. Dively moved to uphold the Zoning Administrator's determination in this matter. He said he found no compelling reason to overturn it. Mr. Dively said that the Zoning Ordinance is fairly straightforward and simple in this regard and the determination of the Zoning Administrator has not been refuted in any way.

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

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Page 129, January 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. FAITH UNITED METHODIST CHURCH/OFFICE FOR CHILDREN, SP 94-L-073 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities and child care center. Located at 7010 Harrison La. on approx. 5.33 acs. of land zoned R-2. Lee District. Tax Map 92-2((1))8B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sally Birmingham, Fiscal Administrator, and Sandra Scott Forest, Head Start Administrator, Office for Children, 3701 Pender Drive, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the site is long and rectangular, sloping from northeast to southwest for approximately 50 feet, and is accessed by way of 30-foot wide commercial entrance at the southeast corner of the site. He said that the existing 4,350-square foot, two-story church structure is located along the

northern property line; a 3,600-square foot play area is located behind the existing church; the parking lot containing 57 spaces is located south of the church and parking is located within 10 feet of the southern property line; the driveway into the site runs east to west between the church and the parking lot and the western one/third of the site is wooded. Mr. Hunter said that the applicants jointly were requesting a maximum enrollment of 49 students within an existing church structure for one year, during the renovation of the child care center's existing location at the Gum Springs Community Center. Mr. Hunter said that the applicant's statement of justification indicated that a maximum of 33 students will be present at any one time; 17 will be present a full day; a maximum of 16 children will be served in the morning session only and another group of 16 children will be present during the afternoon session only. He said that the proposed hours of operation would be 7:30 a.m. to 5:30 p.m., Monday through Friday, and the Center will have five employees. Mr. Hunter said that two special permit applications for child care centers previously were approved by the BZA in 1988 and 1989, respectively; both applications expired before the use was established and the church currently is not under special permit. He said that, because the use is temporary and one or two buses will transport the students to and from the Center, staff was of the opinion that the transportation impacts associated with the use are minimal; staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance provisions. Staff, therefore, recommended approval of the application, limiting the term to eighteen months (six months of grace time for the renovation of the Gum Springs Community Center to be completed). Staff also recommended a waiver of the transitional screening and barrier requirements, as noted in the Proposed Development Conditions. Mr. Hunter said staff also requested that the BZA waive the eight-day waiting period for the decision to become final, making the decision final immediately.

Ms. Forest came forward to state that they did not have many options for moving the children; they are providing services to about 118 children and they would lose services if they did not get approval for the application; they tried other options, such as moving children to private commercial space, which is very expensive and, most times, is prohibitive because of the kinds of regulations required to receive a child care permit. Ms. Forest said that most commercial space prohibits the kinds of things required to get approval for a child care permit. She said that the churches have graciously offered their space to allow the Office for Children to continue to serve the children and their families who would otherwise have to go without the services for the year in which the renovation was being renovated. Ms. Forest covered some of the adverse ramifications that would result from the application being denied, such as funding.

Ms. Birmingham asked the Board to waive the eight-day waiting period for the design to become final and asked that the decision become final immediately.

Mr. Hammack asked if the applicants had read the Proposed Development Conditions and if they were acceptable, to which they replied "yes." He asked if they were sure that eighteen months was enough time and they said it was.

Carmen Trina Carras, parent, Tanya Elstock, parent (addressed the Woodlawn United Methodist Church application), and Barbara Hyman, teacher at Gum Springs, all spoke glowingly of the services provided by the Center and requested that the Board approve the application.

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

Mr. Hammack moved to grant SP 94-L-073 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 17, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-L-073 by FAITH UNITED METHODIST CHURCH/OFFICE FOR CHILDREN, under Section 3-203 of the Zoning Ordinance to permit church and related facilities and child care center, on property located at 7010 Harrison Lane, Tax Map Reference 92-2((1))8B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1995; and

WHEREAS, 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 5.33 acres.

Page 131, January 24, 1995, (Tape 1), FAITH UNITED METHODIST CHURCH/OFFICE FOR CHILDREN, SP 94-L-073, continued from Page 130 )

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 Patton, Harris, Rust & Associates, dated September, 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 enrollment of the child care center shall be forty-nine (49).

5. The maximum number of child care center employees on site at any one time shall be five (5).

6 Fifty-seven (57) parking spaces shall be provided as shown on the plat. All parking shall be on-site.

7. The hours of operation for the child care center shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday.

8. The maximum seating capacity of the sanctuary shall not exceed 200.

9. One to two buses shall be used to transport the students to and from the facility.

10. This approval is only for the temporary use of Faith United Methodist Church as a child care center for children enrolled by the Gum Springs Children's Center until renovation is completed and the facility is approved for occupancy. The approval is limited to the time of renovation with an expected completion date of February 1996. This special permit shall expire eighteen (18) months from the date of approval or when the renovation of the Gum Springs Community Center is completed and approval for occupancy is granted, whichever occurs first.

11. The Transitional Screening requirement shall be modified to allow the existing vegetation to serve as screening. The barrier requirement shall be waived.

12. Signs shall be permitted in accordance with Article 12, signs.

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

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

Mr. Hammack moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 131, January 24, 1995, (Tape 1), Scheduled case of:

9:30 A.M. WOODLAWN UNITED METHODIST/OFFICE FOR CHILDREN, SPA 78-V-291-2 Appl. under Sect(s). 3-203 to amend SP 78-V-291 for church and related facilities to permit child care center. Located at 7730 Fordson Rd. on approx. 1.32 acs. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 102-1((1))78A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sally Birmingham, Fiscal Administrator, and Sandra Scott Forest, Head Start Administrator, Office for Children, 3701 Pender Drive, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the site is located within the Gum Springs Conservation Area and the Gum Springs Redevelopment Area. The church is located along the southern property line and access to the site is by way of a 30-foot wide commercial entrance which is aligned with Joseph Mackel Court on the east side of Fordson Road. The remainder of the site contains 89 parking spaces. The applicants were jointly requesting an enrollment of 72 students within the existing church for approximately one year during the renovation of the Center's current location at the Gum Springs Community Center. The proposed hours of operation are 7:30 a.m. to 5:30 p.m., Monday through Friday, and the Center will have ten employees. There are 354 seats in the existing sanctuary and no new construction is proposed. In 1977, the BZA approved SP 21377, which expired on September 27, 1978. The BZA subsequently approved SP 78-V-291 which was essentially a resubmission of SP 21377 and was later amended to allow the addition of 18,110 square feet of land, the deletion of 42,000 square feet of land and the relocation of parking for the existing church, the land area of the property was reduced from 2.3 acres to 1.32 acres. Mr. Hunter further advised that buses would be used to transport students to and from the Center and to and from the Martin Luther King Community Park, south of the subject property, for outdoor recreation. On-site recreation is also available within the parking area and has approval by the State Health Department . Staff concluded that, if the term of the special permit amendment request is limited to a maximum of eighteen months, the application is in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance Provisions. Staff recommended approval of the application, subject to the Proposes Development Conditions contained in the staff report.

Mr. Hunter advised that the applicants requested and staff recommended the eight-day waiting period.

Mr. Dively asked if there was anything about this application which distinguished it from the previous application, SP 94-L-073, and Mr. Hunter said there was nothing other than the need to bus children to a community park for outdoor recreation.

Ms. Forest said that, just as in the application for Faith Methodist, SP 94-L-073, they were asking to be allowed to relocate the children so that they may continue services for the period during which the Center is being renovated.

The speakers in support of Faith United Methodist Church, SP 94-L-073, heard previous to this case, also included their support for this application.

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

Mr. Pammel moved to grant SP 78-V-291-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 17, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 78-V-291-2 by WOODLAWN UNITED METHODIST/OFFICE FOR CHILDREN, under Section 3-203 of the Zoning Ordinance to amend SP 78-V-291 for church and related facilities to permit child care center, on property located at 7730 Fordson Road, Tax Map Reference 102-1((1))78A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 24, 1995; and

WHEREAS, 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 1.32 acres.

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

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

Page 133, January 24, 1995, (Tape 1), WOODLAWN UNITED METHODIST/OFFICE FOR CHILDREN, SPA 78-V-291-2, continued from Page 132)

2. This Special Permit Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat prepared by Greenhorne & O'Mara, Inc. dated October 10, 1989, revised through January 5, 1995 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. The maximum number students on site at any one time shall be seventy-two (72).

5. The maximum number of child care center employees on site at any one time shall be ten (10).

6. The hours of operation for the child care center shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday.

7. Buses shall be used to transport the students to and from the facility, and to and from Martin Luther King Park for outdoor recreation.

8. This approval is only for the temporary use of Woodlawn United Methodist Church as a child care center for children enrolled by the Gum Springs Children's Center until renovation is completed and the facility is approved for occupancy. The approval is limited to the time of renovation with an expected completion date of February 1996. This special permit amendment shall expire eighteen (18) months from the date of approval or when the renovation of the Gum Springs Community Center is completed and approval for occupancy is granted, whichever occurs first.

9. The play area shall be provided in the western portion of the parking area, shall be limited to 42 children at a time, and shall not be used prior to 8:00 a.m.

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

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

Mr. Pammel moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 133, January 24, 1995, (Tape 1), Action Item:

Approval of Resolutions from January 17, 1995

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

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Page 133, January 24, 1995, (Tape 1), Action Item:

Approval of Minutes from December 13, 1994

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

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As there was no other business to come before the Board, the meeting was adjourned at 10:25 a.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 14, 1995

APPROVED: March 21, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 31, 1995. 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 9:00 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 135, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL K. & CLAUDIA D. KUTZLEB, VC 94-P-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from one side lot line and 14.33 ft. from other side lot line. Located at 2321 Chestnut Hill Ave. on approx. 20,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 194.

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. Kutzleb replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He stated the 20,000 square foot subject property is located on the east side of Chestnut Hill Avenue within the Carolena Subdivision. The property adjoins single family dwellings on the south and west, an undeveloped right-of-way followed by a single family detached dwelling on the east, and a vacant lot on the north all of which are in the R-1 District.

Mr. Heine said the applicant was requesting a variance to allow construction of a 32 foot high two-story addition 16.5 feet and 14.3 feet from the north and south side lot lines, respectively. The Zoning Ordinance requires a 20 foot minimum side yard; therefore, the applicants were requesting variances of 3.5 feet and 5.7 feet, respectively, from the minimum side yard requirements.

The applicant, Michael K. Kutzleb, 2312 Chestnut Hill Avenue, Falls Church, Virginia, thanked staff for their assistance in preparing the application. He said the neighborhood has changed since he purchased the property approximately 15 years ago. Mr. Kutzleb presented photographs of the new development in the area and expressed his belief that the renovations would not only enhance the property, but would make the structure more compatible with the newer houses in the area. In conclusion, Mr. Kutzleb stated that he had a substandard lot, and the addition would not encroach any farther into the side lot line than the existing structure.

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

Mr. Ribble made a motion to grant VC 94-P-145 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 24, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-P-145 by MICHAEL K. & CLAUDIA D. KUTZLEB, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.5 feet from one side lot line and 14.33 feet from other side lot line, on property located at 2321 Chestnut Hill Avenue, Tax Map Reference 39-4((1))194, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 31, 1995; 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 20,000 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The applicants' written and verbal statements cited the narrowness of the lot and the position of the house on the lot as justifications for 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 of the specific addition shown on the plat prepared by Cook and Miller, Surveying and Engineering, dated September 10, 1974, revised by John Lederer, Architect, undated, 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. 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 February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 136, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOANNE B. & ERNEST E. FOLTZ, SR., VC 94-M-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lot 1 having lot width of 27.66 ft., deck to remain 5.0 ft. from side lot line, dwelling to remain 4.8 ft. from side lot line and stairs to remain 2.1 ft. from side lot line. Located at 6308 Lincolnia Rd. on approx. 1.11 ac. of land zoned R-3. Mason District. Tax Map 72-2 ((1)) 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. Ms. Foltz replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the property consists of 1.11 acres and is located on the east side of Lincolnia Road between Braddock Road and Beauregard Street. Ms. Langdon stated the applicants were requesting a variance to the

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minimum lot width requirement to allow subdivision of one lot into three lots with proposed Lot 1 having a width of 27.88 feet. The Zoning Ordinance requires a minimum lot width of 80.0 feet in the R-3 Zoning District. She said the applicants were also requesting permission to allow the 2.0 foot high deck attached to the dwelling on proposed Lot 2 to remain 5.0 feet from a proposed side lot line, the dwelling on proposed Lot 3 to remain 4.8 feet from a side lot line, and the uncovered stairs attached to the dwelling on proposed Lot 3 to remain 2.1 feet from a side lot line. The Zoning Ordinance requires a 7.0 foot minimum side yard for the deck, a 12.0 foot minimum side yard for the dwelling, and a 5.0 foot minimum side yard for the stairs. Therefore, the applicants were requesting a 52.34 foot variance to the minimum lot width requirement, a 2.0 foot variance to the minimum side yard requirement for the deck, a 7.2 foot variance to the minimum side yard requirement for the dwelling, and a 2.9 foot variance to the minimum side yard requirement for the stairs. She noted the existing accessory garage structure and shed would remain on proposed Lot 3.

Continuing, Ms. Langdon said the property is currently developed with two single family detached dwellings, one built in approximately 1915 and the other built in approximately 1936. The surrounding lots to the north, east and west are also zoned R-3 and developed with single family detached dwellings. The lots to the south are zoned R-2 and R-5 and developed with both single family detached and attached dwellings.

The applicant, Joanne B. Foltz, 6308 Lincolnia Road, Alexandria, Virginia, addressed the BZA. She expressed her belief that the application met the necessary requirements and said the variances would allow the land to be developed to its full potential. Ms. Foltz noted the existing driveway would provide ingress and egress to the property. She explained that the plat had been revised to show a more acceptable location for the driveway, and to depict the structure on proposed Lot 2. Ms. Foltz said that the placement of the house on proposed Lot 2 would not have a detrimental impact on the neighbors and noted the house on proposed Lot 3 was built in about 1935 or 1936.

Continuing, Ms. Foltz said she did not believe the application would set a precedent. Addressing the environmental issues, Ms. Foltz stated she had been informed by a member of the Environment and Development Review Branch that staff would not enforce the proposed Lot 1 tree cover requirements until development, and there were no additional trail requirements associated with the application. She addressed Development Condition 2, which required a 45 foot right-of-way dedication from the centerline of Lincolnia Road, and expressed her belief it was not necessary.

In conclusion, Ms. Foltz said the proposed plan would allow reasonable use of the property, and asked the BZA to grant the request. She noted there was a discrepancy between a previous plat, which indicated a lot size of 1.05 acre, and staff's current plat which indicates a lot size of 1.1 acre.

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

Ms. Foltz introduced her engineer, Bill Sikes, 11244 Waples Mill Road, Suite F2, Fairfax, Virginia, who was present to answer questions from the BZA. In response to Mr. Ribble's question regarding the discrepancy in the plat, Mr. Sikes said it was his belief that Ms. Foltz' previous plat was in error. He explained that the discrepancy would have no bearing on the application and the plat would have to be revised to accommodate the dedication.

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

Mr. Pammel made a motion to grant VC 94-M-146 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 24, 1995 with the deletion of proposed Development Condition 2 which required land dedication.

Mr. Hammack seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Dively asked why the dedication requirements were included in the application. Ms. Langdon explained that dedication was recommended based on the projected plan that Lincolnia Road would someday be widened to four lanes. She explained that the Office of Transportation often requested dedication on these types of applications.

Mr. Pammel stated he would have been more sympathetic to staff's request had there been an indication of other right-of-way dedications along Lincolnia Road.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-146 by JOANNE B. & ERNEST E. FOLTZ, SR., under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lot 1 having lot width of 27.66 feet, deck to remain 5.0 feet from side lot line, dwelling to remain 4.8 feet from side lot line and stairs to remain 2.1 feet from side lot line, on property located at 6308 Lincolnia Road, Tax Map Reference 72-2((1))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 January 31, 1995; 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 1.11 acre.
4. The applicant has presented testimony that the application meets the necessary criteria for the granting of a variance.
5. The unusual configuration of the lot and the two existing dwellings on the lot make it difficult to utilize the property to its full extent.
6. The two dwellings on the lot were constructed prior to the adoption of the Zoning Ordinance.
7. Proposed Lot 1 will far exceed the minimum requirements 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 subdivision of Lot 29 as shown on the plat prepared by Coldwell, Sikes & Almirall, dated October 3, 1994, revised January 10, 1995. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.

2. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

3. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of 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 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

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request must specify 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 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 February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 139, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH A. & JOCELYNE C. COLAO, VC 94-P-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 13.0 ft. from front lot line. Located at 9857 Hidden Estates Cove on approx. 9,891 sq. ft. of land zoned R-4. Providence District. Tax Map 48-1 ((34)) 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. Mr. Colao replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 9,891 square foot property is located on Hidden Estates Cove in the Hidden Place Subdivision. The subject property and the lots to the north, east and west are zoned R-4, the lots to the south are zoned PDH-4 and all are developed with single family detached dwellings.

Ms. Langdon stated the applicants were requesting a variance to construct a 12.6 foot high deck 13.0 feet from a front lot line on the lot which is a through lot and contains two front yards. The Zoning Ordinance requires a minimum 30 foot front yard; therefore, the applicants were requesting a 17.0 foot variance to the minimum front yard requirement.

The applicant, Joseph Colao, 9857 Hidden Estates Cove, Vienna, Virginia, addressed the BZA. He explained that when they bought the house in 1993, they intended to construct a deck adjacent to an existing entrance way. Mr. Colao said it was not until they attempted to build the deck that they were informed they had two front yards and would need a variance for the project. Mr. Colao said the variance would allow the full utilization of the property, and there would be no detrimental impact on the neighborhood. He 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 94-P-147 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 24, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-P-147 by JOSEPH A. & JOCELYNE C. COLAO, under Section 18-401 of the Zoning Ordinance to permit construction of deck 13.0 feet from front lot line, on property located at 9857 Hidden Estates Cove, Tax Map Reference 48-1((34))4, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 31, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 9,891 square feet.
4. The application meets the necessary requirements for the granting of the variance.
5. The applicants' written and oral testimony indicated an unusual situation exists in that the property is a "through lot" and has two front yards.
6. The granting of the variance will not set a precedent.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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 Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 140, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPH C. JAESCHKE, VC 94-H-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. from rear lot line. Located at 2634 Iron Forge Rd. on approx. 9,701 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 25-1 ((14)) 194.

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. Jaeschke replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the 9,701 square foot property is zoned R-3, and was developed under the cluster provision of the Zoning Ordinance. Ms. Greenlief stated the applicant was requesting a variance to construct a one story room addition 13.9 feet from the rear lot line. She noted the addition would be built on top of an existing 12.19 foot deck. The Zoning Ordinance requires 25 foot rear yard; therefore, the applicant was requesting a 11.1 foot variance to the minimum rear yard requirement.

The applicant, Christoph C. Jaeschke, 2634 Iron Forge Road, Herndon, Virginia, addressed the BZA. He expressed his belief that the application met the necessary standards. Mr. Jaeschke

stated that the property was acquired in good faith, the lot is exceptionally shallow, the placement of the house on the lot created the need for the variance, the lot is substandard, and the adjacent property to the rear is dedicated parkland. He said the variance would allow utilization of the backyard, there would be no detrimental impact on the neighborhood, the addition would be aesthetically and architecturally compatible with the exiting structure, the neighbors supported the request, the noise caused by the traffic on Monroe Street would be mitigated, the character of the area would not be changed, and the variance would be in harmony with the Zoning Ordinance. He said there was a note on the plat indicating a maximum building height of 20 foot and explained that if they were so restricted, they could not place the addition above the bottom of the second story windows. The addition might be higher than 20 feet but it would be below the height limitations for the district. Mr. Jaeschke said he would cooperate with staff and asked the BZA to grant the request.

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

Mr. Dively made a motion to grant VC 94-H-143 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated January 24, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-H-143 by CHRISTOPH C. JAESCHKE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.9 feet from rear lot line, on property located at 2634 Iron Forge Road, Tax Map Reference 25-1((14))194, 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 January 31, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (Cluster).
3. The area of the lot is 9,701 square feet.
4. The application meets the necessary standards for the granting of the variance.
5. The lot is shallow.
6. The request is for a one story addition to be built over the existing deck.
7. The addition will mitigate the noise caused by the lot's proximity to Monroe Street.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Robert B. Boxer, dated October 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 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 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 February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 142, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JAMES A. FOSTER, VC 94-M-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.9 ft. from side lot line. Located at 7026 Strathmore St. on approx. 10,000 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((22)) (C) 8. (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. Foster replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the 10,001 square foot property is zoned R-4. Ms. Greenlief stated the applicant was requesting a variance to construct a carport 2.9 feet from the side lot line. The Zoning Ordinance requires a 10 foot side yard with a permitted extension of 5.0 feet; therefore, the applicant was requesting a 2.1 foot variance to the minimum side yard requirement.

The applicant, James A. Foster, 7026 Strathmore Street, Falls Church, Virginia, addressed the BZA and said that he has had recurring health problems. He stated that the carport would protect his vehicle from inclement weather, and explained that the size of the carport would accommodate his wheelchair. Mr. Foster said the neighbors supported the request and asked the BZA to grant the variance.

In response to Mr. Hammack's question regarding the design of the carport, Mr. Foster said the carport was designed so that the entire car would be covered.

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

Mr. Hammack made a motion to grant VC 94-M-159 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 24, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-159 by JAMES A. FOSTER, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.9 feet from side lot line, on property located at 7026 Strathmore Street, Tax Map Reference 60-1((22))(C)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 January 31, 1995; and

WHEREAS, 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 the variance.
5. The lot is narrow and approximately 66.7 feet wide.
6. The request is for a minimal variance.
7. The carport will not have a detrimental impact on the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific carport shown on the plat prepared by Alexandria Surveys, Inc., dated November 23, 1994, submitted with this application and is not transferable to other land. The eve of the carport shall be no closer than 2.0 feet from the lot line.

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 with Mrs. Thonen absent from the meeting.

Page 144, January 31, 1995, (Tape 1), JAMES A. FOSTER, VC 94-M-159, continued from Page 143 )

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 144, January 31, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THANH DUC PHAM, VC 94-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7310 Valley Crest Blvd. on approx. 15,422 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((21)) 14.

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

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on Valley Crest Boulevard east of Annandale Road, is 15,422 square feet in size, is zoned R-3, and is developed with a single-family detached dwelling. Surrounding lots in the Broyhill Crest subdivision are also zoned R-3 and are developed with single-family detached dwellings.

Mr. Hunter stated the applicant was requesting a variance to permit a 142 square foot shed to remain in the front yard on a lot containing less than 36,000 square feet.

The applicant, Thanh Duc Pham, 7310 Valley Crest Boulevard, Annandale, Virginia, addressed the BZA. He stated that before he built the tool storage shed, he contacted Fairfax County and was informed that he did not need a building permit. Mr. Pham explained that he had constructed the shed in what he considered to be his rear yard and had not realized that he had two front yards. He asked the BZA to grant the variance so that the shed could remain.

In response to Mr. Dively's question regarding a building permit, Mr. Hunter said the shed was less than 200.0 square feet so a building permit was not required.

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

Jim Kirkwood, 7613 Valley Crest Boulevard, Annandale, Virginia; and Sharon Becker, 7612 Valley Crest Boulevard, Annandale, Virginia, addressed the BZA. They said the applicant was a building contractor and performed work on the property, the lot was used as a storage facility, automobile maintenance was taking place, and the property was not well maintained. They expressed concern that the variance would set a precedent in the area.

During the course of Mr. Kirkwood's testimony, Mr. Ribble asked about other sheds on the property. Mr. Kirkwood said while there was not another shed on the property, there was a fenced area which was used for storage.

Chairman DiGiulian called for rebuttal.

Mr. Pham said that he did repair his own vehicles and sometimes stored excess materials on his property. He expressed his willingness to better maintain the property and said he would keep his shed door closed and put a gate on the fenced area.

In response to Mr. Pammel's question as to whether he was conducting a business on the property, Mr. Pham said no.

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

Mr. Pammel made a motion to defer action on VC 94-M-128 to the morning of February 28, 1995. He instructed staff to investigate to ensure the applicant was in compliance with the Zoning Ordinance. He noted that one vehicle in the photograph was not legally registered.

Mr. Dively seconded the motion.

Mr. Dively said he supported the deferral and would like staff to investigate whether the applicant complied with all the residential requirements of the Zoning Ordinance.

Mr. Kelley said he would support the motion but cautioned that the issue before the BZA was limited to the shed.

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

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9:00 A.M. ROBERT W. & JANE W. MOSER, VC 94-Y-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from rear lot line and deck 3.0 ft. from rear lot line. Located at 13600 Brewerton Ct. on approx. 8,593 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((15)) 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. Ms. Moser replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is 8,593 square feet in size and is located on Brewerton Court southwest of Poplar Tree Park. Surrounding lots in the Big Rock Forest subdivision are also zoned PDH-2 and are developed with single family detached dwellings.

Mr. Hunter stated the applicant was requesting a variance to construct a screened porch addition 5.1 feet from the rear lot line and deck stairs for a 7.5 foot high deck 3.0 feet from the rear lot line.

The applicant, Jane W. Moser, 13600 Brewerton Court, Chantilly, Virginia, addressed the BZA and thanked Carolyn Blevins and David Hunter for their assistance and guidance. She explained that the lot was adjacent to a bike path which generates both bicycle and pedestrian traffic, and a Homeowner's Association common area. Ms. Moser stated that beyond the common area a stream, which runs into the Fairfax County Water Authority's dry pond and flood control, produces an abundance of mosquitoes and wasps. Ms. Moser said a screened porch would allow privacy and protect the family from the insects. She 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-Y-142 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated January 24, 1995.

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel noted the property was zoned PDH 2 and had the screened porch been on the original plans, it could have been built by-right.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-Y-142 by ROBERT W. & JANE W. MOSER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.1 feet from rear lot line and deck 3.0 feet from rear lot line, on property located at 13600 Brewerton Court, Tax Map Reference 55-1((15))24, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 31, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is PDH-2 AND WS.
3. The area of the lot is 8,593 square feet.
4. The application meets the necessary standards for the granting of the variance.
5. The placement of the house on the odd shaped and shallow lot has caused the need for the variance.
6. The applicant has presented verbal and written justifications for 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 of the specific addition and deck shown on the plat prepared by Dewberry & Davis dated July 23, 1993, revised through September 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 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 February 9, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 146, January 31, 1995, (Tape 1), Scheduled case of:

9:30 A.M. NHUT THI BELCH, APPEAL 94-L-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is displaying a sign not permanently affixed to the ground or to a building and that such sign is a portable sign which is prohibited under Par. 2 of Sect. 12-104 of the Zoning Ordinance. Located at 8794-H Sacramento Dr. on approx. 143,765 sq. ft. of land zoned C-8. Lee District. Tax Map 109-2 ((1)) 21-B.

Chairman DiGiulian noted that the notices were not in order and asked staff for a deferral date. Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, suggested a deferral date for the morning of March 14, 1995.

Mr. Ribble made a motion to defer A 94-L-040 to the suggested date and time. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 147, January 31, 1995, (Tape 1), Scheduled case of:

9:30 A.M. LAURA HARRINGTON, JOSEPH C. & CAROLYN E. LYNCH, APPEAL 94-P-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the provisions of Par. 3 of Sect. 9-610 of the Zoning Ordinance do not preclude consideration and approval of other waivers or modifications in conjunction with a request to waive the minimum district size requirements. Located at 8700 Willowmere Dr. on approx. 2.46 ac. of land zoned R-2. Providence District. Tax Map 49-1 ((12)) 1.

Chairman DiGiulian noted that on December 13, 1994, the Board of Zoning Appeals had issued an Intent-to-Defer.

Mr. Pammel made a motion to defer A 94-P-037 to February 28, 1995 at 9:30. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 147, January 31, 1995, (Tape 1), Information Item:

Request for Approval Resolutions from January 24, 1995

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

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Page 147, January 31, 1995, (Tape 1), Action Item:

Request for Approval of December 6, 1994 and December 15, 1994 Minutes

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 Mrs. Thonen absent from the meeting.

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Page 147, January 31, 1995, (Tape 1), Action Item:

Request for Intent-to-Defer
Francis J. Prior and Sharon L. Prior Appeal, A 94-Y-042

Chairman DiGiulian stated the appeal scheduled for February 9, 1995 would be deferred to the morning of March 14, 1995.

In response to Mr. Pammel's question, William E. Shoup, Deputy Zoning Administrator, stated that the appellant had not been able to complete the notification requirements. He said the appellant assured staff if the deferral was granted, the notification requirements would be met.

Mr. Pammel issued an intent-to-defer A 94-Y-042 to the morning of March 14, 1995. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

Mr. Kelley expressed concern regarding the number of appeals which have to be deferred due to the failure of the appellants to complete the notification requirements. He said the Board of Zoning Appeals would consider dismissal if the appellant does not comply with the requirements.

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

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

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: April 4, 1995

APPROVED: April 11, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 9, 1995. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen and Robert Dively were 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 149, February 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE D. VINOGRADOFF, VC 94-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 10.0 ft. from one side lot line and 11.0 ft. from other side lot line. Located at 8021 East Boulevard Dr. on approx. 1.73 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 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, Mr. Vinogradoff, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on East Boulevard Drive and is 1.73 acres in size. The applicant was requesting a variance to allow an addition 10 feet from one side lot line and 11 feet from the other side lot line.

Eugene Vinogradoff, 8812 Danewood Drive, Alexandria, Virginia, said he had discussed the proposal with the two immediate adjoining neighbors and neither had any objection.

Mr. Ribble said it appeared from the applicant's statement of justification contained in the staff report that the lot was irregular shaped and the house was sited at an angle on the lot.

Mr. Vinogradoff said that was correct. He added that he could build a carport without a variance, but he would prefer a garage.

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

Mr. Ribble made a motion to approve VC 94-V-150 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 31, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-150 by EUGENE D. VINOGRADOFF, under Section 18-401 of the Zoning Ordinance to permit construction of additions 10.0 feet from one side lot line and 11.0 feet from other side lot line, on property located at 8021 East Boulevard Drive, Tax Map Reference 102-2((1))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 February 9, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.73 acres.
4. The applicant has met the nine required standards for the granting of a variance.
5. The applicant testified that the position of the house on the very unusually shaped lot was part of the justification for 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 of the specific additions shown on the plat prepared by James L. Brown & Associates, PC dated October 20, 1994, revised November 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 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. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Mrs. Thonen 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 February 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 150, February 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HERITAGE CHRYSLER/PLYMOUTH SALES, INC., JOHN P. & ANN L. COLLINS, VC 94-V-161 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 1800 Old Richmond Hwy. on approx. 6.24 ac. of land zoned C-8. Mt. Vernon District. Tax Map 83-2 ((1)) 2A. (OUT OF TURN HEARING GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Mr. Suit, Vice President and General Manager of Heritage Chrysler/Plymouth Sales, Inc., replied that it was.

David Hunter, Staff Coordinator, presented the staff prepared by Lori Greenlief. He said the subject property is located on the north side of Old Richmond Highway in the Mount Vernon District and is surrounded by commercial uses zoned C-8 and apartments zoned R-30. The applicant was requesting approval of a variance to allow existing parking spaces to remain less than 10.0 feet from the front lot line. The property was the subject of a special exception for an automobile dealership in 1987 and an amendment to that special exception was approved in 1993. It was at that time that it was discovered that the parking spaces were

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too close to the front lot line and the Board of Supervisors imposed a condition on the special exception amendment that a variance be filed. The spaces are 1.5 feet from the front lot line; therefore, a variance of 8.5 feet was requested.

Edward R. Suitt, Jr., 1800 Old Richmond Highway, Alexandria, Virginia, said the applicant has occupied the building since 1974 and it has been a dealership since 1972. He said there have been no changes to the parking since the applicant first occupied the building. In 1987 when the applicant added an addition everything was in order, but when they applied for a permit to add a new service drive the error was pointed out. Mr. Suitt said the spaces are all front parking, up on a retaining wall, and does not adversely impact the sidewalk or the street.

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

Mr. Hammack made a motion to approve VC 94-V-161 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-V-161 by HERITAGE CHRYSLER/PLYMOUTH SALES, INC., JOHN P. AND ANN L. COLLINS, 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 1800 Old Richmond Highway, Tax Map Reference 83-2((1))2A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is C-8.
3. The area of the lot is 6.24 acres.
4. The applicant has satisfied the nine required standards for the granting of a variance, in particular this recently discovered violation predated the present Zoning Ordinance.
5. The parking spaces have been in their present location for at least 21 years that the applicant has operated the facility.
6. 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.

Page 152, February 9, 1995, (Tape 1), HERITAGE CHRYSLER/PLYMOUTH SALES, INC., JOHN P. & ANN L. COLLINS, VC 94-V-161, continued from Page 151 )

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 spaces shown on the plat prepared by Huntley, Nyce & Associates, P.C., dated January 26, 1993, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 February 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Since it was not yet time for the 9:30 a.m. cases, the BZA considered the After Agenda Items.

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Page 152, February 9, 1995, (Tape 1), Action Item:

Approval of January 31, 1995 Resolutions

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

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Page 152, February 9, 1995, (Tape 1), Action Item:

Acceptance of K-V Enterprises of McLean, Inc. Appeal

Mr. Pammel made a motion to accept the appeal as complete and timely filed and scheduled the public hearing for the morning of April 11, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Dively were absent from the meeting.

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Page 152, February 9, 1995, (Tape 1), Action Item:

Acceptance of Marvin D. and Jean P. Toombs Appeal

Mr. Pammel made a motion to accept the appeal as complete and timely filed and schedule the public hearing for the morning of April 11, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Dively were absent from the meeting.

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Page 152, February 9, 1995, (Tape 1), Action Item:

Acceptance of Scott Bland/David Ormrod Appeal

Mr. Pammel said William Shoup, Deputy Zoning Administrator, had stated in his memorandum to the BZA that he did not believe the appeal was timely filed; therefore, he was recommending the appeal not be accepted. Mr. Pammel said he agreed and would move not to accept the appeal. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Dively were absent from the meeting.

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The BZA recessed at 9:20 a.m. and reconvened at 9:30 a.m.

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Page 153, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT.)

Mr. Kelley asked that the BZA take under consideration the Tate Terrace Realty Investment, Inc. Appeal. He said in December 1994 the BZA had asked that this appeal be scheduled on the same date and time as the Richmond American Appeal since it involved the same issue and so moved. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Dively were absent from the meeting. The appeal was rescheduled for the morning of March 7, 1995.

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Page 153, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. O. CLEVELAND LAIRD, JR., SP 94-V-060 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 14.8 ft. from rear lot line and 9.4 ft. from side lot line. Located at 2004 Price's Ln. on approx. 11,511 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (6) 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, Mr. Laird, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located in the Stratford Landing subdivision and is zoned R-3 and surrounded by properties developed with single family detached dwellings. The special permit request was for an error in building location to allow an addition to remain 14.5 feet from the rear lot line and 9.4 feet from the side lot line. The addition, which is actually partially completed, consists of an enclosed porch on one side, a carport in the middle and a shed extension on the other side closest to the side lot line. The minimum rear yard requirement in this district is 25.0 feet and the side yard requirement is 12.0 feet. Thus, the applicant was requesting a modification of 10.2 feet to the minimum rear yard requirement and a modification of 2.6 feet to the minimum side yard requirement.

Mr. Hunter said the applicant submitted several letters of support at the time of the filing of the application which were included in the staff report. Since the publication of the staff report, staff had received three more letters in support and one in opposition.

O. Cleveland Laird, Jr., 2004 Price's Lane, Alexandria, Virginia, read a prepared statement into the record outlining the background of the construction and the steps he has taken to rectify the error. He called the BZA's attention to the letters from his neighbors in support of the request and addressed the concerns of the one neighbor in opposition to the request. (A copy of the statement is contained in the file.) Mr. Laird thanked staff for the competent and courteous way they had assisted he and his wife during the application process. He asked that the eight day waiting period be waived, if it was the BZA's intent to approve the request.

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

Mr. Ribble made a motion to approve SP 94-V-060 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report. The BZA waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-V-060 by O. CLEVELAND LAIRD, JR., under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 14.8 feet from rear lot line and 9.4 feet from side lot line, on property located at 2004 Price's Lane, Tax Map Reference 111-1((3))(6)3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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

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 presented testimony indicating that the non-compliance was done in good faith and through no fault of the property owner.

I. The applicant testified that he received inaccurate information when he contacted the County about the setbacks.

J. The applicant has tried to do the right thing after the error was pointed out to him.

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 Holland Engineering, dated July 29, 1994, submitted with this application, as qualified by these development conditions. The eave on the addition shall be no more than 2.0 feet in width.

3. A Building Permit shall be obtained and final inspections shall be approved for the garage.

This approval, contingent on the above-noted conditions, shall not relieve 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 5-0. Mrs. Thonen 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 February 9, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 155, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL B. PHILLIPS, SP 94-D-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 dwelling to remain 28.5 ft. from front lot line. Located at 1827 MacArthur Dr. on approx. 11,053 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((12)) 141. (Concurrent with VC 94-D-154).

9:30 A.M. MICHAEL B. PHILLIPS, VC 94-D-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 7.0 ft. from side lot line. Located at 1827 MacArthur Dr. on approx. 11,053 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((12)) 141. (Concurrent with SP 94-D-066).

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-owner, Ms. Mansoor, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 11,053 square foot property is located on MacArther Drive in the Chesterbrook Subdivision. The subject property and surrounding lots are zoned R-2 and 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 the existing dwelling to remain 28.5 feet from a front lot line. A minimum front yard of 35.0 feet is required by the Zoning Ordinance.

The request for variance resulted from the applicant's proposal to construct a 6.6 foot high deck 7.0 feet from a side lot line. A minimum side yard of 15.0 feet is required in the R-2 zoning district; therefore, a variance of 8.0 feet was requested for the deck.

Yardena M. Mansoor, 1827 MacArthur Drive, McLean, Virginia, thanked staff for their extraordinary helpfulness and added that it had been a pleasure to work with them. She said the house was built in 1979 in its present location and noted that the situation is unusual because although the address is 1827 MacArthur Drive, the roadway for MacArthur Drive does not exist. Ms. Mansoor said access to the house is through an easement over the neighboring property, 1825 MacArthur Drive to Halsey Road. She said the house is sited sideways on the lot so that the north side of the house faces the front of the lot with the top most corner of the house exceeding the setback requirement.

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

Mr. Pammel made a motion to grant SP 94-D-066 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 31, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-D-066 by MICHAEL B. PHILLIPS, 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 28.5 feet from front lot line, on property located at 1827 MacArthur Drive, Tax Map Reference 41-1((12))141, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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

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 appears from the plat that MacArthur Drive is a candidate for vacation at some point in time which, if it occurred, would render the variance moot. But since it does exist, at least on paper, the BZA must address the issue of the front setback.

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 Scott W. Sterl, Architect, dated October 25, 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. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Divaly were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 94-D-154 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 31, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-154 by MICHAEL B. PHILLIPS, under Section 18-401 of the Zoning Ordinance to permit construction of deck 7.0 feet from side lot line, on property located at 1827 MacArthur Drive, Tax Map Reference 41-1((12))141, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 11,053 square feet.
4. The applicant has met the nine required standards for the granting of a variance; specifically, in this instance the irregular size and shape of the property involved which renders the location of said deck to be feasible in no other location other than that shown 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 deck shown on the plat prepared by Scott W. Sterl, Architect, dated October 25, 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. Kelley and Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 February 17, 1995. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. CHARLES L. BALDI, SP 94-Y-065 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 6.2 ft. from rear lot line. Located at 3016 Hunt Rd. on approx. 20,500 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((6)) 12. (Concurrent with VC 94-Y-151).

9:30 A.M. CHARLES L. BALDI, VC 94-Y-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.0 ft. from side lot line such that side yards total 22.0 ft. Located at 3016 Hunt Rd. on approx. 20,500 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((6)) 12. (Concurrent with SP 94-Y-065).

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. Baldi, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 20,500 square foot subject property is zoned R-1 and was developed under the cluster provisions of the Zoning Ordinance. It is located on the west side of Hunt Road within the Fox Vale Estates Subdivision. The subject property adjoins Fox Vale Park on the north and west and single family detached dwellings on the east and south, all of which are in the R-1 District. 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 a 165 square foot shed to remain 6.2 feet from the rear lot line. The Zoning Ordinance requires a minimum 10.7 foot rear yard for a 10.7 foot high shed; therefore, an error in building location for 4.5 feet was requested.

The variance request was to allow a 718 square foot carport addition to be located 2.0 feet from a side lot line with side yards totalling 22.0 feet. The Zoning Ordinance requires a minimum 7 foot side yard (for a carport) and side yards to total a minimum of 35 feet; therefore, a variance was requested for 5 feet from the minimum side yard requirement and 13 feet from the total minimum side yards requirement.

Charles Baldi, 3016 Hunt Road, Oakton, Virginia, said the existing shed is 10 feet wide, 16 feet long, 10.7 feet high, is situated under a 50 to 75 foot high old tree, and blends in with the surrounding area. He said in fact the shed was on the lot for over a year before the nearest neighborhood realized it had been constructed. Mr. Baldi said he now realized that the minimum yard requirement is to maintain a distance from the nearest lot line equal to the height of the structure; unfortunately, the shed is only 6.2 feet from the lot line. He said the non-compliance was done in good faith and that he had contacted the County prior to construction, but he had misinterpreted the information that he had received. Mr. Baldi read his statement of justification into the record and submitted photographs of the shed to the BZA.

With respect to the variance, Mr. Baldi said he would like to construct a two vehicle carport to the right side of the house which requires a variance because the house was not constructed parallel to the lot lines. He said since he does not have a basement the existing single car garage is used for storage and a workshop. Mr. Baldi said the proposed carport will be 30 feet deep and 24 feet wide and noted that the carport would abut Fairfax County parkland that is heavily wooded. He added that the structure would not change the egress/ingress, it would not be located near a well or septic tank, the lot has an exceptionally small rear yard, and the house sits back on the lot. Mr. Baldi assured the BZA that the fill referenced in the letter from the Fairfax County Park Authority would be removed.

Mr. Hammack asked why the carport could not be constructed over the existing driveway. The applicant replied that he did not believe that it would blend in well with the neighborhood. He said the existing concrete driveway would be left intact.

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-Y-065 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 31, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-065 by CHARLES L. BALDI, 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 rear lot line, on property located at 3016 Hunt Road, Tax Map Reference 36-4((6))12, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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

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

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

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

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

2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat, entitled Plat, Showing the Improvements on Lot 12, Sect. 2, Fox Vale Estates, prepared by Alexandria Surveys, Inc., dated September 22, 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. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 February 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley's a motion to grant VC 94-Y-151 in part. Mr. Hammack said he believed a 30 foot long carport would be too large, the structure could have an adverse impact on the parkland, and to allow the existing driveway to remain would virtually be allowing a three car garage. He noted that the BZA was not supposed to grant a variance based on convenience. Mr. Pammel agreed with Mr. Hammack's comments. The motion to grant FAILED by a vote of 3-2 as it takes four affirmative votes to grant a variance or special permit; therefore, the applicant was denied.

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Page 160, February 9, 1995, (Tape 1), CHARLES L. BALDI, SP 94-Y-065 and VC 94-Y-151, continued from Page 159 )

**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-Y-151 by CHARLES L. BALDI, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.0 feet from side lot line such that side yards total 22.0 feet **(THE MOTION WAS TO ALLOW A GARAGE ONLY 21 FEET WIDE)**, on property located at 3016 Hunt Road, Tax Map Reference 36-4((6))12, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

WHEREAS, 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 20,500 square feet.
4. The adjacent property parkland is heavily wooded and the application does meet the requirements for a variance; however, the garage should not be any wider than 21 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 carport shown on the plat prepared by Alexandria Surveys, Inc., dated September 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. Eaves on the carport which are at least ten (10) feet above the finished ground level, may extend no closer than two (2) feet to the 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 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 **FAILED** by a vote of 3-2. Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voted aye; Mr. Hammack and Mr. Pammel voted nay. Four affirmative votes are required to grant a variance or special permit.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 161, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. KIDS LAND CHILD CARE INC., SP 94-Y-068 Appl. under Sect(s). 4-804 of the Zoning Ordinance to permit a child care center. Located at 13880 Metro Tech Dr. on approx. 40,000 sq. ft. of land zoned C-8 and WS. Sully District. Tax Map 34-4 ((1)) pt. 16D. (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. Aliaskari, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a special permit to establish a child care center with a maximum daily enrollment of 75 students on a 40,000 square foot site, with 3,000 feet of gross floor area, a 2,400 square foot outdoor recreation area, and 15 parking spaces. The property is in the C-8 and WSPOD Districts and located on the eastern side of the Sully Place Shopping Center, northeast of the intersection of Metrotech Drive and Route 50. The subject property is surrounded by the Sully Place Shopping Center which is in the C-8 District.

Mr. Heine said it was staff's position that by limiting the maximum daily enrollment to 75 children, requiring access from the east side of the building near the parking lot and providing some shade trees within the play area, the proposed use would be in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and Standards for Group 3 Uses. Therefore, staff recommended approval subject to the imposition of the Proposed Development Conditions contained in Appendix 1 of the staff report.

Mahan Aliaskari, 1449 Storehouse Drive, Centreville, Virginia, said the operators of the child care center will satisfy all general standards set forth in the County Ordinances. The play area will be located behind the shopping center and be enclosed with a 6 foot high board on board fence surrounded with potted shrubs and ground covers, the play area itself will be covered with 6 inches of wood mulch, and four shade trees will be planted to improve the shading in the play area. Ms. Aliaskari said she did not believe the proposed use will adversely impact the surrounding neighborhood since the site will be located in an existing commercial development. To avoid conflicts within the shopping center, the child care facility will provide 15 parking spaces behind the building specifically for its clients. To ensure the safety of the children and the parents, the access to the facility will be located on the east side of the building which connects the building to the outside recreational area.

The President of Kids Land Child Care, Inc., Sousan Aliaskari, pointed out the need for child care in the Chantilly area and agreed to comply with all the development conditions and general standards.

There was no opposition to the request and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 94-Y-068 for the reasons noted in the Development Conditions contained in the staff report dated January 31, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-068 by KIDS LAND CHILD CARE INC., under Section 4-804 of the Zoning Ordinance to permit a child care center, on property located at 13880 Metro Tech Drive, Tax Map Reference 34-4((1))pt. 16D, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1995; and

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 WS.
3. The area of the lot is 40,000 square feet.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (two sheets) prepared by Dewberry & Davis, dated November 18, 1994, and approved with this application, as qualified by these development conditions. This approval shall only encumber the 40,000 square feet of the subject property and the 3,000 square feet of gross floor area of the child care center and associated parking.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be required 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. A parking study should be approved by the Department of Environmental Management (DEM) which demonstrates that there is sufficient parking on the subject property and for the other uses on the 57.5 acre tract covered by the Site Plan # 5560-SP-04, which encompasses the subject property, approved by DEM on September 28, 1990.

6 Fifteen parking spaces shall be provided as shown on the plat and all parking and the drop-off and pick-up of children shall be on the special permit property.

7. A plan that shows supplemental landscaping, as shown on the special permit plat enclosing the outdoor recreation area shall be approved by the Urban Forestry Branch, DEM. This plan shall provide for four shade trees to be planted in the ground inside of the board on board fence in all four corners.

8. The maximum daily enrollment shall be seventy-five (75) children.

9. The daily hours of operation shall not exceed to 6:30 a.m. to 6:30 p.m., Monday through Friday.

10. Access to the child care center shall be provided from the east side of the building to connect the parking area to the child care center, directly rather than requiring the children and their escorts to walk around the building and play area to enter the building from the parking lot on the west.

This approval, contingent on the above-noted conditions, shall not relieve 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.

Page 163, February 9, 1995, (Tape 1), KIDS LAND CHILD CARE INC., SP 94-Y-068, continued from Page 162)

Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Mrs. Thonen 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 February 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 163, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. BRIAN C. CAMPDEN-MAIN & MARY LINDA SARA, SP 94-Y-062 Appl. under Sect(s). 3-104 of the Zoning Ordinance to permit a home professional office. Located at 12600 Camberley Forest Dr. on approx. 37,463 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((14)) 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 attorney, William (Tom) Thomas, 1733 King Street, Alexandria, Virginia, reaffirmed the revised affidavit and requested that the BZA grant the applicant a deferral. He explained that the applicant would like an opportunity to continue working with the neighbors to address their concerns. Mr. Thomas suggested that the application be deferred to the night meeting of March 21st.

Chairman DiGiulian polled the audience to determine if anyone was present who wished to address the deferral request.

Tim Sherman, 12602 Camberley Forest Drive, Herndon, Virginia, an adjacent property owner, said he was opposed to the request and that he was prepared to proceed as scheduled.

Paul Germaud, 12612 Camberley Forest Drive, Herndon, Virginia, said he was currently serving as the President of the Camberley West Homeowners Association. He said the neighbors had indicated to the Association that they had no interest in continuing meeting with the applicant.

Mr. Hammack pointed out that two members of the BZA were not present and perhaps it would be in the applicant's best interest to have the other members present. He then moved to defer the case to the night meeting of March 21st. Mr. Pammel seconded the motion.

Mr. Ribble said he would support the motion based on the fact that it was not unusual for the BZA to grant at least one deferral to an applicant.

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Page 163, February 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. FRANCIS J. PRIOR & SHARON L. PRIOR, APPEAL 94-Y-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a fence which exceeds 4 ft. in height is located in a front yard on appellant's corner lot in violation of Par. 3B of Sect. 10-104 of the Zoning Ordinance. Located at 13898 Old Nursery Ct. on approx. 19,000 sq. ft. of land zoned R-2. Sully District. Tax Map 44-4 ((8)) (2) 3.

Chairman DiGiulian said it appeared that the notices for this case were not in order. William Shoup, Deputy Zoning Administrator, informed the BZA that the appellant had failed to pick up the certified package from the post office. Mr. Kelley asked that staff convey to the appellant that the BZA would not entertain any further deferrals. Mr. Shoup said the appellant had assured staff that the notices would be done for the next scheduled public hearing.

Mr. Pammel asked staff for a deferral date and time. Mr. Shoup suggested the morning of March 14th. Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Dively were absent from the meeting.

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Page 163, February 9, 1995, (Tape 1), Information Item:

Ruxton Homes Appeal

Chairman DiGiulian called the BZA's attention to a memorandum from the County Attorney referencing the Ruxton Homes Appeal. He said as he recalled the appeal involved a lot that had been recorded prior to the zoning being changed to R-C and did not have sanitary sewer approved at the time of recordation. The Zoning Administrator had ruled that it was not a legal lot, and the BZA upheld that decision. The decision was appealed to the Circuit Court and now, based on the memorandum from the County's Attorney, the County has changed its position and would like to settle the case.

Mr. Kelley asked what the BZA was being asked to do. Chairman DiGiulian said he believed the County was asking for the BZA's concurrence. Mr. Ribble commented that the BZA was being asked to say that it had made a mistake. The members were opposed to that request.

William Shoup, Deputy Zoning Administrator, asked if the BZA members would like to meet with Pat Taves, Senior County Attorney, and Jane Gwinn, the Zoning Administrator.

Mr. Pammel made a motion that the BZA go into Executive Session to discuss legal matters. Mr. Hammack seconded the motion. Mr. Kelley said he believed the BZA was "between a rock and a hard place", and that he was concerned with the manner in which the BZA agreed.

Chairman DiGiulian asked what would happen if the BZA took no position on the County Attorney's request. Mr. Shoup said he was really not sure, but because the BZA was party to the suit the County Attorney was requesting its concurrence.

Mr. Pammel questioned if the County planned to appeal the Circuit Court's decision with respect to the Mary Rose Greene ruling, and if not does the BZA have any input into an appeal.

Mr. Kelley said he believed the BZA should have its own counsel, although it may have a common interest with the County. The other members agreed.

Mr. Hammack suggested that the BZA go into Executive Session to discuss matters which was brought to his attention by a member of the County Attorney's staff, as he would prefer not to make them a part of the public record with respect to the Mary Rose Greene decision.

The BZA requested that Ms. Gwinn and Mr. Taves come to the Board Auditorium, and Jane Kelsey, Chief, Special Permit and Variance Branch, said they were on their way.

Mr. Hammack suggested that Mr. Pammel's motion to go into Executive Session specify that the BZA WOULD DISCUSS LEGAL MATTERS WITH RESPECT TO THE MARY ROSE GREENE AND RUXTON HOMES LITIGATION PURSUANT TO VIRGINIA CODE 2.1-344 (A)(7). The amendment was accepted.

Upon reconvening in the Board Auditorium, Mr. Ribble MOVED THAT THE BZA MEMBERS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED BY THE VIRGINIA FREEDOM OF INFORMATION ACT AND ONLY MATTERS IDENTIFIED IN THE MOTION TO CONVENE EXECUTIVE SESSION WERE HEARD, DISCUSSED, OR CONSIDERED BY THE BZA DURING EXECUTIVE SESSION. The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote. Mrs. Thonen and Mr. Divaly were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

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

John Ribble
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 14, 1995

APPROVED: March 21, 1995

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 14, 1995. 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 9:15 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 165, February 14, 1995, (Tape 1), Scheduled Item:

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. 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, 9/13, AND 11/29 TO ALLOW BOS TO HEAR REQUEST FOR SHARED PARKING AGREEMENT.)

Vice Chairman Ribble asked if the applicant was present and ready to present the case and David Hunter, Staff Coordinator, said the applicant was not yet present.

Vice Chairman Ribble deferred this application until later in the meeting and called for the next scheduled case.

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Page 165, February 14, 1995, (Tape 1), Scheduled Item:

9:00 A.M. VERNON PARKER, VC 94-H-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line such that side yards total 19.0 ft. Located at 2221 Abbotsford Dr. on approx. 11,780 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((22)) 99.

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. Vernon Parker, 2221 Abbotsford Drive, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Tanglewood Subdivision; the lots to the north, east and west are zoned R-2 Cluster and developed with single family detached dwellings; the lots to the south are zoned R-3 and also developed with single family detached dwellings. Ms. Langdon said that this request for a variance of 5 feet to the minimum total side yards requirement resulted from the applicant's proposal to add a garage by enclosing an existing carport; the garage is proposed to be located 9 feet from a side lot line, with total side yards of 19 feet. She said that a minimum side yard of 8 feet, with minimum total side yards of 24 feet are required by the Zoning Ordinance.

Mr. Parker presented the statement of justification, previously submitted in writing and incorporated into the record. He said that the neighborhood architectural committee, as well as all affected neighbors and those within sight of the property, had no objection to his proposal. Mr. Parker said his request, as submitted, was very straightforward, and offered to answer any questions the Board might have.

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

Mr. Hammack moved to grant VC 94-H-158 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-H-158 by VERNON PARKER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.0 feet from side lot line such that side yards total 19.0 feet, on property located at 2221 Abbotsford Drive, Tax Map Reference 38-1((22))99, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 14, 1995; and

WHEREAS, 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 approximately 11,780 square feet.
4. The application involves an existing carport which appears in photos to be partially enclosed in the rear at this point.
5. The variance requested is minimal and will not change the zoning district in any way.
6. The granting of the application will be in harmony with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Gallifant, Hawes & Jeffers, dated November 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. Pammel seconded the motion which carried by a vote of 5-0. 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 February 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARGARITA M. WOODS, VC 94-P-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from rear lot line. Located at 2700 Snowberry Ct. on approx. 10,507 sq. ft. of land zoned R-3. Providence District. Tax Map 48-1 ((9)) 67.

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. Margarita Moylan, daughter of the applicant, 2813 Elsmore Street, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located on the northwest side of Snowberry Court, within the Vienna Oak Subdivision. He said that the property adjoins single family dwellings on the east and south, also zoned R-3, with vacant land on the north and west, zoned R-1, formerly the right-of-way for the former Arlington/Fairfax Railroad. The applicant's request for a variance of 10.2 feet to the minimum yard requirement results from the applicant's proposal to construct a patio enclosure addition.

Ms. Moylan referenced the statement of justification, previously submitted in writing and incorporated into the record, and distributed written additions to the statement. She said the screened and glass enclosure would be unheated and constructed over an existing patio floor which is the only access to the rear yard of the property. She said the property had been purchased as a residential dwelling in 1973 and has remained such to date. Ms. Moylan noted that the lot is pie-shaped and the dwelling is sited in the center of the lot, backing up to a vacant lot with overgrown vegetation. She said the condition is unique because the property is located at the end of a cul-de-sac, making the lot smaller than the two properties on either side, which have more land directly behind, due in part to the angle at which the home was built. The shape of the lot precluded placing the dwelling in any other place without encroaching upon the neighbors' properties, resulting in a narrow rear yard and the inability to construct an addition without benefit of a variance. Ms. Moylan claimed undue hardship because of the foregoing conditions and referenced previous granting of at least five variances in the neighborhood for similar purposes.

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

Mr. Pammel moved to grant VC 94-P-157 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-P-157 by MARGERITA M. WOODS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.8 ft. from rear lot line, on property located at 2700 Snowberry Court, Tax Map Reference 48-1((9))67, 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 14, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 10,507 square feet.
4. The lot is very shallow and only slightly over 105 feet in width.
5. The location of the structure on the property precludes placing the addition in any other location.
6. Other variances have been granted in the area, notably one where the addition is 12.4 feet from the rear property line; whereas, this applicant is requesting a variance of 14.8 feet from the rear property line.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific patio enclosure addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 18, 1994, revised October 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 patio enclosure 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. 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 February 22, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROGER A. & CAROLINE P. CURRIN, VC 94-V-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.4 ft. from side lot line. Located at 8428 Stable Dr. on approx. 10,504 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10)) (8) 38.

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. Roger A. Currin, 8428 Stable Drive, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Riverside Garden Subdivision are also zoned R-3 and developed with single family detached dwellings. He said that the request for a 4.6 foot variance resulted from the applicant's proposal to construct a carport addition. Mr. Hunter noted that eaves and all such similar features which are at least 10 feet above the finished ground level may extend no closer than 2.0 feet to any side lot line and, in this case, cannot extend any further than 0.4 feet from the proposed structure.

Mr. Currin distributed supporting testimony from neighbors for the Board's review. He presented the statement of justification, previously submitted in writing and incorporated into the record. Mr. Currin said he and his wife planned to retire and remain in their

current dwelling, wishing to have protection in inclement weather during their retirement years by constructing a carport.

Vice Chairman Ribble stated that he lives in the subdivision and there are several carports this close to the lot line, more than the staff report indicated.

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

Mr. Kelley moved to grant VC 94-V-156 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

Mr. Kelley stated that he also lives near the subdivision where the applicant resides and said it is a nice community, notwithstanding the presence of the carports in close proximity to the lot lines.

Mr. Pammel stated that he usually is not receptive to this amount of encroachment; however, this is a narrower lot than the Board is used to considering and he did not see any other location for the carport to be placed. He said the basic reason for encroaching so close to the lot line is the existing stoop which extends into the available space.

Mr. Hammack said he echoed what Mr. Pammel said.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-V-156 by ROGER A. & CAROLINE P. CURRIN, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.4 feet from side lot line, on property located at 8428 Stable Drive, Tax Map Reference 102-3((10))(8)38, 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 14, 1995; 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 10,504 square feet.
4. There are several similar structures in the area which still continues to be a very nice subdivision.

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

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

Page 170, February 14, 1995, (Tape 1), ROGER A. & CAROLINE P. CURRIN, VC 94-V-156, continued from Page 169 )

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 carport addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated November 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. If there is an eave on the carport, it can extend no closer than 2.0 feet to the 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 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.

Dively seconded the motion which carried by a vote of 5-0. 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 February 22, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 170, February 14, 1995, (Tape 1), Scheduled Item:

9:00 A.M. STEPHEN M. & SUSAN M. RENNA, VC 94-M-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.7 ft. from street line of a corner lot. Located at 8214 Hillcrest Rd. on approx. 21,674 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((12)) 84.

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. Stephen M. Renna, 8214 Hillcrest Road, Annandale, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Millcreek Park Subdivision to the east and the Camelot Subdivision to the west of the subject property are also zoned R-2 and developed with single family detached dwellings. He said that this request for a 18.3 foot variance resulted from the applicant's proposal to construct an attached two-car garage and breezeway.

Mr. Renna presented the statement of justification, previously submitted in writing and incorporated into the record, stating that strict application of the Ordinance would unreasonably restrict the use of the property, creating an undue hardship. Mr. Renna further stated that the dwelling was constructed in 1952, when garages were not common or demanded features of a dwelling. Over the last 40 years, he said, the changes in lifestyles has influenced home design, resulting in garages becoming a common feature of a single family dwelling. Mr. Renna said that garages and breezeways are now common in his subdivision, a significant number of which were added after the original construction of the dwelling. He cited the dwelling directly across the street as a case in point, stating that a two-car garage and family room addition was constructed in 1987 with benefit of a variance. Mr. Renna said that the area is heavily wooded and garages mitigate the danger of having cars damaged by falling limbs or trees, as well adding protection from the elements. He said he had discussed his plans with surrounding neighbors and they were in full support.

Mr. Hammack asked how close to the street the house on Lot 27A, behind the applicant's lot, was constructed. Mr. Renna estimated 30 feet and said that the owner of Lot 27A was in favor of his proposal.

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

Mr. Dively moved to grant VC 94-V-156 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-140 by STEPHEN M. & SUSAN M. RENNA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.7 feet from street line o a corner lot, on property located at 8214 Hillcrest Road, Tax Map Reference 59-3((12))84, 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 February 14, 1995; 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 21,674 square feet.
4. A corner lot with two front yards almost always constitutes an extraordinary situation and it would be unfair to penalize the applicants for a situation over which they have no control and would not have to contend with if they had an interior lot.
5. The history of the area shows a similar variance request being granted for a distance of 18.43 feet from the property line; whereas, the applicant proposes to build to within 18.3 feet of the property line. It would be difficult to distinguish between the two situations.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 October 19, 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.

Page 172, February 14, 1995, (Tape 1), STEPHEN M. & SUSAN M. RENNA, VC 94-M-140, continued from Page 171 )

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 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 February 22, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 172, February 14, 1995, (Tape 1), Scheduled Item:

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. 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, 9/13, AND 11/29 TO ALLOW BOS TO HEAR REQUEST FOR SHARED PARKING AGREEMENT.)

Vice Chairman Ribble asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, if the representative for Messiah Presbyterian Church was present to address this application which was deferred earlier in the meeting and she replied in the affirmative.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rev. Dong Cheol Lee, Pastor, who gave the church's address as his address, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the subject property is located within the planned community of Cardinal Forest and is developed with a three-story condominium office building. He said the application was filed in February 1994 and requested approval of a special permit to allow a 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; on May 17, 1994, a staff report was published, recommending approval of the application. The staff report indicated that the proposed church required 13 parking spaces and that 85 parking spaces are required for all uses on site; however, only 55 parking spaces are available on site. Without the approval of a shared parking agreement by the Board of Supervisors, a special permit would be null and void, pursuant to the conditions recommended by staff. On August 2, 1994, a public hearing for SP 94-S-009 was held and the BZA deferred decision until November 29, 1994, in order for the Board of Supervisors to approve a shared parking agreement. The applicant submitted a request for a shared parking agreement in June 1994; on September 8, 1994, the Office of Transportation determined that the proposed parking reduction had not been satisfactorily justified and concluded that, without further information, they could not make a positive recommendation on the request by the applicant for a parking reduction. The Department of Environmental Management (DEM) does not schedule a shared parking request for action by the Board of Supervisors until all issues are resolved and this document was included in the previous addendum. Mr. Hunter further stated that the applicant had not pursued a resolution of the issues surrounding the shared parking request and the applicant was requesting a two-month deferral in order to locate an alternative location for the place of worship; they requested additional time to sign the lease for an alternative location in Springfield.

Vice Chairman Ribble requested that one of the participants identify himself and he said he was Mike Lee, 6101 Arlington Boulevard, Falls Church, Virginia. Mr. Lee confirmed that they were requesting a two-month deferral to pursue negotiations for an alternative place of worship.

Vice Chairman Ribble asked if there was anyone present who would like to address the deferral request. Hearing no response, Mr. Davis moved to defer the hearing to April 27, 1995 at 9:30 a.m., requesting that the applicant do their best to resolve the matter before that time because the hearing had been deferred a number of times. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Mr. Pammel and Mr. Hunter discussed the fact that, if the applicant secured an alternative location, they would withdraw the current application and submit a new application.

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Page 173, February 14, 1995, (Tape 1), Scheduled Item:

9:30 A.M. EARL E. ELLIOTT, JR., SP 94-L-069 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 9.0 ft. from rear lot line and 12.0 ft. & 13.8 ft. from side lot lines. Located at 3224 Groveton St. on approx. 7,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (3) 10 & 11. (Concurrent with VC 94-L-160). (OUT OF TURN HEARING GRANTED)

9:30 A.M. EARL E. ELLIOTT, JR., VC 94-L-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. from side lot line and permit accessory structure which exceeds 200 sq. ft. to remain. Located at 3224 Groveton Ave. on approx. 7,000 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (3) 10 & 11. (Concurrent with SP 94-L-069). (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. Beverly Gray Stephenson, Esquire, 4157 Chain Bridge Road, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, advised the Board that a revised affidavit was submitted to identify Mr. Stephenson as the applicant's agent. He presented the staff report, stating that the property is surrounded by single family detached dwellings also zoned R-2. Mr. Heine said that the applicant had requested approval of concurrent special permit and variance applications. The variance request resulted from the applicant's proposal to construct a dwelling and to allow an existing shed to remain. The applicant discovered that a building permit had never been issued for the shed and the construction of a dwelling on the subject property was encumbered by the existing dwelling on Lots 12 and 13 which, when developed in 1950, included the subject lots, 10 and 11, which were jointly defined as one building lot. In 1984, Lots 10 and 11 were severed from the 1950 building lot and sold to a corporation which, in turn, sold Lots 10 and 11 to the applicants in 1989. Information in the files indicates that the shed was constructed between 1981 and 1988. Variance VC 94-L-144, relevant to adjoining Lots 12 and 13, to allow the existing dwelling to remain 6.8 feet from the side lot line, was approved by the Board on January 24, 1995.

Mr. Stephenson presented the statement of justification, previously submitted in writing and incorporated into the record, and stated that there were two issues. His clients learned when they submitted an application to build a house that the shed was not in conformance. The shed was there when they acquired the property and appears to have been constructed in 1981. Mr. Stephenson said that the structure appeared to have been acceptable and there were no complaints from the neighbors. He said he believed that conditions existed for granting the special permit; the non-compliance was through no fault of the applicants. Mr. Stephenson referenced the variance granted to the owners of the two adjacent lots, 12 and 13, who share the problems incurred when the four lots were split.

Scott Sexauer, Esquire, the attorney who had represented the Cheshires, the owners of the two adjacent lots, 12 and 13, when they sought approval of their variance request, came forward. He said that there was not a tremendous amount of complaint about the location of the shed because it has been there for a long period of time. He further noted that the 15-foot required side yard was being recognized on the Cheshire side. Mr. Sexauer said the concerns were directed more to the nature of the development of the property. He said the Cheshires were concerned about impact upon their property during the construction phase on Lots 10 and 11 and, after completion, about possible drainage onto their property. Mr. Sexauer said his clients also were concerned about the patio which encroached upon their property under an easement which had been granted by a previous owner, because the patio is only 12.5 feet from the side of their house.

Mr. Stephenson came forward to state that he had been under the impression that he had addressed the special permit for the shed when he made his presentation and added that the existing conditions are that the lots are narrow but there is no variance requested on the Cheshire side of the property; the proposed side yard remains at 15 feet. The variance of 4 feet to reduce the side yard to 11 feet is on the opposite side. The neighbors, including the Cheshires, signed a letter supporting the applicants' requested variance, which was submitted as part of the application. Mr. Stephenson said he believed the development of the two lots would enhance the neighborhood aesthetically and would be compatible with the rest of the neighborhood.

Mr. Hammack moved to grant SP 94-L-069 and VC 94-L-160 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

Mr. Pammel seconded the motion for the variance and said he wished to add a condition to the variance approval addressing the concerns of the adjoining property owners regarding drainage. Mr. Hammack accepted that modification to his motion and the result is reflected in the Resolution.

Mr. Pammel referenced his comments when VC 94-L-144 was heard on January 24, 1995, and asked that those comments be incorporated into these minutes.

(At that time, Mr. Pammel was addressing the problem caused when property owners of a "building lot" comprised of several lots then divide and sell portions to different owners, thereby creating building lots which are no longer in compliance with the Zoning Ordinance/zoning district.)

Mr. Pammel noted that the Board heard a similar case several weeks previously and a great deal of concern had been expressed at that time. The situation had been created in much the same way. He said that the County should have provisions for precluding this type of situation from occurring.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-L-069 by EARL E. ELLIOTT, 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 9.0 feet from rear lot line and 12.0 feet and 13.8 feet from side lot lines, on property located at 3224 Groveton Street, Tax Map Reference 92-2((18))(3)10 and 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 February 14, 1995; and

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

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

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

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

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

2. This special permit is granted only for the purpose(s), structure(s) and use(s) indicated on the special permit plat, entitled Variance Plat, Lots 10 and 11, Block 3, Section 1, Groveton Heights, prepared by Schiller and Associates, dated October 20, 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. Pammel seconded the motion which carried by a vote of 5-0. 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 February 22, 1995. 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-L-160 by EARL E. ELLIOTT, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. from side lot line and permit accessory structure which exceeds 200 square feet to remain, on property located at 3224 Groveton Avenue, Tax Map Reference 92-2((18))(3)10 and 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 February 14, 1995; and

WHEREAS, 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 7,000 square feet.
4. The companion case was heard several weeks ago relating to Lots 12 and 13 where the dwelling encroaches closer to the lot line than the proposed structure.
5 The proposed structure is positioned to minimize the impact on the dwelling on Lots 12 and 13.
6. There appears to be an adequate distance between the dwelling on Lot 9 on the side where the variance is required.
7. The lots in this zoning district are extremely narrow and that is the justification for the Ordinance.
8. The history of how the lots were divided is regrettable but the Board can do nothing about it at this point in time.
9. There will be no detriment to adjacent property.
10. A demonstrable hardship exists.
11. The zoning district will not be changed.
12 Other development in the area also is on narrow lots of similar size.
13 It would be appropriate to add a condition addressing drainage.

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

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

Page 176, February 14, 1995, (Tape 1), EARL E. ELLIOTT, JR., SP 94-L-069 and VC 94-L-160, continued from Page 175 )

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

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

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

1. This variance is approved for the location and the specified dwelling and accessory shed shown on the plat prepared by Schiller and Associates, dated October 20, 1993, submitted with this application and is not transferable to other land.

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

3. Grading of the site shall be in conformance with standard requirements of the County with respect to on-site drainage and shall divert runoff away from Lots 12 and 13.

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 of the dwelling has commenced and has been diligently prosecuted, and for the shed unless all appropriate approvals have been obtained to insure safety. 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. 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 February 22, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 176, February 14, 1995, (Tape 1), Scheduled Item:

9:30 A.M. BALMORAL GOLF ASSOCIATES L.C., SPA 92-S-026 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 92-S-026 for commercial golf course and accessory uses to permit reduction in land area and change in development conditions and site alterations. Located at 6922 Union Mill Rd. on approx. 232.339 ac. of land zoned R-C and WS. Springfield District. Tax Map 74-2 ((5)) B. (Formerly 74-2 ((5)) A1, 1, pt. 2, pt. 3, pt. 11A, pt. 12A, pt. 13A, pt. 14, pt. 15, pt. 22, pt. 23, pt. 24, pt. 25, pt. 27, pt. 101A, pt. 102A, pt. 103A, pt. 104A, pt. 110, 111-117,; 74-4 ((2)) pt. 28, pt. 33A, pt. 93A, pt. 94A, pt. 95A, pt. 96A, pt. 97A, pt. 98A, pt. 99A, pt. 100A, 105A, 106A, 107A, 108A, 109A, pt. 118, pt. 119, pt. 120, pt. 121, pt. 122, 123, 124, pt. 125).

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, Lee Fifer, of McGuire Woods, et al., 8380 Greensboro Drive, McLean, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the staff report had been prepared by Marilyn Anderson, Senior Staff Coordinator, who could not be present that day. Ms. Kelsey presented the staff report, stating that the property was surrounded by vacant land, except for single family detached dwellings to the east; all the properties are zoned R-C, except for the triangular lot to the north, which is zoned R-1. She said the applicants were requesting an amendment to an existing special permit which was approved for a commercial golf course and accessory uses on the property to allow: A reduction of the land area to reflect a portion of an acre which was dedicated for improvements to Compton Road; the relocation of the clubhouse and associated facilities, including the maintenance facility, which was necessitated by the final design of the golf course; and the relocation of fencing which was previously approved around the entire perimeter of the site, but is proposed to be located around the golf course, the gasoline and VEPCO easement and the maintenance facility, thereby creating a greater screening yard than was previously approved. Ms. Kelsey said it was staff's conclusion that the requested amendment was in harmony with the Comprehensive Plan and meets all the applicable provisions of the Code and staff recommended approval, subject to the Proposed Development Conditions dated February 7, 1995. An amended affidavit was included in the Board's package.

Mr. Kelley asked if he was correct in assuming that there were no significant changes to the application from when it was approved in 1992. Ms. Kelsey said that was correct, except for the proposed relocation which was outside the scope of the Zoning Administrator's area of administrative approval and the condition, as written, did not allow the applicant sufficient latitude in the location of their facilities.

Page 177, February 14, 1995, (Tape 1), BALMORAL GOLF ASSOCIATES L.C., SPA 92-S-026, continued from Page 176 )

Mr. Pifer said that the applicant had sought an administrative ruling and the proposed changes were outside the realm of an administrative action. He introduced principals in this project, Bill Keech and Tom Abbonizio and presented the statement of justification, previously submitted in writing and incorporated into the record. Mr. Pifer said that Mr. Fred Couples was now a member of the team; he currently ranged number 4 in the world of golf and was number 1 in about 1991. This will be the first Fred Couples golf course in the world. Mr. Pifer said the Proposed Development Conditions were acceptable to the applicant and asked, if the application is approved, that the eight-day waiting period be waived.

Henry Kaiser, 7009 Union Mill Road, came forward to state that he was the closest resident to the project and had supported the applications throughout, having spoken before the BZA in their favor. He expressed concern about the relocation of the maintenance shed because the entrance now would be on Union Mill Road, which is a small, dead end road, accommodating eight families, all of whom he was representing. He expressed concern about the screening and lighting around the maintenance shed. Mr. Kaiser requested assurances about the concerns. He referenced item 7 in the plat notes relative to water and believed the notes to be ambivalent concerning the source of water, specifically the option of wells. He said that the neighbors were all dependent upon wells for their water; they do not have public water. Mr. Kaiser said he had met with Mr. Keech but wanted to go on record with the concerns of the neighbors and get assurances about remedies.

Mr. Pifer addressed Mr. Kaiser's concerns, which previously had been discussed by Mr. Keech and Mr. Kaiser. He referenced existing Condition 12, requiring that all lights be shielded so that there is no glare onto adjacent properties, to alleviate that particular concern. To further mitigate any intrusion by the lights and to satisfy screening requirements, 200 feet of natural woodlands will be preserved as a result of the changes to the plat which move the golf course holes and allow the maintenance shed to be relocated. The issue of wells was not being proposed for amendment as a part of this application, but already had been discussed at length in the previous approval and condition 5 addresses that issue. Mr. Pifer said that, if the need to dig wells arose, every effort would be made to protect the neighbors' wells and the principals would abide by the conditions imposed.

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

Mr. Kelley moved to grant SPA 92-S-026 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 7, 1995.

Mr. Hammack expressed concurrence with Mr. Kelley's findings of facts and said he would support the motion. He said he recalled Mr. Pifer stating that the principals would develop the property in a proper manner and not impact upon adjacent properties with deep wells. Mr. Hammack said he would be willing to live with the original Proposed Development Conditions and would not like to see any impact on adjacent property owners from deep wells.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 92-S-026 by BALMORAL GOLF ASSOCIATES, L.C., under Section 3-C03 of the Zoning Ordinance to amend SP 92-S-026 for commercial golf course and accessory uses to permit reduction in land area and change in development conditions and site alterations, on property located at 6922 Union Mill Road, Tax Map Reference 74-2((5))B (formerly 74-2((5))A1, 1, pt. 2, pt. 3, pt. 11A, pt. 12A, pt. 13A, pt. 14, pt. 15, pt. 22, pt. 23, pt. 24, pt. 25, pt. 27, pt. 101A, pt. 102A, pt. 103A, pt. 104A, pt. 110, 111-117; 74-4((2))pt. 28, pt. 33A, pt. 93A, pt. 94A, pt. 95A, pt. 96A, pt. 97A, pt. 98A, pt. 99A, pt. 100A, 105A, 106A, 107A, 108A, 109A, pt. 118, pt. 119, pt. 120, pt. 121, pt. 122, 123, 124, pt. 125, 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 14, 1995; and

WHEREAS, 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 232.339 acres.
4. It was the decision of the Board that the Proposed Development Conditions addressed the concerns of the citizens and that no changes or additions were required.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-603 and 8-606 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, Balmoral Golf Associates L.C., and may be transferred to another owner or lessee, provided that the owner or lessee submits in writing to the Board of Zoning Appeals, prior to the issuance of a Non-Residential Use Permit, a commitment to comply with the following conditions. This approval is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat entitled "Special Permit Plat - Amended, Balmoral Golf Course: SP 92-S-026", prepared by Williamsburg Environmental Group, Inc., dated January 25, 1995, and approved with this application, as qualified by these development conditions.

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

4. This Special Permit for a Commercial Golf Course and related facilities is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment (SPA) Plat prepared by Williamsburg Environmental Group, Inc., dated January 25, 1995, and these development conditions.

5. The property shall be served by public water as approved by the Fairfax County Water Authority and a private septic system as approved by the Fairfax County Health Department. If, however, the applicant should prefer to not provide public water, the golf course may be developed with private wells as approved by the Fairfax County Health Department. Any private wells and/or septic fields shall be located on the property so as not to interfere with or disturb any vegetation within the thirty-five foot and 43-foot transitional screening yard, not to reduce the 97 acres of undisturbed forest land, not to disturb any cemetery, nor shall they disturb any historically significant site identified by the County's heritage resources/heritage preservation staff as to remain undisturbed. If a private septic system is not approved by the Fairfax County Health Department to serve this site, this special permit shall be deemed to be null and void.

6. If operated as a country club, the maximum number of memberships shall be 1200 and a maximum of 300 parking spaces shall be provided. If operated as a commercial pay-and-play golf course with accessory uses, there shall be a maximum of 200 parking spaces, notwithstanding the representation shown on the Special Permit Amendment Plat. All parking for this use shall be on site. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

7. Notwithstanding the representation on the Special Permit Amendment Plat, there shall be no more than 50 employees on site at any one time for the pay-and-play golf course and parking shall be provided in accordance with the Zoning Ordinance.

8. A six (6) foot high chain link fence with black wire shall be provided around the entire golf course, shall be located between the golf course and the transitional screening yard, and shall fulfill the barrier requirements of the Zoning Ordinance. The existing trees within the transitional screening yard shall be preserved to provide screening along the periphery of the area of the golf course as approved by the Urban Forestry Branch of the Department of Environmental Management (DEM), and shall fulfill the transitional screening requirements of the Zoning Ordinance. The transitional screening area shall be a minimum of thirty-five feet wide along the southern lot line adjacent to the cluster subdivision lots and shall be a minimum of forty-three (43) feet wide along all other lot lines of the golf course. An eight-foot wide equestrian trail shall be provided within the transitional screening yard but in no event shall trees be removed for the construction of the trail. A public access easement for the equestrian trail shall be recorded in the land records of Fairfax County prior to site plan approval. A public access easement, with construction easements, shall be provided across the approximately 400 foot frontage of the site adjacent to the spine road as shown on the SPA plat to allow the construction by others of a five (5) foot wide trail or sidewalk to connect with the trail or sidewalk to be constructed across proposed Lot 182 to the south. The purpose of the trail is to provide public access between the future parkland to the north and south. The easements shall be recorded in the land records of Fairfax County prior to site plan approval or at the request of Fairfax County, whichever comes first

9. Proper pool cleaning procedures shall be implemented. Pool waters not discharged through the pool's filter system shall be properly neutralized prior to being discharged during seasonal draining and/or cleaning operations. The recommended method involves adding sufficient amounts of lime or soda ash to the acid cleaning solution 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. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. A limits of clearing and grading and a tree preservation plan to include any monarch and/or specimen trees shall be submitted to the Fairfax County Urban Forestry Branch for review and approval prior to Site Plan approval. These plans shall provide for tree preservation and protection to the satisfaction of the Urban Forestry Branch. Within the approximately 232.33 acre golf course, clubhouse and drainfield area, as designated on the SPA Plat, a minimum of 97 acres of forest land, excluding any area within the Virginia Power easement, shall be preserved as wooded open space outside of the limits of clearing and grading. The applicant shall have the right to clear underneath the trees (the understory) within preservation areas and to provide understory plantings, subject to the approval of the Urban Forestry Branch, DEM.

11. The applicant shall have the right to modify the golf course layout, contingent upon the preservation of monarch and/or specimen trees identified by the Urban Forestry Branch, DEM, the provision of 97 acres of forest land and the transitional screening yards; the applicant shall have the right to modify the footprints and locations of the buildings shown so long as they are located within the building envelope formed by the boundaries of the buildings shown on the plat (excluding the maintenance building), do not exceed a maximum of 50,000 gross square feet, and the minimum distances to lot lines remain as shown on the plat; and the applicant shall have the right to modify the parking lot shown on the SPA Plat so long as (1) any additional spaces are located adjacent to the spaces shown on the Plat and are no closer than 75 feet to any lot line and (2) any reduction of spaces are utilized as landscaped open space.

12. All exterior lights shall be shielded, if necessary, to prevent the projection of light or glare onto adjacent properties and roadways. If parking lot lighting is installed, such lighting shall be the low intensity type on standards not to exceed twelve (12) feet in height and shielded as described above. If tennis court lights are provided, they shall not exceed 22 feet in height, shall be shielded as described, and shall shut off automatically by 11:00 p.m. There shall be no illumination of the eighteen-hole golf course.

13. The hours of operation shall be limited to the following:

    Golf Course: Dawn to dusk.
    Swimming Pool: 7:00 a.m. to 10:00 p.m.
    Club house facilities: 6:00 a.m. to 1:00 a.m.

14. The construction of the accessory uses such as the clubhouse, pool, and tennis courts and their associated parking may be phased over a ten (10) year period from the approval of this special permit amendment; provided, however, that the entire golf course with associated parking, transitional screening and stormwater management for the entire site, and all road improvements shall be provided in the first phase before the issuance of the Non-Residential Use Permit. Road improvements shall be provided as set forth elsewhere in these conditions.

15. The applicant shall prepare a management plan for the application of fertilizers, herbicides and pesticides which shall be reviewed, approved and monitored by the Northern Virginia Soil and Water Conservation District. This plan shall be designed to control/manage the application of fertilizer, herbicides and other chemicals to protect water quality in the Occoquan Watershed and to encourage the application of fertilizers primarily during the fall months of the year when impacts of nutrients in the reservoir are less severe.

16. For one year preceding the initiation of grading, or, if construction is scheduled to occur sooner than one year from the date of final approval of this special permit amendment, then, beginning within thirty (30) days following approval of this special permit amendment; for the period of construction on the site; and for two (2) years following the issuance of the Non-Residential Use Permit for the golf course, water quality grab samples shall be obtained during each of the four seasons of the year from Johnny Moore Creek at locations immediately upstream and downstream of the golf course drainage area. The samples shall be analyzed to determine the presence and concentration of specific herbicides and pesticides being applied to the golf course and to determine if the goals of the Management Plan and the water quality regulations of the County, State and Federal governments are being met. The sample collection and testing protocol shall be submitted to the Fairfax County

Health Department for review and approval prior to initiation. The water quality grab samples shall be obtained from Johnny Mora Creek at the locations indicated on the SP Plat approved with SP 92-S-026 entitled "Balmoral Special Permit Plat", prepared by Dewberry & Davis/Leigh A. Conrad & Assoc., Inc., dated April 27, 1992, during each of the four seasons of the year and the results provided to the Fairfax County Health Department and the Environmental Branch of OCP.

17. In order to prevent groundwater contamination, all surfaces used for chemicals, machines, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants. A written maintenance plan for the system shall be developed. The catchment system design and the maintenance plan for this system shall be approved by the Department of Environmental Management (DEM).

    In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

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

19. Wetland areas of the golf course, as designated by the Director, DEM, at the time of site plan approval or final grading plan approval, shall be preserved within the limits of clearing and grading and shall be shown on the site plan and final grading plan as wetlands preservation areas. These wetland areas may be designed as golf course hazard areas (features of the golf course designed to challenge play but not to include tees, greens or manicured fairways), and shall be maintained to preserve the wetlands. A written wetland/habitat conservation plan shall be developed and approved by the Office of Comprehensive Planning and DEM prior to site plan approval to specifically address the golf course operational management of these designated wetland areas to ensure these areas are managed to function as natural wetlands within the golf course and that they will remain as wetland preservation areas for the life of the golf course. Approval from the Army Corps of Engineers shall be obtained, if necessary, for impacts to the wetlands areas on site.

20. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual and that meet the requirements of the Chesapeake Bay Preservation Ordinance shall be provided if determined to be needed by the Director, DEM. Stormwater management ponds may be wet or dry as determined by the Director, DEM. If approved by the Director, DEM, BMP ponds located outside of the boundaries of the special permit may be used to satisfy this requirement.

21. The applicant shall retain a qualified archaeologist to perform Phase I and Phase II level archaeological studies within the areas to be cleared and graded (buildings, roads, golf course, drainfield, etc.) and to oversee any contracted or grant-funded studies that may be done as determined by the heritage resources/historic preservation staff of Fairfax County. The responsibilities of the applicant's archaeologist shall be as set forth in a written agreement between the applicant and the Fairfax County heritage resources/historic preservation staff. The Fairfax County heritage resources/historic preservation staff shall have access to the site, at their own risk, before and during clearing and grading of the property, provided that they do not interfere with or delay the applicant's construction schedule.

22. All cemeteries and burial places, including those currently known, as well as those that may be discovered during construction, which are located outside of the public open space shall be preserved in outlots as approved by the Director, DEM. The cemeteries shall be fenced with a suitable enclosure such as a stone wall or wrought iron fence as approved by DEM. Two cemeteries are known to exist within the area of the proposed golf course; one is located near the proposed maintenance facility and the other is near the 13th green as shown on the SPA Plat. If any other burial sites are encountered during development, work in that area shall cease and required procedures taken to notify Fairfax County authorities. In addition, the Director of the Office of Comprehensive Planning shall be notified and the applicant shall secure the necessary permits to remove any remains or shall protect such areas in outlots as outlined above.

23. To protect all sites identified as historically significant sites on the SPA Plat, those sites shall be enclosed with temporary construction fencing prior to and during any construction activity within 100 feet of such sites.

24. Union Mill Road shall be realigned at Compton Road to align with the proposed spine road. The construction shall be to a standard as required by VDOT and as generally shown in Exhibit A. The associated right-of-way for Compton and Union Mill Roads shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval for the golf course, if not before. If deemed necessary by VDOT, the

applicant shall provide a new driveway for the lot at Tax Map 74-2 ((1)) 9. The design and construction of the intersection and driveway shall be as approved by DEM and VDOT and shall be provided by the applicant prior to the issuance of the Non-Residential Use Permit for the golf course. Any portion of parcel 74-2((1)10A not required for the intersection realignment shall be dedicated to the Board of Supervisors.

25. The realigned Union Mill Road/Compton Road intersection shall be constructed with right and left turn deceleration lanes on all approaches. This construction will be to a standard as required by VDOT and as generally shown on Exhibit B.

26. The applicant will use best efforts to acquire any off-site right-of-way which may be needed for the realignment of Union Mill Road at its intersection with Compton Road and the spine road. In the event the applicant is unable to acquire needed right-of-way, the applicant shall request that the County acquire the right-of-way by means of its condemnation powers at applicant's expense. It is understood that the County shall be under no obligation to do so. It is further understood that the applicant's request will not be considered until it is forwarded, in writing, to the Director, Land Acquisition Division, Department of Public Works, accompanied by: (1) plats, plans and profiles showing the necessary right-of-way property; (2) an independent appraisal, by an appraiser not an employee of the County, of the value of land taken; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) funds, to be held in escrow, in an amount equal to the appraised value of the property to be acquired, including damages, and the cost of acquisition, including attorneys fees. It is also understood that in the event the property owner of the right-of-way property to be acquired is awarded more than the appraised value of the property in a condemnation suit, the amount of the award and any damages to the residue, in excess of the funds held in escrow, shall be paid to the County by the applicant within fifteen (15) days of said award. If the County elects not to use its powers of eminent domain to acquire right-of-way that is required for the intersection improvement, applicant's obligation for construction of that intersection improvement shall be deemed satisfied when the applicant posts funds in escrow for acquisition of said right-of-way as provided herein above (the amount to be determined at the time of posting by an appraiser approved by the County Executive or his designee and the Director, Land Acquisition Division, DPW) and funds for the cost of construction of said intersection improvement (the amount to be determined at the time of posting by a construction cost estimator approved by the County Executive or his designee). The above appraisal and estimate shall be at applicant's expense.

27. Ancillary easements, deemed necessary for road improvement purposes by DEM or VDOT, shall be provided for Compton Road and Union Mill Road along the full frontage of the property upon demand by the Director, DEM or VDOT.

28. Right-of-way along the site's frontage on Compton Road shall be dedicated to 45 feet from centerline. Dedication of right-of-way to 57 feet from centerline shall be provided in the area of the right turn deceleration lane. The right-of-way shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever first occurs.

29. The spine road from Compton Road southward to the golf course entrance shall be constructed within 52 feet of right-of-way to PFM public street standards for a two-lane roadway generally as shown on the SP Plat and shall be dedicated in fee simple to the Board of Supervisors prior to the issuance of any Non-Residential Use Permit.

30. Approval shall be obtained from VDOT for all entrances to the site. All streets and turn lanes shall be designed and constructed in accordance with VDOT standards.

31. Prior to the issuance of the Non-Residential Use Permit, the applicant shall initiate a request for the abandonment/vacation of existing Union Mill Road in the area of the realigned intersection of Union Mill and Compton Roads. The applicant shall provide cash or other surety acceptable to the Director, DEM sufficient to cover the cost of the scarification and revegetation of this abandoned/vacated area prior to the issuance of the Non-Residential Use Permit for the golf course.

32. Cash or other surety acceptable to the Director, DEM sufficient to cover the cost of design, equipment and installation, as determined by VDOT, of a traffic signal at the realigned intersection of Compton, Union Mill, and the spine road shall be provided by the applicant prior to the issuance of the Non-Residential Use Permit (Non-RUP) for the golf course, unless such funds previously have been provided pursuant to the proffers accepted with RZ 92-W-007. In the event this signal has been installed by others, other than the developer of RZ 92-W-007, prior to the issuance of such Non-RUP, then the cost of the design, equipment and installation of the traffic signal shall be paid to DEM prior to the issuance of the Non-RUP, for reimbursement to VDOT or the County, whichever paid for the traffic signal. The applicant shall have no further obligation to fund signalization of this intersection if the County has not requested the signal or VDOT warrants have not been met within two years after the issuance of the last Residential Use Permit approved pursuant to RZ 92-W-007 or the Non-Residential Use Permit for the golf course, whichever shall occur later, in which event Applicant's aforesaid cash or other surety shall be released to the applicant.

Page 182, February 14, 1995, (Tape 1), BALMORAL GOLF ASSOCIATES L.C., SPA 92-S-026, continued from Page 181 )

This approval, contingent on the above-noted conditions, shall not relieve 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. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 182, February 14, 1995, (Tape 1), Scheduled Item:

9:30 A.M. JEANNEMARIE GARDES, APPEAL 95-L-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the allowable density for the proposed Huntington Commons subdivision is not dependent upon the density of the adjacent Jefferson Manor subdivision, that a prior covenant had no effect on the density determination and that the recommendations of the comprehensive plan are not applicable to the proposed Huntington Commons Subdivision. Located on the W. side of Fairhaven Ave. at the southern terminus of Edgehill Ct. on approx. 8.3 ac. of land zoned R-8 and R-20. Lee District. Tax Map 83-3 ((2)) (7) A, B, B1 and C.

Vice Chairman Ribble said it was his understanding that the notices were not in order. William E. Shoup, Deputy Zoning Administrator, advised that the notices, in fact, were not in order and recommended a hearing date on the morning of March 28, 1995, at 9:30 a.m. Mr. Dively so moved. Mr. Pammel seconded the motion which carried unanimously by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 182, February 14, 1995, (Tape 1), Action Item:

Approval of Resolutions from February 9, 1995 Hearing

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 182, February 14, 1995, (Tape 1), Action Item:

Approval of Minutes from November 29, December 20, 1994 and January 3, 1995

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 182, February 14, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
David L. Ricketts Appeal
Clerk suggests morning of May 2, 1995

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 182, February 14, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Lewis C. Myers Appeal
Clerk suggests morning of April 4, 1995

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 183, February 14, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Holland N. Edmunds Appeal
Clerk suggests morning of May 2, 1995

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 183, February 14, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Jeannemarie Gardes Appeal
Clerk suggests morning of March 28, 1995

William E. Shoup, Deputy Zoning Administrator, clarified for the Board that this was a second appeal, not the one previously scheduled. He said his memorandum of February 8, 1995 advised that some of the issues were not timely and that the appellant was present to discuss that issue; however, he said he had just been advised by Robert Lawrence, of the firm of Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, who represents the developer in these appeals, that he would have a problem appearing on March 28 and wished to address the Board regarding that issue. Bob Lawrence requested that the Board consider another date for the hearing of the appeals because he had vacation plans, made a year ago. He said any other time would be acceptable to him. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the next available date would be the morning of April 4, 1995, which is the following week.

Another speaker, Tu Chan Huan, 2910 School Street, Alexandria, came forward and said she would like to have the appeals heard as early as possible because the density and other issues affected her and her neighbor directly and, with the merging of the management, they needed to be heard before the buildings are erected with the new density because they oppose it. Vice Chairman Ribble informed Ms. Huan that she would be able to address that issue on April 4 and she said she would like to have the hearing in March, before Mr. Lawrence went on vacation, if possible.

Ms. Kelsey said that any date before March 28 would be extremely difficult because of advertising deadlines and staff preparation. Vice Chairman Ribble asked Ms. Huan if she understood that and she said she did and that she was a Federal Government employee, too, and something that affected a whole neighborhood was being rescheduled because of someone's vacation. She said she believed the work ethic should be considered and the date should be changed to the original date.

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

Mr. Dively moved to reschedule Gardes appeal 95-L-001, considered earlier in the hearing, to April 4, 1995 at 9:00 a.m., along with this second appeal. At that time the Board will make a decision on whether the second appeal is complete and timely filed. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

Mr. Hammack said that the lady who spoke against this deferral should note that the first Gardes appeal, scheduled to be heard that day, could not be heard because the notices were not in order as required by the statute.

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Page 183, February 14, 1995, (Tape 1), Action Item:

Request for Additional Time
Antioch Korean Baptist Church, SP 90-M-048
New Expiration Date: February 20, 1997

M. Hammack so moved. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 183, February 14, 1995, (Tape 1), Action Item:

Request for Additional Time
St. Aidan's Episcopal Church, SP 92-V-003
New Expiration Date: July 8, 1995

Vice Chairman Ribble said he had difficulty granting this. Mr. Hammack said he had heard that the applicant was working with the County in an attempt to resolve issues involving the property, as well as consulting with Supervisor Hyland's office. Vice Chairman Ribble said he knew there were existing difficulties and it was believed that the applicant would plant some trees and some other things, none of which had been done. Vice Chairman Ribble suggested that the Board discuss this item at the next meeting after looking into some of the issues.

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Page 184, February 14, 1995, (Tape 1), Action Item:

Request for Change of Permittee
SPA 86-S-072
From: DDG, Inc.
To: Burke Health Club, Inc.

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 184, February 14, 1995, (Tape 1), Action Item:

Request to Reschedule
Ourisman Dodge, Inc. Appeal
to June 6, 1995

Mr. Pammel said that the memo from William E. Shoup, Deputy Zoning Administrator, indicated that the appellant was making an effort to correct the violation and the request for rescheduling was being made to allow the appellant an opportunity to continue to pursue resolution of the violation; therefore, he said it would be desirable to reschedule this appeal to June 6, 1995, and he so moved. Mr. Hammack asked why one appeal was being scheduled for July 11 (the next item on the agenda) and one was being rescheduled for June 6. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that Mr. Shoup had left the room and she could not answer that question. Mr. Pammel said he believed the appeal for which a July 11 hearing date had been recommended was a new appeal; whereas, this appeal had been pending and, since there is a existing violation, an effort was being made to move the appeal as quickly as possible to resolve the violation.

The Board concurred with a 5-0 vote. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 184, February 14, 1995, (Tape 1), Action Item:

Request to Reschedule
John E. and Kathryn M. Clark Appeal
to July 11, 1995

Mr. Kelley so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 184, February 14, 1995, (Tape 1), Action Item:

Out-of-Turn Hearing Request
for Application under the name of Cruz

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the Board was being handed a memo from her concerning this rather unique application. She requested that, instead of setting the hearing for a specific date, they allow staff to set a hearing date for as soon as possible after the application was put in order. Staff was working with the Office of Assessments and the Community Manager to try to resolve some of the problems.

Mr. Kelley moved to allow the request and permit staff to set the hearing for the earliest convenient date. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 184, February 14, 1995, (Tape 1), Action Item:

Condition of Approval
SP 84-M-009

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that one of the conditions of approval of the Mosque was that an annual review would be conducted. She said that consideration of the Board's schedule prompted staff to recommend the May 16, 1995 night meeting for that review. She said staff had notified the applicant, who had no objection. Ms. Kelsey said that would be the only item on the agenda for that night. Mr. Pammel noted that the memo stated that parking was still an issue. Vice Chairman Ribble said he experienced a dangerous situation in that area the previous week, crossing Route 7. The Board concurred with a vote of 5-0. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 185, February 14, 1995, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John F. Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: March 28, 1995

APPROVED: April 4, 1995

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 21, 1995. The following Board Members were present: Vice Chairman John Ribble; 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 8:00 p.m. and Mr. Hammack gave the invocation. Vice Chairman Ribble asked a special blessing for Chairman DiGiulian who was scheduled to undergo surgery the next day and wished him well. He then called for the first scheduled case.

Vice Chairman Ribble called for Board matters and Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to the resignation letter from Mary Thonen. Vice Chairman Ribble said Mrs. Thonen would be missed a great deal.

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Page 187, February 21, 1995, (Tape 1), Scheduled case of:

8:00 P.M. RICHARD & HELEN KEARNEY, VC 94-D-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1 having lot width of 120 ft. Located at 419 Walker Rd. on approx. 4.83 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 39.

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. Runyon, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 4.83 acre parcel is located on the east side of Walker Drive, is in the R-E District, and is developed in a single family detached dwelling. The subject property is surrounded on three sides by single family detached dwellings and on the east by the River Bend Country Club, all of which are in the R-E District. The single family dwellings to the west are developed under the cluster provisions of the Zoning Ordinance.

Mr. Heine said the applicant was requesting a variance to the minimum lot width requirement in order to subdivide existing Lot 39 into 2 lots with proposed Lots 1 and 2 having lot widths of 120.0 feet and 212.65 feet, respectively. The R-E District requires a minimum lot width of 200 feet; therefore, a variance of 80 feet was requested for proposed Lot 1 from the minimum lot width requirement. He said it was staff's determination that the proposed application did not meet several of the standards for variances as set forth in Sect. 18-404, in particular Standards 2, 4, 6, and 9. There are no physical conditions on the property that precludes reasonable use of the property since the property is developed in a single family detached dwelling and can continue to be used as a residential lot. Denial of the variance would not restrict all reasonable use or suggest a hardship approaching confiscation. In addition, granting the variance request would establish a precedent encouraging more subdivision variances in the neighborhood.

Charley Runyon, Agent, 10650 Main Street, Fairfax, Virginia, said based on the narrowness and shape of the lot he believed the variance met the requirements. He believed it would have been difficult for any application the BZA has considered over the years to meet the requirements enumerated by staff. Mr. Runyon said the proposed house would not be located in an area of problem soils, the request would not be out of character with the neighborhood or the Comprehensive Plan, and there are no objections from the neighbors.

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

Mr. Hammack made a motion to grant VC 94-D-153 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 31, 1995.

Following the vote, Mr. Hammack commented that he believed staff's criticism did have some merit with respect to the location of the house and noted that he hoped the applicant would consider that when the final siting was done.

Mr. Runyon agreed. He asked that Condition Number 4 be revised to allow some flexibility with regard to the amount of dedication since the Great Falls Citizens Association has requested that the dedication on Walker Road be 60 feet in order to maintain the rural nature of the area. The maker and seconder of the motion agreed to the change.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-153 by RICHARD AND HELEN KEARNEY, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 1 having lot width of 120 feet, on property located at 419 Walker Road, Tax Map Reference 7-2((1))39, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 21, 1995; 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 4.83 acres.
4. The applicants have satisfied the nine required standards for the granting of a variance.
5. It is somewhat of a close case since a substantial variance is required for one of the lots although it leaves a residue that exceeds the minimum lot size in the district as well as does the other lot, which is the overriding factor.
6. Existing Lot 39 is not exceedingly narrow, but it is narrow and deep given the 4.83 acres.
7. It does satisfy the nine required standards and the granting of the variance will not change the character of the neighborhood.
8. There are some comparable size lots in the district and there are some lots that are much smaller, with most being allowed in 1978 or 1979, one in 1981, and one in 1982.

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into two (2) lots as shown on the plat prepared by Runyon, Dudley, Associates, Inc. and dated November 8, 1994.

2. Prior to subdivision review, a landscape plan shall be approved by the Urban Forestry Branch, DEM, which incorporates tree preservation to the maximum extent feasible and restoration as determined by the Urban Forestry Branch and which meets the tree cover requirement of the Zoning Ordinance. Special consideration should be given to preserving the trees surrounding the dwelling on Lot 2

3. At subdivision review, a geotechnical engineering study shall be provided, if deemed necessary for review and approval by DEM, and shall be implemented as required by DEM.

4. Right-of-way to 45 or 60 feet, as required by the Department of Environmental Management (DEM), from the centerline of Walker Road to allow for the future upgrading of the road to current standards shall be dedicated to the Board of

Supervisors in fee simple at subdivision review. A 15 foot wide ancillary easement parallel to the right-of-way dedication shall also be provided.

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 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 5-0. 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, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 189, February 21, 1995, (Tape 1), Scheduled case of:

8:00 P.M. ST. GEORGE'S UNITED METHODIST CHURCH, SPA 79-S-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-S-049 for church and related facilities to permit building addition. Located at 4910 Ox Rd. on approx. 5.84 ac. of land zoned R-1 and WS. Springfield District. Tax Map 68-1 ((1)) 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. The Building Chairman for the Church, Mr. Kraucunas, reaffirmed the affidavit dated February 14, 1995 which reflected a minor change in the Church's Board of Trustees.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by David Hunter. She said The 5.84 acre subject property is located on the west side of Ox Road south of its intersection with Braddock Road. The site is zoned R-1, is located within the Water Supply Protection Overlay District, and is developed with The Saint George's United Methodist Church. There are 350 seats in the existing sanctuary and the site contains 106 parking spaces. Access to the site is by way of an existing driveway from Ox Road.

The applicant was requesting approval of an amendment to provide a 2-story building addition which will house classrooms, totalling 10,310 square feet. There will be no increase in seating capacity or in the number or parking spaces and the proposed FAR will be 0.09. The applicant proposed demolishing the existing deck at the rear of the church structure in order to construct the 2-story addition. The applicant also proposed removing and rebuilding portions of the existing parking lot, providing curb and gutter and storm sewer and providing a 7,400 cubic foot Stormwater Management/BMP Dry Pond to the rear of the existing parking lot. The proposed pond has been sized to collect stormwater runoff from the site as well as runoff from the adjacent North Hills subdivision to the north. Notwithstanding, a significant number of trees will be removed in order to construct the dry pond. Pursuant to Proposed Development Condition Number 9, staff recommended a reduction in the size of the pond in order to maximize tree preservation, if possible.

In addition, Proposed Development Condition Number 12 stated that interparcel access within the existing ingress/egress easement along Ox Road shall be provided to Lot 13 to the south.

Ms. Kelsey said staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, it recommended approval subject to the Development Conditions contained in the staff report. Staff further recommended approval of a modification of the transitional screening requirement and a waiver of the barrier requirement as noted in the Proposed Development Conditions. She noted the applicant has submitted a revised affidavit.

Paul Kraucunas, 5331 Black Oak Drive, Fairfax, Virginia, thanked David Hunter for his assistance during the application process and thanked Ms. Kelsey for filling in for Mr. Hunter in his absence. He noted a minor design change to the interior of the church by stating that the existing kitchen will be relocated to a classroom and the number of classrooms will be reduced from 12 to 11. Mr. Krausunas said there are no objections from the neighbors and added that the church has tried to make the application fit in with the neighborhood.

The church's engineer, Robert Mereness, with Cad-Con Consulting, Inc., 8133 Leesburg Pike, Vienna, Virginia, asked that the last sentence in Condition 9 be deleted which required the "construction of an embankment only type SWM/BMP". With respect to Condition 12, Mr. Mereness said in 1981 the church entered into an agreement with the Department of Environmental Management which states the church will make road improvements at such time as the parcel to the north or south is developed.

The pastor of the church, Bud Davis, 5806 White Oak Court, Burke, Virginia, said he has served as the church's pastor for the past 5 years and outlined services the church has provided to the community since 1981.

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

Mr. Pammel made a motion to grant SPA 79-S-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report Dated February 14, 1995 with the deletion of Condition 12 and the deletion of the last sentence of Condition 9.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 79-S-049 by ST. GEORGE'S UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 79-S-049 for church and related facilities to permit building addition, on property located at 4910 Ox Road, Tax Map Reference 68-1((1))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 February 21, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 5.84 acres.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Cad-Con Consulting, Inc. dated October 21, 1994, revised through November 9, 1994 consisting of 3 pages 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. The location for the "future building" as noted on the plat is not approved as part of this application.

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

5. The maximum seating capacity of the sanctuary shall be limited to 350 seats.

6. One hundred and six (106) parking spaces shall be provided in the locations shown on the Special Permit Plat. All parking shall be on-site.

7. The existing vegetation shall satisfy the transitional screening requirement along the northern and western property lines. The existing, mature white pines shall satisfy the transitional screening requirement along the southern property line. A modification is permitted in order to allow parking spaces and the travel aisle within the transitional screening yard along the southern property line.

   The barrier requirement shall be waived.

8. Interior parking lot landscaping shall be maintained in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.

9. Stormwater Best Management Practices (BMPs) shall be provided on site as shown on the special permit plat to the satisfaction of the Department of Environmental Management (DEM) in the form of a dry pond in the area depicted on the submitted

plat and in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

10. 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 the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized silteation fencing. If determined by DEM, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM.

11. 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, DEM.

12. Any existing or proposed lighting of the parking lot 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.

13. Signs shall be permitted in accordance with Article 12, signs.

These conditions incorporate and supersede all previous conditions.

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

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. 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, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 191, February 21, 1995, (Tape 1), Scheduled case of:

8:00 P.M. LUTHER F. & SHARON A. MANNIS, SP 94-L-057 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 5610 Cornish Way on approx. 8,446 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 100-2 ((2)) 352A. (DEF. FROM 1/17 AT PLANNING COMMISSION'S REQUEST)

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

Susan Langdon, Staff Coordinator, presented the staff report. She said the application was originally scheduled for public hearing on January 17, 1995 and the Planning Commission asked the BZA to defer the hearing to allow them an opportunity to administratively review the application. Ms. Langdon said the Planning Commission's recommendation was contained in the verbatim report, which was included in the BZA's package.

Ms. Langdon said the 8,446 square foot site is located on Cornish Way, southeast of the intersection of Telegraph Road and Hayfield Road, in the Hayfield Farms Subdivision. The subject property and surrounding lots are zoned R-3, Cluster, and developed with single family detached dwellings.

The applicants were requesting approval of a special permit for a home child care facility with a maximum daily enrollment of ten children. The proposed hours of operation are 6:00 a.m. to 6:00 p.m., Monday through Friday, with two employees in addition to the applicant. The rear yard is enclosed with a four foot high chain link fence creating a 3,200 square foot play area. A one-car driveway is provided in the front of the structure.

Ms. Langdon said staff concluded that the proposed Home Child Care Facility, on the limited scale as requested and with the implementation of the Proposed Development Conditions, 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 the application. Ms. Langdon said staff had received nine letters in support of the request and seventy-six letters in opposition were submitted to the Clerk just prior to the public hearing.

Mr. Kelley questioned staff's recommendation with respect to on street parking and asked if the same recommendation would be made if the request were for a home professional office. Jane Kelsey, Chief, Special Permit and Variance Branch, said the language relating to home professional offices and home child care facilities differs with respect to the parking requirements.

In response to a question from Vice Chairman Ribble with respect to the Planning Commission's recommendation, Ms. Langdon said the Planning Commission had recommended that the BZA deny the application.

Luther Mannis, 5610 Cornish Way, Alexandria, Virginia, said his wife has been performing home day care for over 4 years and has a State license which allows her to care for 12 children. He said there is a fenced back year and weather permitting the toddlers are allowed outside for one hour per day. There is a one car driveway set aside for the parents dropping off and picking up the children, in addition to two roadside parking spaces. Mr. Mannis said the contracts signed by the parents at the time of registration stipulated a staggered time for dropping off and picking up their children. He added that this stipulation limits the number of parents to no more than two or three at a time. With respect to the speed of the traffic, Mr. Mannis said he had not known there was a problem in the neighborhood since none of the neighbors had approached either he or his wife. When they did become aware of the neighbors' concerns, he and his wife talked to each of the parents and asked them to obey the speed limit. Mr. Mannis said based on his personal observations the parents using the day care center drove no faster than the neighborhood traffic, and in some instances the parents using the center drove much slower. He said he did not believe the children generated enough noise to negatively impact upon the neighbors. Mr. Mannis pointed out that the BZA has approved other day care centers on lots located on cul-de-sacs and asked that the BZA favorably consider this request.

Vice Chairman Ribble called for speakers to the application.

Judy Guiliano, 5903 Farland Court, Alexandria, Virginia, said she lives in the community and that her child attends the Mannis' day care center. She said she could not imagine the children receiving better care and that she had never experienced a parking, noise, or traffic problem. Ms. Guiliano pointed out that the children are constantly supervised.

The following came forward to speak in opposition to the request: Bob McLaren, 7810 Kincardine Court, Alexandria, Virginia, spoke on behalf of the Hayfield Citizens Association; Shirley Courtney, 7809 Worthing Court, Alexandria, Virginia; Vicky Connelly, 5606 Cornish Way, Alexandria, Virginia; Karen Rogers, 5609 Cornish Way, Alexandria, Virginia; and, Lenora Funkhouser, 5604 Cornish Way, Alexandria, Virginia.

The citizens expressed concern with the traffic and noise impact on the surrounding neighbors and the adverse impact the use has on the residential character of the neighborhood. One speaker also expressed concern with the applicants also operating a day care center in a second house they purchased in the neighborhood.

In rebuttal, Mr. Mannis said the issue of his purchasing another house in the neighborhood was a personal matter and had no bearing on the application before the BZA. He again expressed concern with the fact that the parents had not approached either he or his wife with the issues brought out at the public hearing.

Mr. Pammel said the BZA had received a report from the Virginia Department of Social Services commending the applicants on the quality of day care they provide and had noted that the center exceeds the averages. Mr. Mannis thanked Mr. Pammel.

Mr. Hammack asked if it were true that the applicants could continue to operate a home child care center with up to 7 children if the application were denied. Ms. Langdon said they could continue to operate the center with up to 7 children at the center at one time.

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

Mr. Kelley made a motion to deny SP 94-L-057 for the reasons noted in the Resolution.

Mr. Hammack added that 10 children on a lot this size is too much and that he believed there is a detrimental impact on the neighbors from the traffic.

Page 193, February 21, 1995, (Tape 1), LUTHER F. & SHARON A. MANNIS, SP 94-L-057, continued from Page 192)

Mr. Dively said he believed it was a close case, but that he did find it particularly impressive that the Planning Commission was very lopsided in its vote with the vote being 10-1.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-L-057 by LUTHER F. AND SHARON A. MANNIS, under Section 3-303 of the Zoning Ordinance to permit a home child care facility, on property located at 5610 Cornish Way, Tax Map Reference 100-2((2))352A, 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 21, 1995; 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 8,446 square feet.
4. The applicants have not presented testimony indicating compliance with the General Standards.
5. Although there is only a difference of 3 children, the lot is less than a quarter acre and the applicant mentioned that each parent may spend 5 to 10 minutes on each end of the trip, which adds up to 3 hours of time with people parked in and around the applicants' house.
6. The lot is too small for 10 children.
7. The issue before the BZA is not the quality of care that the children receive noting the letter from Social Services stating that the applicants provide excellent care.
8. It is also not an issue that the applicants might be connected to another facility.

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. Hammack seconded the motion which carried by a vote of 5-0. 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, 1995.

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Page 193, February 21, 1995, (Tape 1), Scheduled case of:

Approval of February 14, 1995 Resolutions

Mr. Hammack moved to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 193, February 21, 1995, (Tape 1), Scheduled case of:

Request approval of additional time for
St. Aidan's Episcopal Church, SP 90-M-048

Vice Chairman Ribble said he had asked that the BZA forego action at the February 14th public hearing to allow him an opportunity to discuss the request with the church's building committee. He said he would now support the request since the church had assured him they would make the required plantings. Mr. Kelley made a motion to grant the applicant's request making the new expiration date July 8, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 194, February 21, 1995, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 9:15 p.m.

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

John H. Ribble III
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: April 4, 1995

APPROVED: April 11, 1995

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 28, 1995. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:05 a.m. and Mr. Pammel gave the invocation. Vice Chairman Ribble stated that Chairman DiGiulian was home and doing well after having surgery.

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Page 195, February 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EILEEN T. & WILLIAM J. HAYDEN, VC 94-D-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16.

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

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is 24,266 square feet in size and is located on the south side of Weant Drive east of River Bend Road. Surrounding lots in the Weant subdivision are also zoned R-E and are developed with single family detached dwellings.

Mr. Hunter stated that the applicants were requesting a variance to construct a two-car garage addition 6.3 feet from the eastern side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicants were requesting a 13.7 foot variance.

The applicant, Eileen Hayden, 9225 Weant Drive, Great Falls, Virginia, addressed the BZA. She stated she believed the application met the necessary standards, the addition cannot be placed elsewhere on the lot, and there have been three other variances granted for garages in the area. Ms. Hayden said the proposed development conditions were acceptable.

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

Winifred Henshel, 9221 Weant Drive, Great Falls, Virginia, addressed the BZA and said she bought her property in 1966. She expressed her belief that no hardship exists, the addition would have a detrimental impact on her property, and would be a fire hazard. Addressing the three other variances granted on Weant Drive, she stated the neighbors had supported the variances, the lots had steep topographic conditions, and the construction did not have a detrimental impact on air flow or visibility on the adjacent properties. Ms. Henshel noted that two of the variances allowed the enclosure of existing carports, and the garage addition approved by the third variance was never constructed and the variance has expired. In conclusion, she said the placement of a garage 6.0 feet from the property line would adversely effect the value of her property, would set a precedent, and would change the character of the neighborhood. She asked the BZA to deny the request.

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

Ms. Hayden said they had a right to request the variance to build the garage and expressed her belief that the addition would increase property values in the area.

Mr. Pammel made a motion to grant-in-part VC 94-D-152 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 21, 1995.

Mr. Kelley seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Dively said he would have supported a motion to grant the request, but would support the motion to grant an addition 12.0 feet from the side lot line noting that it was a minor encroachment on the long and narrow property.

Mr. Pammel explained that the motion would be consistent with other variances granted in the area.

Vice Chairman stated that the applicants would have to submit a new plat to the staff within thirty days.

In reply to Mrs. Hayden's question as to whether the case would have to be heard by the Planning Commission or returned to the BZA, Vice Chairman Ribble explained that the application was approved in-part and the plat would have to be redrawn to reflect the 12.0 foot setback. Mr. Pammel explained that the applicant would not have to appear before the BZA, but would merely have to submit a revised plat. He further explained that once the plat was received, the BZA would order the variance approved in-part.

On April 27, 1995, the Board of Zoning Appeals upon motion by Mr. Dively, seconded by Mr. Pammel, this application was brought up for reconsideration, and the final action on this variance. Mr. Pammel made a motion to deny the application since the applicant had not

provided revised plats which showed the amount of required yard which the BZA had approved and for reasons set forth in the motion. (Refer to April 27, 1995 Minutes)

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-D-152 by WILLIAM HAYDEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.3 feet from side lot line, on property located at 9225 Weant Drive, Tax Map Reference 8-4((3))16, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 1995; 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 24,266 square feet.

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 approval-in-part of the subject application is **DENIED.**

Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGuilian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995.

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Page 197, February 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THANH DUC PHAM, VC 94-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7310 Valley Crest Blvd. on approx. 15,422 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((21)) 14. (DEF. FROM 1/31 TO ALLOW STAFF AN OPPORTUNITY TO INSPECT PROPERTY.)

Vice Chairman Ribble noted that at the January 31, 1995 hearing the Board of Zoning Appeals (BZA) deferred the case to allow staff the opportunity to inspect the property.

David Hunter, Staff Coordinator, said staff has learned that two Notices of Violation were issued to the applicant, the first in May and the second in June of 1994. The Notices of Violation indicated that miscellaneous items including scrap wood were being stored in the front yard on the subject property, and also cited the presence of the existing shed in the front yard along Crest Drive.

Mr. Hunter explained that on June 10, 1994, the applicant asked for additional time to file the variance, but did not file for the variance until September 21, 1994. He said on February 6, 1995, the Zoning Enforcement Branch inspected the property and found that the storage shed still remains in the front yard. The outside storage violation was cleared.

After a brief discussion, it was the consensus of the BZA to defer the case. The BZA instructed staff to investigate and report on the existing condition of the property, to submit new photographs of the property, and to request both the Police and the Health Departments inspect the property.

Mr. Kelley made a motion to defer VC 94-M-128 to April 4, 1995 at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 197, February 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH R. CONRADI, SP 94-Y-070 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 14.0 ft. from rear lot line. Located at 4622 Granite Rock Ct. on approx. 11,705 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 599.

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. Conradi replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the 11,705 square foot property was located in the Poplar Tree Estates, zoned PDH-2 as are the surrounding lots, and all the properties are developed with single family detached dwellings.

Ms. Greenlief said the applicant was requesting a special permit for an error in building location to allow an addition consisting of a 23 inch high deck-like structure with 8.0 foot high board-on-board walls to remain 14.0 feet from the rear lot line. The Zoning Ordinance requires a minimum 25.0 foot rear yard, therefore, a special permit of 11.0 feet was requested.

Ms. Greenlief explained that a building permit for a ground level deck without walls had been obtained by the previous owner, and on April 28, 1994 a Notice of Violation was issued to the current owner.

The applicant, Joseph R. Conradi, 4622 Granite Rock Court, Chantilly, Virginia, addressed the BZA. He stated that the deck existed when he purchased the house and he only became aware of the violation when a neighbor was not allowed to build a similar deck. Mr. Conradi noted that he had the neighbors support, the deck provided privacy for his family, and asked the BZA to grant the request.

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

In response to Mr. Dively's question as to whether the deck could have been built by-right during the original construction, Ms. Greenlief said yes.

Mr. Kelley made a motion to grant SP 94-Y-070 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 21, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-070 by JOSEPH R. CONRADI, 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 14.0 feet from rear lot line, on property located at 4622 Granite Rock Court, Tax Map Reference 55-1((9))599, 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 28, 1995; and

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

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 requirement for the granting of the special permit.

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 (deck like structure with eight foot high board on board and lattice walls) 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 3, 1986, revised through July 18, 1994, submitted with this application, as qualified by these development conditions.

3. A building permit shall be obtained which accurately reflects the existence of walls on the deck.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0 with 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 March 8, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 199, February 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RUTH L. LOWE, VC 94-M-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.9 ft. from side lot line. Located at 6222 Lakeview Dr. on approx. 14,200 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 71. (Concurrent with SP 94-M-067).

9:00 A.M. RUTH L. LOWE, SP 94-M-067 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.8 ft. from side lot line. Located at 6222 Lakeview Dr. on approx. 14,200 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 71. (Concurrent with VC 94-M-155).

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, Ruth Lowe, 6222 Lakeview Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, stated that the 14,200 square foot property was located in the Lake Barcroft Subdivision, subject property and lots to the south, east, and west are zoned R-2 with single family detached dwellings. To the north is Lake Barcroft.

Ms. Langdon said the applicant was requesting a special permit to allow a 780 square foot one bedroom accessory dwelling unit within a single family detached dwelling.

Ms. Langdon stated the applicant was also requesting a variance to construct an addition 5.9 feet from the west side lot line. The one bedroom and bath addition would be used to expand the accessory dwelling unit bringing the total square footage to 1,032 square feet. She said a total of four parking spaces would be provided.

Continuing, Ms. Langdon stated the applicant was further requesting a special permit for a reduction to the minimum yard requirement based on an error in building location to permit a dwelling to remain 8.8 feet from the east side lot line. The Zoning Ordinance requires a minimum 15.0 foot side yard; therefore, the applicant was requesting a modification of 7.2 feet.

Ms. Langdon said staff believed an accessory dwelling unit within the existing structure would create few visual impacts to the surrounding neighborhood and would be consistent with the Comprehensive Plan. However, the applicant's request to construct an addition would result in new construction within 5.9 feet of the side lot line and would not be for use by the occupant of the principle dwelling unit. Therefore, staff recommended approval in-part subject to the proposed development conditions contained in the staff report dated February 21, 1995.

The applicant's agent, Mark J. Cross, P.O. Box 280, Clifton, Virginia, addressed the BZA. He explained during the process of waterproofing the existing structure, excavation had been necessary. The applicant would like to take advantage of the excavation and construct the addition for safety, health, and security reasons. Mr. Cross said there would be no change in the buildings footprint, its perimeter, roof line, heights, or exterior.

Vice Chairman Ribble said the written statement of justification addressed the topography and indicated there would no change in grade or tree cover. Mr. Cross said there would be no increase in the footprint or the roof line, no change to existing grading or water flow, no increase in the impervious surface, and no changes in the conditions of the existing site.

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

Mr. Dively made a motion to grant VC 94-M-155 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 21, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-155 by RUTH L. LOWE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.9 feet from side lot line, on property located at 6222 Lakeview Drive, Tax Map Reference 61-3((14))71, 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 February 28, 1995; and

WHEREAS, 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 14,200 square feet.
4. The pie shaped narrow lot tapers towards the front.
5. The excavation has created a steep topographic condition.
5. There would be no increase in the footprint of the existing construction.
6. The application meets the necessary standards for 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 of the specific addition shown on the plat prepared by L. Carl Gardner, Jr., Land Surveyor, dated September 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 addition shall be architecturally compatible with the existing dwelling.

4. One row of evergreen trees, a minimum of six (6) feet in height at the time of planting, shall be planted along the western lot line adjacent to the proposed addition.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0 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 March 8, 1995. 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 SP 94-M-067 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 21, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-M-067 by RUTH L. LOWE, 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 permit dwelling to remain 8.8 feet from side lot line, on property located at 6222 Lakeview Drive, Tax Map Reference 61-3((14))71, 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 February 28, 1995; and

WHEREAS, 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 14,200 square feet.
4. The application meets the necessary standards for the granting of the 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, 8-914, and 8-918 of the Zoning Ordinance.

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

1. This approval for an accessory dwelling unit is granted to the applicant only and is not transferable without further action of this Board, and is for the location and 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 L. Carl Gardner, Jr., Land Surveyor, dated September 28, 1994, and approved with this application, as qualified by these development conditions.

3. A copy of this Special 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, the special permit for an accessory dwelling unit 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 4-0 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 March 8, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 202, February 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. LAURA HARRINGTON, JOSEPH C. & CAROLYN E. LYNCH, APPEAL 94-P-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the provisions of Par. 3 of Sect. 9-610 of the Zoning Ordinance do not preclude consideration and approval of other waivers or modifications in conjunction with a request to waive the minimum district size requirements. Located at 8700 Willowmere Dr. on approx. 2.46 ac. of land zoned R-2. Providence District. Tax Map 49-1 ((12)) 1. (DEF. FROM 1/31).

Vice Chairman Ribble said staff had indicated that the notices were not in order. An unidentified representative of the appellants stated that there was some disagreement regarding the notices. And, rather than argue the point, he would agree to a deferral.

In response to Mr. Kelley's question regarding the January 31, 1995 deferral, William E. Shoup, Deputy Zoning Administrator, stated that the appellants had requested deferral because they needed more time to prepare the case. He said the notices had not been an issue.

Mr. Pammel made a motion to defer A 94-P-037 to April 25, 1995 at 9:30 a.m. Mr. Dively and Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman DiGiulian was absent from the meeting.

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The Board of Zoning Appeals recessed at 9:30 a.m. and reconvened at 9:45 a.m.

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Page 202, February 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 94-Y-064 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 14040 Braddock Rd. on approx. 6.06 ac. of land zoned R-1, WS, HC and SC. Sully District. Tax Map 54-4 ((1)) 3A. (IN ASSOCIATION WITH PCA 86-S-097-2).

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. Robson replied that it was. He explained the request was unusual because Fairfax County owned the property and the church was the lessee.

Susan Langdon, Staff Coordinator, presented the staff report. She said the subject property is located north of Old Braddock Road between Route 28 and Interstate 66. The site is zoned R-1, WS, HC and SC, and is developed with a 14,885 square foot church building and a 91 space paved and gravel parking lot. Presently there are two existing entrances to the site from Old Braddock Road. To the north and east of the subject property is land zoned R-1 which contains right of way for Interstate 66. To the south and west is land zoned PDH 20 and PDH 30 and planned for multifamily residential use.

Ms. Langdon stated that in July, 1987, the subject property was rezoned by, the previous owner, the Centreville United Methodist Church so that approximately 90% of the total acreage of the site could be dedicated to Fairfax County for future road improvements for the Interstate 66/Route 28 interchange. A Proffered Condition Amendment was subsequently approved in 1988 to allow a portion of the parcel to become part of the Trinity Center, a mixed use development on 101 acres adjacent to the church. The Board of Supervisors is the current owner of the 6.06 acre property and has been leasing the existing church building to Centreville Presbyterian Church. As outlined by proffers approved in conjunction with the adjacent rezoning of the Trinity Center, the developer will close Braddock Road from Route 28 to the church. In addition, a sound barrier will be constructed which will effectively eliminate access to the church property.

Continuing, Ms. Langdon explained that the Board of Supervisors approved Proffered Condition Amendment yesterday, February 27, 1995, to allow Centreville Presbyterian Church to use the

subject property under a temporary lease agreement until such time as the property is needed for right-of-way for the Route 28/66 interchange. The Board of Supervisors also approved a modification of transitional screening, a waiver of barrier requirements, a modification of interior and peripheral parking lot landscaping, and a waiver of the service drive requirement along Route 28.

Ms. Langdon said the applicant was requesting approval of a special permit for a church and related facilities to allow the church to operate on the site and to relocate the entrance from Old Braddock Road to Route 28. The entrance from Route 28 will be located opposite an existing intersection of Route 28 and an entrance ramp to Interstate 66. The church proposes to relocate and supplement the existing signalization of the intersection to insure safe operation of the thoroughfare. The parking lot currently contains 91 parking spaces and a portion of the parking area is proposed to be relocated to accommodate the new entrance. The 91 spaces would continue to be provided with 58 spaces asphalt and 33 spaces gravel. No construction other than the entrance and parking spaces was proposed.

Ms. Langdon stated that staff believed the application would be in harmony with the Comprehensive Plan and the Zoning Ordinance. Therefore, staff recommended approval subject to the development conditions dated February 24, 1995.

The applicant's agent, William Robson, 4500 Daly Drive, Suite 400, Chantilly, Virginia, addressed the BZA. He stated the applicant would like to continue to serve the community and believed there were no outstanding issues.

In response to Mr. Pammel's question regarding the proposed development conditions, he said the applicant agreed with the conditions.

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

Mr. Pammel made a motion to grant SP 94-Y-064 for the reasons reflected in the Resolution subject to the development conditions dated February 24, 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-064 by CENTREVILLE PRESBYTERIAN CHURCH, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 14040 Braddock Road, Tax Map Reference 54-4((1))3A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 28, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1, WS, HC, and SC.
3. The area of the lot is 6.06 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, 7-500, 7-600, 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 only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by William M. Robson, Robson Group Architects, dated July 1994, revised through September 16, 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 maximum number of seats in the main area of worship shall be 240. Ninety-one parking spaces shall be provided within the parking areas shown on the special permit plat. All parking shall be on site.

6. Existing vegetation along the western and southern property lines shall be preserved and shall satisfy the requirements of Transitional Screening 1. The barrier requirement shall be waived along the western and southern lot lines.

7. Interior and peripheral parking lot landscaping requirements shall be modified as shown on the plat approved with this application.

8. Stormwater Management (SWM)/Best Management Practices (BMPs) shall be provided to the satisfaction of the Department of Environmental Management (DEM).

9. The geometrics of the entrance to the site from Route 28 shall be subject to the review and approval of the Virginia Department of Transportation (VDOT). The applicant shall construct a right turn lane and shall relocate the signal pole to the satisfaction of VDOT.

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

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

Mr. Dively and Mr. Kelley seconded the motion which carried by a vote of 4-0 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 March 8, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 204, February 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. EVELYN REID SYPHAX, VC 94-M-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of five lots into nine lots and one outlot, proposed Lots 7 and 8 having lot widths of 10.0 ft. Located at 3432, 3433, 3436, 3437 Bannerwood Dr. on approx. 4.76 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 22; 59-2 ((2)) 3, 4A, 4B, 5. (DEF. FROM 1/17).

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

Don Heine, Staff Coordinator, presented the staff report. He said the 4.7 acre property is in the R-2 District, contains five existing lots and is located on the south end of Bannerwood Drive. The property is in the R-2 District and is undeveloped except for a single family detached dwelling which is located on Lot 3. The subject property is surrounded on three sides by single family detached dwellings and on the south by Camelot Elementary School. The surrounding properties are in the R-2 District except for those lots adjoining the northeastern lot line which are in the R-3 District.

Continuing, Mr. Heine stated the applicant was requesting a variance to the minimum lot width requirement in order to subdivide the existing five lots into nine lots and an outlot with proposed Lots 7 and 8 having lot widths of 10.0 feet. The Zoning Ordinance requires a minimum lot width of 100 feet; therefore, the applicant was requesting variances of 90 feet to the minimum lot width requirement.

Mr. Heine said it was staff's determination that the proposed application does not meet all the necessary standards for variances. He explained the property is currently subdivided into five lots and can be resubdivided, by-right, into 9 lots without a variance. Therefore, staff believed the strict application of the Ordinance would not result in an undue hardship and the applicant would not be denied reasonable use of the property.

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In conclusion, Mr. Heine said the applicant has submitted a revised affidavit, as well as a rebuttal to the staff report, both of which were distributed to the BZA.

Mr. Dively asked Mr. Heine to clarify the footnote on page 5 of the staff report which refers to the fact that even if the pipestem lots are granted, they should be 25 feet, referencing Section 2-416. After a brief delay, Mr. Heine responded by reading Section. 2-416, as follows:

> "Sect. 2-416 states that on a pipestem lot, notwithstanding the minimum requirements of the district in which located, the front yard shall be a minimum of twenty-five feet (25). The required twenty-five (25) feet shall be measured from the lot line formed by the pipestem or the edge of the pipestem driveway pavement, whichever is the greater distance."

Mr. Dively asked if the width here is 10 feet, and if that was correct. Mr. Heine read the footnote and said the applicant was requesting a lot width of 10 feet. Mr. Dively said that even though Sect. 2-416 requires 25 feet and Mr. Heine responded, Yes.

Chairman Ribble asked Jane C. Kelsey, Chief, Special Permit and Variance Branch to please explain that. She stated that it is the front yard requirement that must be 25 feet. The applicant is not requesting a variance from the front yard requirement, but a variance to the lot width requirement, which is different. She explained by using the viewgraph to point to the building restrict line. She explained the footnote was just a point of information and was not indicating that the applicant doesn't meet it, because as shown on the plat they do meet the 25 foot front yard requirement, but not the lot width requirement which would allow the property to be subdivided into this many lots.

Vice Chairman Ribble asked Ms. Kelsey if the property was developed into nine lots, would it still meet the front yard requirement. Ms. Kelsey said the applicant had previously submitted a subdivision plat for nine lots in a different configuration and that Mr. Heine might have a copy of that plat. She referred the question to Mr. Heine since he did the research on the application. Mr. Heine said there was a copy of that in the appendix of the Staff Report and said that if they came in for the required nine lots, they would have to meet the minimum yard requirements for the R-2 district. Since they didn't have pipestem lots, they would not need to meet the requirements for a pipestem front yard, but would have to meet the Zoning Ordinance requirements of the R-2 District.

The applicant's agent, Peggy Keyes, 2411 Rocky Branch Road, Vienna, Virginia, addressed the BZA. She stated that the staff report contained certain findings which were not based on the evidence provided in the application. Ms. Keyes explained that the extent of the ten foot lot width for Lots 7 and 8 was to provide room for a driveway which would access a conventional rectangular lot.

Ms. Keyes said the factual evidence demonstrated compliance with the required standards for variances. She stated the exceptionally shallow and narrow lot is three times as long as it is deep, therefore, has an exceptional shape, and noted that no other lot in the surrounding area had the same unusual characteristics. Ms. Keyes explained that the adjacent property to the west was currently experiencing storm water runoff problems and said the variance would allow the developer to limit the clearing of existing vegetation along the western property line. Houses and site improvements for Lots 7 and 8 would be located further to the east and final grading could modify the stormwater runoff conditions on the adjoining property. She said the applicant would take specific measures, such as providing a swale, a storm sewer, or regrading the lot to adjust the water flow.

Addressing the hardship issue, Ms. Keyes used the viewgraph to show a drawing which indicated if the development were to include a cul-de-sac, Lots 7 and 8 would be exceptionally narrow, additional vegetation would be removed, and the existing stormwater runoff problem could not be mitigated. She explained the 15.0 foot right-of-way on the northern property line necessitated a 35.0 foot front yard setback. Ms. Keyes said the drawing also showed Lot 9 would be unbuildable, and Lots 6 and 8 would become so shallow that the builder could not construct houses which would be compatible with the neighborhood.

Continuing, Ms. Keyes stated that the minimum lot size for the R-2 district is 15,000 square feet and the pipestem Lots 7 and 8 would be 18,700 and 18,300 square feet, respectively. She expressed her belief that the application was in harmony with the spirit and purpose of the Zoning Ordinance. Ms. Keyes noted the variance would allow conventional and rectangular lots with sufficient buildable space and proposed adding a sixth development condition:

> "The rear building restriction line along the west property line for Lots 7 and 8 shall be 50 feet, rather than 25 feet as required by the Zoning Ordinance."

In conclusion, Ms. Keyes stated the applicant has worked with the Civic Association and surrounding homeowners to resolve stormwater drainage issues, and to maintain as much existing vegetation as possible.

Mr. Pammel asked what purpose the access easement served. Ms. Keyes said she did not believe it served much purpose, and explained the research indicated there were so many heirs that it would be very difficult to have the land vacated.

In response to Mr. Dively question regarding Outlot A, Ms. Keyes said it would probably be conveyed to the Homeowners Association.

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

Thomas McCully, 8104 Guinevere Drive, Annandale, Virginia, addressed the BZA. He said he was an abutting homeowner, as well as an officer in the Homeowners Association. Mr. McCully said he has work closely with the developer to resolve drainage problems and believed the developer would help assist the adjoining homeowners in resolving these problems.

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

Mr. Dively made a motion to grant VC 94-M-138 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated January 10, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-138 by EVELYN REID SYPHAX, under Section 18-401 of the Zoning Ordinance to permit subdivision of five lots into nine lots and one outlot, proposed Lots 7 and 8 having lot widths of 10.0 feet, on property located at 3432, 3433, 3436, 3437 Bannerwood Drive, Tax Map Reference 59-2((1))22; 59-2((2))3, 4A, 4B, 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 February 28, 1995; and

WHEREAS, 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 4.76 acres.
4. The narrow and shallow lot is oddly configured.
5. The lot is only 156 feet deep.
6. The applicant's plan has substantially dealt with the narrowness of the lot, has minimized the removal of the existing vegetation, and has effectively addressed the storm water runoff issue.
7. The alternative plan, which would involve an additional cul-de-sac, does not seem very feasible.
8. According to the survey, the minimum yard requirements and minimum required lot size would be observed. The average lot density of 18,820 square feet more than meets the minimum is 15,000 square feet 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 strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 five (5) lots into nine (9) lots as shown on the plat prepared by Cook and Miller, Ltd., dated August 31, 1994, revised September 29, 1994, submitted with this application and is not transferable to other land.

2. At the time of subdivision review, a tree preservation and restoration plan which meets the tree cover requirements of the Zoning Ordinance and which provides for maximizing the vegetation outside the limits of clearing and grading to the maximum extent possible shall be approved by the Urban Forestry Branch, DEM. This tree preservation plan and restoration shall attempt to preserve as much of the existing tree canopy located on the eastern and western parts of the property with special emphasis given to preserving the two tulip poplar trees located on the southwestern portion of proposed Lot 5.

3. At the time of subdivision review, stormwater management shall be accordance with the DEM waiver approved on May 18, 1994 which requires the applicant to replace the existing fifteen (15) inch reinforced concrete pipe and install an appropriately sized pipe to prevent ponding in front of the Camelot Elementary School. The waiver does not relieve the applicant of any other County drainage requirements or conformance to the Chesapeake Bay Preservation Ordinance.

4. At the time of subdivision review, a geotechnical engineering study shall be provided, if deemed necessary for review and approval by DEM and shall be implemented as required by DEM.

5. The pipestem driveways shall provide access to Lots 7 and 8 as shown on the approved variance plat and 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. At subdivision review, Outlet A shall either be deeded over to the contiguous lot owners or a homeowners association shall be established to become the owner of the lot.

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. Pammel seconded the motion which carried by a vote of 4-0 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 March 8, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 207, February 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. STUMP DUMP, INC., SP 94-D-058 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit zoological park. Located at 830 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, 15C. (DEF. FROM 1/24 FOR NOTICES)

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

Lori Greenlief, Staff Coordinator, presented the staff report. She noted that the latest revised affidavit, which added the firm of Miles and Stockbridge, was presented to the BZA this morning.

Ms. Greenlief said the property is located on the west side of Utterback Store Road in Great Falls, contains 66.64 acres, and is zoned R-E. The surrounding land is zoned R-E and is either developed with single family detached dwellings or is vacant.

Ms. Greenlief stated the applicant was requesting approval of a special permit to allow a zoological park on the property. The applicant planned to have approximately 200 wild and exotic animals such as camels, zebra, elk, antelopes, pigs, goats, fowl, kangaroos, deer, and several miniature animals on the property. The applicant would allow six school tours per year, but the property will not be open to the general public as a commercial establishment. Staff concerns regarding the uses are discussed on Pages 3 through 8 of the staff report. Staff recommended limiting the number of animals on the property to a number close to that which would be allowed by-right if the animals were not wild and exotic, and prohibiting carnivorous animals on the property. The additional standards for the use require inspections by the Department of Animal Control. Thus, staff recommended the Department of Animal Control inspect all aspects of the operation, including fencing, regulations of the number of animals based on availability of grazing area, and the health of the animals. Staff also recommended the applicant work with the Northern Virginia Soil and Water Conservation District and the Urban Forester to ensure that there are no sedimentation or erosion problems.

Continuing, Ms. Greenlief said the site is an old debris landfill which is in the process of being closed. Conversations with officials from both the Commonwealth of Virginia and the Department of Environmental Management (DEM) have indicated that the applicant will have to complete some grading in the area of the stream channel and submit a final as-built plan to DEM. Staff has included a condition which ties the issuance of the Non-Residential Use Permit (NON-RUP) to the closure of the landfill and requires the closure be completed within 6 months.

Ms. Greenlief noted that representatives from the Virginia State Department of Environmental Quality, the Fairfax County Fire and Rescue HAZMAT Team, and the Fairfax County Department of Animal Control were present to answer any questions the BZA may have. A revised plat was submitted on February 22, 1995, in response to staff's concern about the need to show all proposed structures on the special permit plat. Another revised plat was submitted yesterday, March 27, 1995, because staff had concerns about the location of two proposed structures in the Resource Protection Area (RPA). The last plat showed that the two structures were moved out of the RPA. The March 27, 1995 plat, as shown on the overview, depicts four new structures, an addition to the existing barn, two shelters in the western portion of the site, and a second barn.

In conclusion, Ms. Greenlief said it was staff's belief, that with the implementation of the development conditions contained in the addendum to the staff report, and with the submission of the March 27, 1995 revised plat deleting the two structures in the RPA, the use would be in conformance with the Zoning Ordinance. Thus, staff recommended approval of SP 94-D-058.

Mr. Kelley asked, if approval was granted, would Proposed Development Condition 20 permit the Zoning Administrator to grant extensions of the five year term. Ms. Greenlief said that to receive an extension of the five year term, the applicant must return to the BZA.

The applicant's agent, Juliann Crippen, 1210 Tottenham Court, Reston, Virginia, addressed the BZA and presented sixteen letters of support. She thanked staff members for their assistance and explained that the applicant had conferred with many government officials, the citizens associations, and the neighbors to address issues of concern. Ms. Crippen said it was her understanding that the major area of concern was that the use of the property remain non-commercial and be limited to the applicant's personal enjoyment of the exotic animals. The other concern was that the use would not be inconsistent with, or intrude upon the proper and continual closure of the old construction debris landfill.

Ms. Crippen said that in 1994, the applicant was cited by DEM for housing and harboring exotic and illegal animals within Fairfax County. Subsequently, the applicant filed the special permit. She explained that the applicant was given a 12 month period from the date the ruling was made in Fairfax County General District Court to receive a special exception application in order to continue to have the animals which have been present on the property in various numbers over the past forty years.

Addressing the issues of concern, Ms. Crippen said the issue of the closure of the landfill has been addressed by staff and noted the NON-RUP would not be granted until the closure requirements have been certified as completed by DEM. She further noted the development conditions prohibited commercial development and testified that the applicant had no intention of developing the site in any capacity other than for his personal enjoyment.

Ms. Crippen referred to the letters of support, and explained that the applicant has resolved the issues of concern and asked the BZA to grant the request.

Mr. Kelley asked when the landfill would be closed. Ms. Crippen said they have been advised by the Virginia State Department of Environmental Quality that, in order to receive certification the site is closed, one area of the property had to be graded. She explained the applicant anticipated it would take approximately four months to complete all the closure requirements. She noted that, after conferring with various Virginia State and Fairfax

County officials, staff believed the full and final closure would be completed within the next six months.

Mr. Dively asked about the Great Falls Citizens Association's concern that the facility would become a commercial enterprise involving public exhibition, viewing, and contact. He referenced the requirement for a public exhibition which would be satisfied by having a group of school children view the animals. Ms. Crippen said there was a paradox in the Fairfax County regulations with respect to the keeping of wild or exotic animals. She explained the use fell under the zoning regulations for a zoological park which must be open to public exhibition. In order to satisfy the Zoning Ordinance requirements, the County Attorney's office and staff suggested a small number of school children view the animals. Ms. Crippen assured the BZA that the park would not be open to the public, nor would it be a commercial venture. She noted there would be no charge for the children's visits. Ms. Crippen said the proposed development conditions would preclude the applicant from conducting a commercial enterprise on the property. She stated that, since the Zoning Ordinance does not allow a zoological park without public access, the only other alternative would be to have the Board of Supervisors rezone the property.

Vice Chairman Ribble asked for speakers in support the following citizens came forward.

Dr. Charles Patton, 334 Chesapeake Drive, Great Falls, Virginia; Wendy Watson, 10741 Green Drive, Mason Neck, Virginia; Mari DeBullet, 646 Seneca Road, Great Falls, Virginia; Stephanie DeBullet, 646 Seneca Road, Great Falls, Virginia; Marge Tony Gersic, 11120 Corobon Lane, Great Falls, Virginia; David Karmol, 322 River Bend, Great Falls, Virginia; Larry Croft, a nine year employee of Mr. Crippen; and Frances Davela, Great Falls, Virginia; addressed the BZA and expressed support of the application. They said the animals received the finest care and love, and were provided a wonderful habitat. They attested to the Crippen family's contributions to the community and to Child Help U.S.A. The citizens stated Mr. Crippen allowed children to work and play with the animals, assisted students in gaining valuable knowledge in working with large animals, and allowed the animals to be used as a fund raiser for charity. In conclusion, they said they supported the application and asked the BZA to grant the request.

The applicant, Jack Crippen, 11395 Senica View Way, Great Falls, Virginia addressed the BZA and said he had established Lake Fairfax and the Pet Farm. He stated that, although he no longer owned the properties, the citizens of Fairfax County continue to benefit from his endeavors. Mr. Crippen expressed his love of animals and explained his intentions of converting the Stump Dump into an estate where exotic animals would be free to roam, and his family and friends, along with a few school children, could enjoy.

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

Richard Peters, Executive Committee Member of the Great Falls Citizens Association, 9209 Weant Drive, Great Falls, Virginia, addressed the BZA and explained the Association's position. He stated they had concerns with the application, were opposed to it as presently framed, and were against the timing. Mr. Peters referred to the many unresolved issues and said the citizens has reservations regarding the establishment of a commercial use in the area. He expressed the community's belief that the applicant should have asked the Board of Supervisors for a Zoning Ordinance Amendment which would allow the private keeping of exotic animals in Fairfax County.

Mr. Dively noted, that under the special permit requirements, the applicant would not be allowed to charge for the school children's visits. Mr. Peters stated the citizens were not concerned solely with the commercial aspect of the operation, but were concerned that it would become a public institution, create parking problems, and increase traffic.

Mr. Peters strongly advised that the community needs immediate relief from the incessant truck traffic bringing fill material to the site. He explained that approximately 300 trucks per day visited the site causing road bed damage and creating a nuisance. He asked that there be a determination on the amount of fill needed to complete the operation and the number of trucks allowed on site to be controlled. In conclusion, Mr. Peters said the application was not compatible with the Zoning Ordinance or in harmony with the Comprehensive Plan. He asked the BZA to either defer or deny the application.

Mr. Kelley stated the BZA did not have the authority to change Fairfax County's application procedure and explained that the BZA had to operate under existing regulations. He said it was his understanding that the principal concern was the closure of the Stump Dump. Mr. Peters said he agreed. Mr. Kelley said he understood Mr. Crippen no longer had direct control as to when the Stump Dump would be closed because it is under a mandate from the Commonwealth of Virginia. Mr. Peters explained that the community did not want to have the special permit approved until the landfill was closed and other issues were resolved.

Sally Mann, Pamlaco Lane, Great Falls, Virginia, a member of the Great Falls Citizens Association Executive Board, stated the Pet Farm operated for many years and was not made legal until approximately four years ago when the Zoning Ordinance was amended to allow exotic animals for a pet farm. She noted the process was expedited and only took about two months to complete. She too expressed her belief a Zoning Ordinance Amendment was needed.

Ms. Mann expressed concern regarding the VDOT requirement to install a commercial entrance at the site and noted the special permit requirements would establish a commercial use.

The President of the Running Brook Estates Association of Great Falls, Wayne Dillehay, 604 Utterback Store Road, Great Falls, Virginia, addressed the BZA. He said the Association strongly opposed the application and viewed the Stump Dump operation as a symbol of ineffectual enforcement by government agencies. He said the opposition was based on Mr. Crippen's past record and expressed the belief that the mismanaged property subjected the neighbors to dangerous traffic, polluted the streams, attracted continued dumping of uninspected materials which periodically produced underground fires, produced methane gas, and was a visual eyesore of unprecedented proportion. Mr. Dillehay expressed doubts that the applicant would abide by the development condition and asked the BZA to deny the request.

Susan Cochran, a neighbor; Nevil Brown, 733 Utterback Store, Great Falls, Virginia; and Shirley Johnson 811 Blacks Hill Road, Great Falls, Virginia; addressed the BZA. They expressed disappointment and suspicion of the applicant's intentions to honor the special permit requirements and noted the stream pollution caused by the Stump Dump operation. They explained the applicant's operation has had a detrimental impact on the community for many years and expressed concern regarding Mr. Crippen's failure to comply with established State and County regulations and his lack of concern with regards to the welfare of his neighbors.

Vice Chairman Ribble called for rebuttal.

Ms. Crippen said many of the concerns revolve around the closure of the facility and noted the issues must be resolved before the NON-RUP is issued to the applicant. She assured the BZA that the applicant was anxious to complete the closure. Ms. Crippen explained that she was the applicant's daughter-in-law and was most likely the beneficiary of the property and assured the BZA she has no interest in conducting a commercial use on the property.

In response to Vice Chairman Ribble's question as to whether various government officials were present to respond to closure issues, Ms. Greenlief said a representative of the State Department of Environmental Quality was present.

Scott Bullick, 5506 Windy Ridge Terrace, Melothian, Virginia, with the State Department of Environmental Quality, said Mr. Crippen had work closely with state and local office to address issues of concern. He expressed his belief that the closure would be completed by August 1, 1995.

Mr. Kelley made a motion to grant SP 94-D-058 for the reasons reflected in the Resolution and subject to the revised development conditions dated February 21, 1995. He said that Development Condition Number 7 would ensure the Zoological Park could not become a commercial operation without an amendment to the special permit or obtaining a special exception from the Board of Supervisors. He said it was unfortunate the landfill existed, but noted it was not part of the application. Mr. Kelley said Development Condition Number 17 would be left intact.

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

Mr. Pammel noted the applicant had indicated there would be barns on the property and he asked staff to clarify the issue, Jane Kelsey, Chief, Special Permit and Variance Branch, confirmed that the new plat did depict the proposed barns.

Addressing Development Condition 6, Mr. Pammel asked that the word "dangerous" be deleted. He said the other Development Conditions should remain as submitted by staff.

Ms. Greenlief noted that Development Condition 2 should read:

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 Jarrett, Surveys, Inc., dated March 10, 1994, revised through February 27, 1995 and approved with this application, as qualified by these development conditions.

The maker of the motion agreed and the Chair so moved.

Mr. Hammack expressed concern regarding the application and said he believed the applicant should seek a Zoning Ordinance Amendment. He explained that he shared the citizens concern regarding the facility. Mr. Kelley noted the applicant had been advised to obtain a special permit.

Chairman Ribble said he was satisfied with the conclusions of the State and County officials who had thoroughly investigated the facility.

After a brief discussion, the BZA suggested staff investigate the possibilities of a Zoning Ordinance Amendment for a zoological park.

Vice Chairman Ribble stated the professional staff had done an excellent job on the application and the BZA had adopted its recommendations. He expressed the belief that the school children's visits would not cause problems in the community.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-D-058 by STUMP DUMP, INC., under Section 3-E03 of the Zoning Ordinance to permit zoological park, on property located at 830 Utterback Store Road, Tax Map Reference 7-3((1))1, 8, 15A, 15C, 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 28, 1995; and

WHEREAS, 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 66.64 acres.
4. Development Condition 7 will ensure the use will not become a commercial enterprise.
5. If the property should change ownership, the new owner would have to obtain approval from the Board of Supervisors or the BZA to continue the use.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-603 and 8-612 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 Jarrett, Surveys, Inc., dated March 10, 1994, revised through February 27, 1995 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 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 animals on site at any one time shall be 200. Of that number, the maximum number of herbivores (or grazing) animals on the property, not including fowl or birds, herbivores under the age of six (6) months, or the miniature varieties of animals which are kept in the barn, shall be 100. If, at the time of an inspection, the Department of Animal Control determines that, based on available grazing area or the health of the animals, the number should be further reduced, the applicant shall comply with the recommendations of that department.

6. There shall be no carnivorous animals, as determined by the Fairfax County Department of Animal Control, on the subject property.

7. The zoological park shall not be open to the general public for the sole purpose of viewing the animals; except that six (6) school tours consisting of two (2) buses each shall be allowed per year during the hours of 9:30 a.m. to 3:30 p.m.

8. The applicant shall contract with a licensed veterinarian specializing in the care of wild and exotic animals for the care of sick animals. The veterinarian shall make an annual inspection of the property and shall make the findings available to the Fairfax County Department of Animal Control upon request.

9. The Department of Animal Control shall be permitted to conduct quarterly inspections of the property, as well as have additional access to the property on an "as needed" basis. An annual fee of $500.00 dollars shall be paid to the Fairfax County Department of Animal Control at the time of the first inspection of the year. A fee of $50.00 shall be paid to the Fairfax County Department of Animal Control for each inspection made when an animal has escaped.

10. A landscape plan shall be submitted to the County Urban Forester for review and approval at the time of site plan review. This landscape plan shall address the need to vegetate the slopes to reduce the potential for erosion, the need to reestablish a buffer area along the stream channel to aid in the natural filtration of runoff from the site and the need to have scattered groups of trees for shade for the animals.

11. The Transitional Screening 1 requirement shall be modified to allow the existing vegetation within 25 feet of all lot lines to satisfy the requirement, with the exception of the southern lot line in the area of the barns. In this area, existing vegetation shall be supplemented to the level of Transitional Screening 1 with the plantings to be reviewed and approved by the County Urban Forester. The existing six (6) foot high chain link fence which completely surrounds the property shall be deemed to meet the barrier requirement.

12. At the time of site plan review, a Soil and Water Conservation Plan shall be developed in coordination with the Northern Virginia Soil and Water Conservation District which addresses the storage and spreading of manure on the property, water quality protection measures and landscaping measures to reduce the potential for erosion. The recommendations of the Soil and Water Conservation District, as outlined in the Plan, shall be followed.

13. The fencing shall be inspected by the Department of Animal Control and increased in height and/or relocated in the areas determined necessary by the Department of Animal Control to keep the animals from escaping. The fence may be electrified with wire(s) placed no lower than 5 feet off of the ground. The voltage running through the wire(s) shall be no higher than the equivalent of a 12-volt battery. A sign shall be installed on the fence at each lot that abuts the property (a total of 19 signs) which says "Electric Fence" and which contain a graphic indicating electric current or voltage. The fence shall be maintained in good repair and gates shall remain closed at all times except for entry and exit.

14. The shelters/sheds may be moved on the property in response to the needs of the animals but shall not be closer than fifty (50) feet to any lot line. Dens may be installed under ground provided their installation and placement is approved by the Department of Environmental Management.

15. The antenna located near the barn shall be removed.

16. The northernmost entrance shall be approved by the Virginia Department of Transportation (VDOT).

17. The outlet road shall not be used for vehicles associated with the special permit use.

18. Roads on the property which are currently dirt may be paved.

19. Neither a Non-Residential Use Permit for the zoological park nor a building permit for the dwelling shall be issued until final inspections have been completed by the State and the State has deemed the landfill to be closed. If closure of the landfill does not occur within six (6) months of the approval date of this special permit, this special permit is null and void.

20. This special permit shall expire without notice five (5) years from the final approval date and may be renewed by the Board of Zoning Appeals under the provisions of Sect. 8-013.

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

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

Mr. Dively seconded the motion which carried by a vote of 4-1 with Mr. Hammack noting 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 March 8, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 213, February 28, 1995, (Tape 2), Information Item:

Request for Approval Resolutions from February 21, 1995

Jane C. Kelsey, Chief, Special Permit and Variance Branch stated that the Board of Zoning Appeals (BZA) had requested staff to obtain additional information on the Richard and Helen Kearney Variance, VC 94-D-153. Don Heine, Staff Coordinator, stated the applicant was requesting a 30 foot dedication, rather than a 45 foot or 60 foot dedication. It was the concensus of the BZA to require a 30 foot dedication.

Mr. Pammel made a motion to approve the Resolutions as corrected. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 213, February 28, 1995, (Tape 2), Action Item:

Request for Date and Time
Bargain Buggies Rent-A-Car Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of May 9, 1995. (Mr. Dively asked the appeal be scheduled at 9:30 a.m. and then at the March 7, 1995 meeting asked that it be changed to the morning of May 9, 1995.) Mr. Dively seconded the motion carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 213, February 28, 1995, (Tape 2), Action Item:

Request for Date and Time
Centex Real Estate Development Corporation/Centex Homes Appeal

Mr. Dively made a motion to schedule the appeal for the morning of June 13, 1995. (Mr. Dively asked the appeal be scheduled at 9:30 a.m. and then at the March 7, 1995 meeting asked that it be changed to the morning of May 9, 1995.) Mr. Pammel seconded the motion carried by a vote of 5.0 with Chairman DiGiulian absent from the meeting.

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Page 213, February 28, 1995, (Tape 2), Information Item:

Tate Terrace Realty Investment, Inc. Appeal, A 94-Y-039

Mr. Kelley stated he intended to defer A 94-Y-039 which was scheduled for the March 7, 1995 hearing. He explained that he wanted the Richmond American Homes of Virginia, Inc. Appeal, A 94-H-041 heard at the same time as the Tate Appeal. Mr. Kelley expressed his belief that the case was important and a full Board should be present to hear the case. He also noted that the appellant was meeting with the Accessory Dwelling Unit Advisory Board in an attempt to resolve the issue.

After a brief discussion, the BZA decided to address the deferral at the March 7, 1995 meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

Minutes by: Helen Darby

APPROVED: May 16, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

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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 7, 1995. The following Board Members were present: Vice Chairman John Ribble, 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 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 215, March 7, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR S. LEAHY, SP 94-M-071 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 1.6 ft. from rear lot line. Located at 6359 Eighth St. on approx. 2,077 sq. ft. of land zoned R-12. Mason District. Tax Map 72-3 ((22)) 32.

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. Arthur S. Leahy, 6359 Eighth Street, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the townhouse is located on the south side of Eighth Street, within the Little River Village Subdivision, adjoining townhouses on the east and west, a parking lot on the north, and community open space on the south, all zoned R-12. He said a private driveway on the south of the community open space is zoned R-2. Mr. Heine said this request for a special permit results from the applicant's request to allow a reduction in the minimum yard requirements based on an error in building location, to allow an enclosed porch and storage addition to remain 1.6 feet from the rear lot line, where the Zoning Ordinance requires a 20-foot minimum rear yard, resulting in a variance of 18.4 feet.

Mr. Leahy presented the statement of justification, previously submitted in writing and incorporated into the record. He stated that the shed was already there when he built the patio enclosure and, to his knowledge, had been there since the house was built in the early 70's, when all houses without basements, such as his, had sheds. Mr. Leahy said that, in his row of five attached townhomes, there are five sheds. He referenced the applicable standards in Sect. 8-006, and said he had responded to those standards. Mr. Leahy proposed to use the patio enclosure to sit outside and to provide shelter for his dog; he has allergies and works all day; he has no basement and, therefore, cannot leave the dog in the house. Mr. Leahy said that the proposed use shall be in harmony with the general purpose and intent of the applicable zoning regulations; several of his neighbors have similar structures in the same location on their properties, such as deck enclosures and greenhouses. He showed photographs of the various enclosures, as well as his patio enclosure located between the shed and the house. He went on to describe the various structures within the neighborhood. Mr. Leahy submitted copies of letters from his immediate neighbors in support of his application. He said he had submitted copies of his plans and specifications to the Homeowners Association and did not receive any opposition from them. He addressed the applicable and non-applicable standards.

Mr. Hammack asked if the applicant knew if any of the photographs represented enclosures for which special permits had been obtained. Mr. Leahy said he did not know. Mr. Heine said there were variances in the neighborhood for carports, one addition, and one error in building location, which were cited in the staff report.

There were no speakers in support.

Harry Dennis, 6347 Eighth Street, President of the Little River Village Community Association, came forward to state that the applicant did not seek the Association's approval prior to construction; he sought approval after the fact and approval was not granted; a letter was sent to the applicant in January stating that the Board would not give approval and that approval would not have been given even if it were sought before construction. He said that the addition had not been inspected for electrical safety, although electrical work had been done; as such, it poses an unacceptable risk to others in the area. He said that any hardship incurred has been self-imposed.

Mr. Dively asked if the applicant was presently in violation of the Homeowners Association by-laws and asked the primary reason why. Mr. Dennis said the primary reason was that the applicant did not seek approval for the enclosure and approval would not have been given because they did not approve additional living space. There are three others in violation and action also was being taken against them. Mr. Dennis said there are no other existing enclosures of the type the applicant has built.

Claude Seymour, a neighbor of the applicant and a Vice President of the Association Board, said his objection to the enclosure was that approval was sought after the fact, with no regard for the neighbors who were potentially at risk because there were no building or electrical inspections conducted. He further said that the structure was not in character with the neighborhood. Mr. Seymour referenced the photographs presented by Mr. Leahy when Mr. Leahy stated that the enclosure could not be seen from the access road behind it; he said the reason the enclosure could not be seen was that Mr. Leahy had illegally extended his fence, as well. He said the enclosure looks "awful" and is more of a shack than an extension of the house; it is unpainted and looks terrible.

Mr. Hammack said it appears that other neighbors along the row of townhouses have higher fences and asked what action the Association was taking to enforce its covenants. Mr. Seymour said his own fence was higher, but it had been approved by the Association, although not by the BZA. He said he replaced a previous fence and did not know approval by the BZA was required. In answer to a question from Mr. Hammack, Mr. Seymour said that the issue of enforcing the covenants is before the Architectural Committee; they sent a letter to Mr. Leahy requesting that he comply. Mr. Hammack asked Mr. Seymour if he had read the Proposed Development Conditions contained in the staff report, which require that a final inspection and building permit be obtained which would require the electrical work to be inspected; he asked if that knowledge would in any way make Mr. Leahy's enclosure more acceptable to the Association, since they were concerned about the fire hazard. Mr. Seymour said it would make it more acceptable but he was still extremely annoyed by the contempt the applicant showed for the neighbors by building the enclosure without approval or inspections.

Mr. Dively said that not only was the enclosure at issue, but also the shed; he asked if there was a shed on every one of the properties. Mr. Seymour said there were sheds on every one of the properties on that particular road; however, Mr. Leahy has joined his house to the shed by enclosing the patio. Mr. Dively asked if it was common to be located approximately 1.5 feet from the lot line. Mr. Seymour said he believed there were two properties so located; his own shed slab is about 3 feet from the lot line.

Mr. Leahy came forward for rebuttal and showed the Board a photo of the adjacent property with a shed in as close proximity to the lot line as his shed. He said that, on December 8, he submitted a request to the Association at Mr. Dennis's address, he did not get a response. He said that the covenants state that, if the Association did not approve or disapprove designs within 30 days after they have been submitted, "...approval will not be required and this article will be deemed to have been fully complied with..." from Article 7, Architectural Control, page 6, of the Declaration of Covenants, Conditions and Restrictions, Little River Village Community Council. Mr. Leahy provided a copy for the record.

Mr. Hammack asked Mr. Leahy when he was notified by the Association that he was not in compliance. He said he received a letter on January 26, 1995, from Ann Russell, the Chair of the Architectural Review Committee, not mentioning his letter, only requesting submission of a plan for all architectural changes. He furnished copies of that letter to the Board.

Mr. Leahy said that, on February 1, 1995, he sent a public notice of the hearing to the Council at their business address, via certified mail. On February 21, 1995, he wrote to Mrs. Russell and said the patio enclosure plan was previously submitted to the Board of Directors on December 8, 1994, and that no other architectural changes were planned. Mr. Leahy said he believed the Council had ample prior opportunity to comment on his project and he believed the photos he submitted demonstrated that fairness would require that he receive equal treatment from them because they have allowed similar structures in the development. Vice Chairman Ribble said the Board did not have any control over the Architectural Review Board in his community; they would deal only with the zoning issues.

Mr. Hammack said that the photographs showed the enclosure to be unfinished. Mr. Leahy said he planned on staining it cedar-tone, and had so advised the Council.

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

Vice Chairman Ribble asked Mr. Leahy to step back to the microphone for a question from Mr. Hammack and the hearing was reopened. Mr. Hammack said that, in looking at the photographs, he could understand the neighbors' concern about the addition. While it appeared to be neatly constructed, it looked like it was made of plywood; whereas, the rear of the dwelling was finished with some kind of frame siding and the addition next door is brick. He said it really looked quite out of character, in his opinion. Mr. Hammack asked if Mr. Leahy could finish off the addition with materials compatible with the siding on the rear of his house. Mr. Leahy said that the lower portion of his house is light beige brick and the upper portion is light green siding which he believed was no longer made. He said he was planning on staining the enclosure.

Vice Chairman Ribble again closed the public hearing.

Mr. Hammack moved to deny SP 94-M-071, for the reasons set forth in the Resolution.

Mr. Dively said he would support the motion because the addition does not look harmonious with the neighborhood; however, there are two issues here: there is not just the porch enclosure, but the shed which is 1.6 feet from the property line is shown by testimony to be prevalent up and down the street. He said that, if and when this request is denied, it would be very easy for the Zoning Inspector to go to the area and post violations on just about every house on the street. Mr. Hammack said he could not disagree with that because practically every photo that was submitted to the Board in support of the application appeared to be a zoning violation. Mr. Hammack referenced the Council's lack of response to Mr. Leahy's submission within 30 days, thereby waiving their rights; however, the Board could not be concerned with a convenant that was enforceable by the Homeowners Association. He said it appeared that the Association had been derelict in enforcing its own covenants against other neighbors with greenhouses, eight-foot fences, etc., across the back of the area, all of which appear to be in violation, as was Mr. Leahy's enclosure. He said that the applicant was in violation because he attached the enclosure to a shed, which brings it up to

1.6 feet of the property line. Mr. Hammack said he could not approve a structure which appeared to be built of plywood and very insubstantial; it should be built according to building requirements, with insulation and wiring, and should meet appropriate Code requirements for approval; it also should be compatible with the existing dwelling.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-M-071 by ARTHUR S. LEAHY, 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 1.6 ft. from rear lot line, on property located at 6359 Eighth Street, Tax Map Reference 72-3((22))32, 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 7, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-12.
3. The area of the lot is approximately 2,077 square feet.
4. The 1.6 ft. distance from the lot line is close is some ways; however, the addition as constructed is not compatible with the neighborhood.
5. The addition was constructed without proper inspections.
6. The concerns of the community regarding the handling of the construction are shared by the Board.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-903 and 8-914 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. 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 15, 1995.

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Page 217, March 7, 1995, (Tape 1), Scheduled case of:

9:30 A.M. JAMES & DEBORAH ATTILIIS, SP 94-P-072 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 23.0 ft. from front lot line. Located at 6708 Chestnut Ave. on approx. 7,442 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((13)) (7) 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. James and Deborah Attiliis, 6708 Chestnut Avenue, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the City Park Home Subdivision, surrounded by single family detached dwellings on three sides, and by a vacant lot on the north, all zoned R-4. He said the applicant was requesting a variance of 7.0 feet from the minimum front yard requirement.

Mrs. Attiliis presented the statement of justification, previously submitted in writing and incorporated into the record, and asked that she be allowed to amend the description of the application on page 1 of the staff report and the Proposed Development Conditions, to permit them to cover the entire porch. Mrs. Attiliis said that, when they purchased the property in October 1979, there was an existing brick and cement front porch, covered by a fifteen-foot wide aluminum roof, with wrought iron support pillars and raised brick flower boxes of the same depth as the porch, on either side of the porch, extending to the ends of the house. She submitted photos. When they made efforts to improve the property, they did not realize they were not in compliance with the Zoning Ordinance until 1994, when they were notified that they needed to apply for a building permit for the reported construction of a porch. Mrs. Attiliis said that they did not apply for a building permit because they believed they

were not constructing a new porch, only making repairs to existing porch steps and flower beds. They subsequently applied for a building permit and were advised that a variance would be required before they could replace the existing aluminum roof with a new roof that would cover the entire porch. She said they proceeded to file for a variance and found they also would require a special permit to correct the building in error, for which they also applied. They were then advised that only the special permit would be required and the check for the variance application was returned. Mrs. Attiliis submitted signatures of neighbors in support of the application. She said other properties in the area also have fully-covered front porches that appear to be less than 30 feet from the property line. The applicant said the enforcement of the minimum yard requirement would impose an unreasonable financial hardship and would force them to tear down the repairs and improvements which already have been made.

Paul R. McGill, 6710 Chestnut Avenue, homeowner of 27 years, said the non-compliance covered a period of over 30 years; he knew the original owner and the flower beds have been in existence since the previous owner, who purchased the house in the 40's. He said there were no complaints from the neighbors and any improvement would be welcome, especially since the steps were a safety hazard.

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

Mr. Pammel moved to grant SP 94-P-072 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained the staff report dated February 27, 1995.

Mr. Heine reminded the Board that the applicant wished to change condition 3 to read "...completely roofed..." instead of "...partially roofed...." Mr. Pammel said that he wished to have his motion include this modification.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-P-072 by JAMES & DEBORAH ATTILIIS, 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 23.0 ft. from front lot line, on property located at 6708 Chestnut Avenue, Tax Map Reference 50-4((13))(7)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 March 7, 1995; and

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

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.

Page 219, March 7, 1995, (Tape 1), JAMES & DEBORAH ATTILIIS, SP 94-P-072, continued from Page 218 )

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 roofed porch 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 November 2, 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 completely roofed porch addition.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 5-0. 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 15, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 219, March 7, 1995, (Tape 1), Scheduled case of:

9:30 A.M. ST. AMBROSE CATHOLIC CHURCH, MOST REV. JOHN R. KEATING, SPA 76-M-086-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-M-086 for church and related facilities to permit private school of general education which has an enrollment of 100 or more students daily, and building additions. Located at 3901 Woodburn Rd. on approx. 13.67 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((1)) 11A.

Mr. Dively moved to call the other three cases first as they were not going forward and the people involved would be free to leave. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 219, March 7, 1995, (Tape 1), Scheduled case of:

9:30 A.M. RICHMOND AMERICAN HOMES OF VIRGINIA, INC., APPEAL 94-H-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that PCA 87-C-060-3 and FDP 87-C-060-2 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family attached units must be affordable. Located S.E. of the Virginia Power Easement between Fox Mill Rd. and Thomas Jefferson Dr. on approx. 22.35 ac. of land zoned PDH-16. Hunter Mill District. Tax Map 16-3 ((1)) 15A. (BZA RESCHEDULED FROM 1/10/95)

Vice Chairman Ribble advised that he had information to the affect that the notices were not in order for this appeal. William E. Shoup, Deputy Zoning Administrator, confirmed that this was true and that the appellant had requested a 30-day deferral. Staff recommended April 27, 1995 at 9:30 a.m. Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

Mr. Hammack asked why the notices were not in order, since the appeal was rescheduled from January 10. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the notice package had been sent to the appellant and was not received by the appellant's attorney in time to meet the legal requirements.

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Page 219, March 7, 1995, (Tape 1), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore

12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL)

Mr. Kelley moved to reschedule this appeal to be heard consecutive to the prior case on April 27, 1995, 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

The applicant's agent, Lynne J. Strobel of the law firm Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, came forward to state that the appellant had no objection to the deferral.

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Page 220, March 7, 1995, (Tape 1&2), Scheduled case of:

9:30 A.M. LOUIS V. GENUARIO, SR., GENUARIO CONSTRUCTION CO., INC., Appeal 94-V-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a part of the dwelling unit located on the R-2 portion of the appellant's property has been converted into an office use in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8400 Radford Ave. on approx. 24,724 sq. ft. of land zoned R-2, C-8 and HC. Mt. Vernon District. Tax Map 101-3 ((3)) 1 and pt. 2. (DEF. FROM 1/3/95)

Vice Chairman Ribble noted that the notices were not in order. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that one property owner was not notified, as well as some members of a condominium association. She said the appellant was aware of the legal notice insufficiencies. Ms. Kelsey advised that there also was a request for a deferral. William E. Shoup, Deputy Zoning Administrator, advised the Board that the appellant was seeking a deferral as far away as December because attempts to resolve the situation involved a rezoning and a resubdivision. Mr. Shoup said he had advised the appellant that staff could not support a deferral for that length of time because of the existing violation. He said he would defer to the Board to set a date and would be comfortable with a date this summer. Mr. Kelley made a motion to set a date after the August recess, with which Mr. Shoup concurred. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting. Vice Chairman Ribble asked Ms. Kelsey to suggest a date and she recommended September 13, 1995 and Mr. Kelley said he would incorporate it into his motion.

Vice Chairman Ribble asked Ms. Kelsey if the Board had a meeting scheduled for the day after Labor Day and she said she did not believe that the Board had not yet approved the schedule for the latter part of the year.

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Page 220, March 7, 1995, (Tape 1), Scheduled case of:

9:30 A.M. ST. AMBROSE CATHOLIC CHURCH, MOST REV. JOHN R. KEATING, SPA 76-M-086-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 76-M-086 for church and related facilities to permit private school of general education which has an enrollment of 100 or more students daily, and building additions. Located at 3901 Woodburn Rd. on approx. 13.67 ac. of land zoned R-1 and R-2. Mason District. Tax Map 59-3 ((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. Peter Fisher, 200 N. Glebe Road, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that properties zoned R-1, R-2 and R-3 surround the subject property on the north, south, east and west and are developed with single family detached dwelling; also to the south is a Fairfax County-owned Police Emergency Facility. She said that the site is currently developed with a 9,016-square-foot church building, a 22,587-square-foot school building and a 6,073-square-foot rectory; 194 parking spaces are located north of the church and school buildings; access to the site is via separate entrances and exits from Woodburn Road. Ms. Langdon said the school, with 250 students, would be located within an existing building to which the applicant is proposing to make a 2,164-square-foot addition; it will contain grades kindergarten through eight, with hours from 8:15 a.m. to 3:30 p.m., Monday through Friday; various other activities, such as PTA meetings, would take place during evening hours. Ms. Langdon said that 17 employees are proposed; the applicant has identified a 168,700-square-foot recreation area on site, the greater part of which is wooded; the cleared portion of the recreation area, adjacent to the school building, may contain playground equipment for the school. Ms. Langdon further said that the applicant proposed to relocate the site entrance approximately 70 feet to the west and construct a left-turn deceleration lane into the site; the existing right-turn deceleration lane will be extended. She said that a 624-square-foot addition is also requested for the church building; no other additions or construction is proposed. Additionally, the applicant was requesting a waiver of the

barrier requirements along the northern, eastern and western lot lines; these requirements were waived in conjunction with the previous special permit amendment. Ms. Langdon said staff concluded that, with implementation of the proposed developed conditions, the proposed school and additions would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and standards for Group 3 uses; staff recommended approval under the Proposed Development Conditions and a waiver of the barrier requirements. Ms. Langdon said that the applicant had submitted revised conditions to the Board that morning; staff had reviewed the proposed changes and had no objections.

Ms. Langdon said staff had received one letter of opposition to the application, which had been submitted to the Board that morning; an addendum to the transportation analysis was also included in the Board's package.

Vice Chairman Ribble asked if the Board of Supervisors was required to hear applications proposing more than 100 students. Ms. Langdon said that, when more than 100 students are proposed, the applicant has a choice between going before the BZA or the Board of Supervisors.

William Robson, the architect and agent for the Catholic Diocese, 4200 Daly Drive, Chantilly, Virginia, presented the statement of justification, previously submitted in writing and incorporated into the record. He covered the history and dialogue of negotiations with the County agencies regarding this application.

Father Mark Pilon, Pastor of St. Ambrose for five years, addressed the traffic issues and a traffic study which had been conducted, and discussed with the County, in an effort to make the most feasible choices concerning those issues. He said area parents had approached him because surrounding parochial schools were full, with waiting lists, and nearby parents were being forced to drive their children as far as Arlington, Manassas and various other places for enrollment in parochial schools. Father Pilon said they had a building which was constructed in 1968 as an elementary school, to building standards, approved by the County as a school, but never opened because of a financial problem in the parish which kept the Diocese from giving its approval. This occurred at the same time Pine Ridge, a former larger facility, was operating. Father Pilon said the school now was needed in the area and would enhance the community in general by providing an alternate form of education, along with enhancing property values. He said they were willing to accept the County's Proposed Development Conditions, with the exceptions submitted that morning.

Speaking in support were: Ann Fox, 3803 Shelly Lane, Annandale, Virginia; Dave Lamont, neighbor, parish member, and licensed realtor; and Gerry O'Dell, parish member.

Comments in favor included: The County should consider the financial implications - the proposed school would educate 225 to 250 students and provide employment to teachers and administrators; the school would enhance property values; traffic would be reduced by keeping potential students in the immediate area of approximately 3,000 people, resulting in reduced pollution; the tree cutting will be offset by the planting of six trees.

Speaking in opposition were: Walter Engel, 3806 Woodburn Road, across the street from the church, representing the fourteen families who live opposite the church; Arthur Thomas McClinton, Jr., 3808 Woodburn Road; Ronald Rinaldi, 3810 Woodburn Road, across from the church; Fran Wallingford, on behalf of the Mantua Citizens Association who also submitted a letter from the Pine Ridge Civic Association, written by Carol Cole, the Land Use Co-Chair; James Kale, 3750 Prosperity Avenue, representing Pine Ridge Civic Association; Mansfield Smith, Co-Chair for Transportation for the Pine Ridge Civic Association, Morningside Drive, which loops off Prosperity Avenue. Concerns stated were as follows: the existing traffic problem would be compounded by the potential increased traffic flow and the planned exit and entry traffic during peak rush-hour conditions from 6:30 a.m. to 9:00 a.m.; it is difficult for residents to back out of their driveways, onto Woodburn Road, between the hours of 6:30 a.m. and 9:15 a.m. on work days due to traffic; that situation will be compounded if the school is allowed to open. To ameliorate congestion, they suggested planning an entrance and exit to the school along the portion of Woodburn Road adjacent to the Police Academy, where a school originally operated; it was suggested that school buses be used to reduce the number of automobiles using the area, or moving the starting time of the school from 8:15 a.m. to approximately 9:00 a.m. and, that a crossing guard be used to regulate traffic flow down Woodburn Road to prevent the left-turn lane from becoming clogged. It was stated that church attendees parked in residents' driveways; a circular driveway was requested by one resident and VDOT would not approve a second curb cut; the line of sight will be adversely affected by moving the entrance/exit; a delay was requested until a traffic study could be conducted; it was stated that the development conditions are too loosely worded and do not accomplish what the staff report promised; a deferral was requested to allow more time to explore the issues affecting Prosperity Avenue; a count by two residents revealed that, between 7:45 a.m. and 8:15 a.m., 245 cars traveled eastbound from Leroy onto Woodburn, 273 coming up Woodburn from Route 236 and turning right on Woodburn, for a total of 518 cars within half an hour.

Vice Chairman Ribble said he believed that VDOT periodically conducted traffic studies and that the results were probably available through the Fairfax County Office of Transportation.

Mr. Robson came to the podium for rebuttal, stating it appeared that many of the concerns in opposition also were the concerns of the applicant regarding traffic. He said commuters had

discovered that Woodburn Road can be used as a shortcut. Mr. Robson said they had struggled with the issue in trying to determine how to get people on and off the church property; they did a traffic count and discovered that 938 cars passed through during the peak hour of 7:30 a.m. to 8:30 a.m., moving from the intersection of Leroy and Prosperity towards Fairfax Hospital; the deceleration lane was planned in an attempt to remove the applicant's traffic from that count, so that through traffic could more easily move on through. Mr. Robson said that, in an effort to not impede traffic, they had deferred to the Office of Transportation's recommendations, believing that their engineers had the best understanding of the issues. He said that the use of Woodburn Road as a thoroughfare impacted the applicant as much as it did the surrounding neighbors; however, beyond what they were proposing, there was nothing the applicant could do because they do not have the time nor money; the school has to open by September to go forward. The applicant must hire teachers and establish an enrollment in a timely fashion. VDOT will have a very active role in this situation after the use is established. Mr. Robson addressed the car-pooling option and said the applicant had established a count by surveying other Catholic Schools and finding that the carpool ratio was between 2.5/1 to 4/1, students to cars; they chose the median of 3/1 as being realistic. He said that the Pastor had been considering a traffic guard.

Mr. Pammel asked Mr. Robson about the entry point, stating that it was not an efficient way of handling traffic into the site because the incoming traffic would run into a bay of parked cars, forcing immediate left and then right turns. He asked that the applicant give some consideration to making the entryway more efficient by moving the traffic to a point where it can discharge without additional turning movements. Mr. Robson referenced the proposed modifications to the wording, distributed that morning; he said condition 5 had been modified to address the issue of parked cars referred to by Mr. Pammel, by modifying the number of parking spaces.

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

Mr. Hammack moved to grant SPA 76-M-086-03 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions, as modified and reflected in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 76-M-086-03 by ST. AMBROSE CATHOLIC CHURCH, MOST REV. JOHN R. KEATING, under Sections 3-103 and 3-203 of the Zoning Ordinance to amend SP 76-M-086 for church and related facilities to permit private school of general education which has an enrollment of 100 or more students daily, and building additions, on property located at 3901 Woodburn Road, Tax Map Reference 59-3((1))11A, 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 7, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and R-2.
3. The area of the lot is approximately 13.67 acres.
4. It would be appropriate to modify Proposed Development Conditions 5, 8 and 11.
5. A greater use originally was approved when the church came before the Board years ago; however, the permit was allowed to lapse for various reasons.
6. The facilities are on site and are familiar to members of the Board.
7. There is no question that there are traffic problems on Prosperity Avenue and that there is heavy traffic along Woodburn Road, associated with commuter traffic. Regrettably, the Board cannot allow general traffic conditions in Fairfax to preclude the use of a facility that can demonstrate compliance with the applicable standards set forth in the County Ordinance.
8. The Office of Transportation has considered various remedies to ameliorate the traffic issues generated by the use on site; there is a median and a left turn lane; the entrance to the site will be reconfigured to consolidate turning movements.
9. The only possible issue may be that the stacking lane may be too short, depending upon the number of students arriving at any given time.
10. The Board believes the applicant tried to address the issues in a manner commensurate with the size of the school; with not more than 250 students, it is not a large school.
11. Pine Ridge Elementary School formerly generated traffic until a few years ago when school consolidation occurred in the area which, perhaps, eliminated some of the traffic along Woodburn Road. As long as western Fairfax County continues to develop, more commuter traffic may be expected in the neighborhood, sometimes referred to as "cut through traffic."

12. The building additions are consistent with the development on site and there has been no opposition expressed.
13. It is doubtful the Board would have authority to require off-site improvements to Prosperity Avenue and Leroy Street, unless much greater traffic generated on site by the use could be demonstrated.
14. The applicant has made reasonable attempts to minimize any problems associated with turning movements; it is hoped that the median and the lane development along the front of the school site may help the existing traffic flow.
15. The operation of the school will draw students from the immediate vicinity of the school and will hopefully reduce some traffic in 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 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 and 8-308 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.* This approval reaffirms the original education use of the existing building.

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 Robson Group Architects, dated November 17, 1994, revised through February 14, 1995 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 church shall be six hundred (600) with 193 parking spaces as shown on the special permit plat. A maximum of six (6) parking spaces may be deleted if the proposed entry is redesigned to serve as both an entry and exit. All parking for the use shall be on site.

6. The private school of general education shall be limited to a maximum daily enrollment of 250 students.

7. The hours of operation for the school shall be limited to a maximum time period between 8:15 a.m. and 3:30 p.m. with reasonable accommodation for drop-off and pick-up of students before and after school. Evening hours until 11:00 p.m. shall be permitted for related school activities.

8. The recreation area shall be as shown on the special permit plat. There shall be no additional clearing for play equipment or ball fields on site. Play equipment may be located within the portion of the recreation area located between the limits of clearing (as indicated on the special permit plat) and the school building.

9. The applicant shall encourage a carpool program with a goal of 40% of the students in the school participating in the program.

10. To preserve the existing vegetation on the site, the limits of clearing and grading shall be as shown on the special permit plat. The existing vegetation protected by the limits of clearing and grading shall be deemed to fulfill the requirements for transitional screening on all lot lines.* The Urban Forestry Office shall inspect the transitional screening located between the parking lot and Woodburn Road and may require replacement plantings for any vegetation which is dead, dying or less than six (6) feet in height. The minimum number of trees shall be as shown on the approved special permit plat.

11. The barrier requirement shall be waived along the northern, eastern and western lot line. Trees, a minimum of six (6) tall at time of installation, shall be planted along the southern lot line between the church and western end of the school building, and the lot line. These trees shall be planted to provide the maximum benefit yet not interfere with easements and the recreation area. Species, size and location shall be approved by the Urban Forestry Branch.

12. Interior perking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.*

13. Stormwater management Best Management Practices (BMPs) shall be provided for as determined by DEM. If required by DEM, the undisturbed open space shall be preserved in a conservation easement to meet BMP requirements.

14. The right and left turn deceleration lanes on Woodburn Road shall meet required standards as determined by VDOT. The entry, as depicted on the special permit plat revised through February 14, 1995, shall be redesigned to become both an entrance and exit from the site. The exit shall become a right-out exit only.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

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

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

Mr. Dively seconded the motion which carried by a vote of 5-0. 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 15, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 224, March 7, 1995, (Tape 1), Action Item:

Approval of Resolutions from February 28, 1995 Hearing

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 224, March 7, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Robert E. Grady Appeal
Clerk suggested morning of May 23, 1995

Mr. Dively so moved. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 224, March 7, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Mobil Oil Corporation Appeal
Clerk suggested morning of May 9, 1995

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 224, March 7, 1995, (Tape 1), Action Item:

Zoning Administrator's Request for Acceptance
Hollywood Entertainment Corp. Appeals
t/a Hollywood Video (6419 Shiplett Boulevard)
t/a Hollywood Video (6307 Multiplex Drive)
Clerk suggested morning of June 6, 1995

Mr. Dively so moved. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 225, March 7, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Robert S. and Mariann Marona
SP 95-Y-015

Mr. Dively moved to deny because the requested date of March 15, 1995 would not allow sufficient time to comply with legal requirements for advertising and notification. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 225, March 7, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Lewis Patrick Ryan
VC 95-Y-018
Currently scheduled for May 9, 1995

Mr. Pammel moved to schedule for the morning of April 27, 1995. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 225, March 7, 1995, (Tape 1), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, spoke of a date when three cases were scheduled for 9:30 a.m. and none for any earlier. She asked for permission from the Board to reschedule the cases for 9:00 a.m. and the Board concurred. Mr. Dively moved to grant the request. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Kelley was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 225, March 7, 1995, (Tape 1), Action Item:

ARTHUR S. LEAHY, SP 94-M-071

Mr. Hammack referenced the Leahy application, denied earlier in the morning, and requested that staff call the applicant and advise him that he had the right to request a reconsideration for the Board to entertain a request for a waiver of the twelve-month waiting period on refiling, if he could bring his addition into compliance.

Mr. Hammack said that, if Mr. Leahy could satisfy the Board that electrical and all other aspects could be completed, he would hate to see the addition torn down and have the applicant incur that expense.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that Mr. Leahy could not get a building permit unless the Board granted a variance, because he would be in violation of the Zoning Ordinance. If the variance had been granted, it could have been conditioned upon the applicant obtaining a building permit.

Mr. Pammel said he believed the Board had requested that the surrounding additions be reviewed and whatever was necessary should be done to bring them into compliance. He was particularly concerned about the eight-foot high fence. This was the consensus of the Board.

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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Minutes by: Geri B. Bepko

Approved on: April 11, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

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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 14, 1995. The following Board Members were present: Vice Chairman John Ribble; 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 9:07 a.m. 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 227, March 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. FRANCIS J. PRIOR & SHARON L. PRIOR, APPEAL 94-Y-042 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a fence which exceeds 4 ft. in height is located in a front yard on appellant's corner lot in violation of Par. 3B of Sect. 10-104 of the Zoning Ordinance. Located at 13898 Old Nursery Ct. on approx. 19,000 sq. ft. of land zoned R-2. Sully District. Tax Map 44-4 ((8)) (2) 3. (DEF. FROM 2/9 FOR NOTICES).

William Shoup, Deputy Zoning Administrator, informed the BZA that the appellant was requesting a withdrawal of A 94-Y-042. Mr. Dively made a motion to allow the withdrawal. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote.

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Page 227, March 14, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NHUT THI BELCH, APPEAL 94-L-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is displaying a sign not permanently affixed to the ground or to a building and that such sign is a portable sign which is prohibited under Par. 2 of Sect. 12-104 of the Zoning Ordinance. Located at 8794-H Sacramento Dr. on approx. 143,765 sq. ft. of land zoned C-8. Lee District. Tax Map 109-2 ((1)) 21-B. (DEF. FROM 1/31 FOR NOTICES).

William Shoup, Deputy Zoning Administrator, said at issue was a sign that the appellant has displayed on a number of occasions in front of the Sacramento Shopping Center, where she conducts a retail business called "Teddy Bears To Go." The 3 foot x 4 foot sign is enclosed in a metal frame, similar to a real estate sales sign, and has been displayed in a grassy area between the shopping center parking lot and Route 1. Since the sign is not permanently affixed to the ground, it is considered a portable sign and is prohibited under the provisions of Article 12 of the Zoning Ordinance. Mr. Shoup said the appellant does not appear to be disputing the fact that there is a violation, but merely asked in the statement submitted with the appeal application that the BZA waive the regulation since in her opinion the shopping center is dead and every store needs a sign out front. Mr. Shoup said although he could appreciate the appellant's desire for more sign exposure, he did not believe it was a basis for an appeal. He referenced staff's memorandum dated March 6, 1995 which states there are no provisions allowing for a waiver or a variance of the applicable sign regulations; therefore, staff asked the BZA to uphold the Notice of Violation dated October 18, 1994.

Mr. Kelley asked if the sign was similar to the real estate signs displayed all over the area on weekends. Mr. Shoup said that was correct and submitted a photograph depicting the sign to the BZA.

The appellant, Nhut Thi Belch, 8794 H Sacramento Drive, Alexandria, Virginia, said she had used the sign based on information that she had received from the managers of the shopping center.

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

Mr. Hammack said he had read the staff report on this case, the Ordinances set forth in the staff report, and in particular the appellant's written statement. He said although he was sympathetic to the problem, he did not believe the Zoning Administrator had erred in the application of the Ordinance. Mr. Hammack said the appellant had obtained a temporary sign permit, which has expired, there is a sign on the front of the store and there is a free-standing sign in the shopping center advertising the center and various shops. He then made a motion to uphold the decision of the Zoning Administrator in A 94-L-040 regarding the appeal of Nhut Thi Belch. Mr. Dively seconded the motion.

Mr. Pammel made the observation that the County has been involved for approximately 15 years in a revitalization effort of the Route 1 Corridor, and part of that effort requires strict adherence to the sign criteria set forth in the Zoning Ordinance, which he believed is very important.

Mr. Kelley said he lives in that area and drives the Route 1 Corridor all the time, and there are signs everywhere, but he believed the motion was correct.

The motion carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 228, March 14, 1995, (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. (DEF. FROM 10/11 AT APPLICANT'S REQUEST.)

Vice Chairman Ribble noted that the appeal has been rescheduled to the morning of July 11, 1995. William Shoup, Deputy Zoning Administrator, said that was correct.

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Page 228, March 14, 1995, (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, 2/8, 3/22, AND 9/27 AT APP'S. REQUEST.)

Vice Chairman Ribble noted that the appeal has been rescheduled to the morning of June 6, 1995. William Shoup, Deputy Zoning Administrator, said that was correct.

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Page 228, March 14, 1995, (Tape 1), Scheduled case of:

Approval of the February 28, 1995 Resolutions

Mr. Hammack added another finding of fact to the St. Ambrose Catholic Church, SPA 76-M-086-3 Resolution which read:

15. The operation of the school will draw students from the immediate vicinity of the school and will hopefully reduce some traffic in the area.

He then made a motion to approve the Resolutions as amended. Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 228, March 14, 1995, (Tape 1), Scheduled case of:

Request for Additional Time for
St. Aidan's Episcopal Church, SP 92-V-003

Mr. Dively moved to approve the applicant's request making the new expiration date July 8, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 228, March 14, 1995, (Tape 1), Scheduled case of:

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

Mr. Dively moved to approve the applicant's request making the new expiration date February 6, 1996. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 228, March 14, 1995, (Tape 1), Scheduled case of:

Request for Additional Time for
Graham Road United Methodist Church, SPA 91-P-040

Mr. Pammel moved to approved the applicant's request making the new expiration date April 7, 1996. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 228, March 14, 1995, (Tape 1), Information Item:

Jane Kelsey, Chief, Special Permit and Variance Branch, said at the BZA's request she had investigated the possibility of changing the May 30th meeting to another date. She called the BZA's attention to the memorandum setting forth the dates of the evening of May 30th or Thursday, June 1st.

Page 229, March 14, 1995, (Tape 1), CHANGE IN MEETING DATE:

Mr. Dively said he would prefer the evening of May 30th. Mr. Pammel agreed. Mr. Kelley said he would not be present that week. Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 229, March 14, 1995, (Tape 1), Scheduled case of:

Request for Acceptance of
Caprino Sign Corporation

William Shoup, Deputy Zoning Administrator, said staff was recommending that the BZA not accept the appeal as he did not believe the appeal was timely filed nor was the appellant an aggrieved party. He said the appellant had indicated that he would be present to address the staff's negative recommendation, but he was not present in the Board Auditorium. Vice Chairman Ribble suggested the BZA defer action for one week. Hearing no objection, the Chair so ordered.

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Page 229, March 14, 1995, (Tape 1), Scheduled case of:

Request for Acceptance of
John F. and Anne M. Lefevere Appeal

William Shoup, Deputy Zoning Administrator, said staff was recommending that the appeal be scheduled for May 30th. Mr. Dively so moved. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 229, March 14, 1995, (Tape 1), Scheduled case of:

Request for Acceptance of
David Brown/Rock Stone and Sand, Inc.

Mr. Dively noted that staff was recommending that the appeal not be accepted and suggested that action be deferred for one week. Mr. Kelley agreed. Hearing no objection, Vice Chairman Ribble so ordered.

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As there was no other business to come before the Board, the meeting was adjourned at 9:25 a.m.

Minutes by: Betsy S. Hurtt

Approved on: April 25, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

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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 21, 1995. The following Board Members were present: Vice Chairman John Ribble; 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 8:00 p.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 231, March 21, 1995, (Tape 1), Scheduled case of:

8:00 P.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. (DEF. FROM 11/1/94 AT APPLICANT'S REQUEST)

Vice Chairman Ribble stated that the Board of Zoning Appeals had received a letter from the applicant requesting withdrawal.

Mr. Kelley made a motion to allow the withdrawal of SP 94-S-027. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 231, March 21, 1995, (Tape 1), Scheduled case of:

8:00 P.M. GRAHAM ROAD UNITED METHODIST CHURCH, SPA 91-P-040-02 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 91-P-040 for church and related facilities and child care center to permit an increase in seating capacity and parking. Located at 2929 Graham Rd. on approx. 1.91 ac. of land zoned R-4. Providence District. Tax Map 50-3 ((8)) 10, 11, 47B and 48. (OUT OF TURN HEARING GRANTED)

Vice Chairman Ribble stated that the Board of Zoning Appeals had received a letter from the applicant requesting an indefinite deferral.

Mr. Hammack made motion to defer indefinitely SPA 91-P-040-02. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Pammel not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 231, March 21, 1995, (Tape 1), Scheduled case of:

8:00 P.M. BRIAN C. CAMPDEN-MAIN & MARY LINDA SARA, SP 94-Y-062 Appl. under Sect(s). 3-104 of the Zoning Ordinance to permit a home professional office. Located at 12600 Camberley Forest Dr. on approx. 37,463 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 35-4 ((14)) 17. (DEF. FROM 2/9 AT APPLICANT'S REQUEST)

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

Don Heine, Staff Coordinator, addressed the BZA. He said the 37,463 square foot lot is located on the northwestern corner of the intersection of West Ox Road and Camberley Forest Drive within the Camberley West Subdivision. The lot is zoned R-1 and developed with a 5,064 square foot, one-story single family detached dwelling with a full basement that is at ground level in the rear yard.

Mr. Heine said the applicants, a medical doctor and a doctor of philosophy, were requesting a special permit to operate a home professional office for a marital counseling practice. The proposed office hours were 9:00 a.m. to 10:05 p.m., Monday through Thursday. The office would occupy 1,002 square feet of the basement, have six parking spaces on the south side of the dwelling, and two spaces within the attached garage. Access to the proposed use would be via a proposed walkway that would extend from the parking area to the rear basement entrance. Although the office would be open on Friday from 9:00 a.m. to 5:00 p.m., no patients would be seen.

Mr. Heine said staff had concerns regarding two professionals practicing on site, the long hours of operation, the number of vehicles trips per day, and believed the proposed use would be too intense for the subject property. Staff has also determined the proposed use would not be in harmony with the Comprehensive Plan, and would not meet several of the General Special Permit Standards.

In conclusion, Mr. Heine said there were other non-residental uses in the area and Dr. Buckis' home professional dental office was across the street. Although Dr. Buckis is not currently operating, his special permit would allow him to practice dentistry or request a change in permittee for a period of two years. Approval would allow two nonresidential uses at the main entrance to the subdivision; therefore, staff recommended denial.

The applicants' attorney, William C. Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne, and Deichmeister, 1733 King Street, Suite 300, Alexandria, Virginia, addressed the BZA. He said that although he had attempted to meet with concerned citizens to resolve the issues, the citizens did not wish to do so.

Mr. Thomas expressed his belief that the proposed use would meet the home professional office standard of the Zoning Ordinance. He stated that the applicants have practiced together for the last sixteen years, have maintained a stable practice, and do not intend to increase their business. He further stated that Dr. Campden-Main, who is in his seventies, intended to decrease his case load.

Mr. Thomas noted the house location in respect to Dr. Buckis' office, and said the turn lanes had already been installed, West Ox Road has been widened, and the activity of the use would be unnoticeable. He explained that the applicants would like to have a home professional office because marriage counseling was best practiced in a non-threatening and non-clinical environment. Mr. Thomas said the driveway was adequate to accommodate the practice and noted because the applicants did not have children, there would be no impact on the community.

In conclusion, Mr. Thomas said the large lot would be located at the corner of the development, would have well defined mitigating measures, and would be harmonious with the community. He contended that Dr. Buckis' establishment of a home professional office created a physical arrangement which would benefit the applicants use. Mr. Thomas stated that the lot is located directly off of West Ox Road, the parking would be situated to the front of the house, and the landscaping would be substantial.

Vice Chairman Ribble asked if the special permit would violate restrictive covenants of the neighborhood. Mr. Thomas said he had read the covenants and did not believe the covenant prohibited the use.

In response to Mr. Kelley's question as to whether the applicants had a contingent contract to buy the property, Mr. Thomas said that was correct and the contract had been extended based on the special permit request.

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

Timothy Sherman, 12602 Camberley Forest Drive, Herndon, Virginia; David Buckley, 12614 Camberley Forest Drive, Herndon, Virginia; Nancy Clements, 12611 Camberley Forest Drive, Herndon, Virginia; Thomas Clements, 12611 Camberley Forest Drive, Herndon, Virginia; Jean Sherman, 12602 Camberley Forest Drive, Herndon, Virginia; Richard Schnieder, 3346 Wilbury Road, Herndon Virginia; Daniel Zivney, 3351 Wilbury Road, Herndon, Virginia; stated they were in opposition to the request. They said the application does not comply with the Zoning Ordinance standards, nor with the deed restrictions. They expressed concern that the use would create a traffic and safety hazard, would compromise the residential integrity of the community, and would adversely impact property values. They noted that Dr. Buckis' special permit was still valid and he could reopen the dental office. They used photographs to depict that the landscaping was inadequate and a visual and noise hazard would be imposed on the neighbors. The citizens expressed concern regarding the hazardous waste which could be generated from the use and expressed their belief the applicant should conduct their practice in a medical center.

There being no further speakers in opposition, Vice Chairman Ribble allowed a citizen to speak in support of the request.

Sandy Gilmore, with Long and Forest Realtor, 12662 Stillpond Lane, Herndon, Virginia, addressed the BZA. She said she had written the contract on the property and believed the property served as a buffer between West Ox Road and the community. She noted the applicants agreed to pay full purchase price for the property which has no other potential buyers. Ms. Gilmore expressed her belief that the use would have no detrimental impact on the community, the landscaping would be sufficient, and the purchase would increase other property values in the area.

Vice Chairman Ribble called for rebuttal.

Mr. Thomas said the applicants had addressed the citizens' concerns by enhancing the parking, and providing additional landscaping. He explained that they intend to cooperate with the neighbors and staff to mitigate any adverse impacts on the community and expressed his belief that the property values would increase. Mr. Thomas noted there would be no signage, clients are seen by appointment only, the lighting would be governed by the code, and the location of the property was suitable for a home professional office.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to deny SP 94-Y-062 for the reasons reflected in the Resolution.

Mr. Kelley seconded the motion.

Vice Chairman Ribble called for rebuttal.

Mr. Pammel said his primary concern were the proposed hours, which he believede would be too intense for the residential area.

Mr. Hammack noted that since he has been a member of the BZA, he could not remember the BZA granting a home professional office with evening hours.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-062 by BRIAN C. CAMPDEN-MAIN AND MARY LINDA SARA, under Section 3-104 of the Zoning Ordinance to permit a home professional office, on property located at 12600 Camberley Forest Drive, Tax Map Reference 35-4((14))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 March 21, 1995; 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 37,463 square feet.
4. The applicant has not satisfied the necessary standards for the granting of a special permit.
5. The BZA had extensive hearings on whether or not to grant Dr. Buckis' application the first time and the fact that he seems to have moved out to commercial area is a benefit to these applicants, but we have considered the fact he could move back and that would give two home professional uses at the entrance to this subdivision. There are other standards that have to be met and the burden is on the applicants to show that they satisfy the standards.
6. An overriding point is the number of trips the use would generate, and the number of patients that would be seen on the property which would have two professionals practicing in the same building. Normally, the BZA hears cases involving one professional, seldom has the BZA been asked to hear a case involving two professionals.
7. The testimony has indicated that additional parking was required, the use could generate 5 vehicle trips per hour, and the professionals would have no control over visitors who might drive further into the community to turn around.
8. The applicants' request to receive patients in the evening hours on a regular basis would not be in harmony with the adopted purpose and intent of the Zoning Ordinance.
9. To establish such an intense operation in the residential community would not be in harmony with the Comprehensive Plan.
10. The use would not be harmonious with the adjacent residential neighborhood.
11. There are concerns regarding the additional vehicular traffic that would be generated.
12. The BZA has taken into account the staff's concerns as stated in the staff report.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 29, 1995.

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Page 233, March 21, 1995, (Tape 1), Action Item:

Request for Approval Minutes from January 24, 1995 and February 9, 1995

Mr. Hammack made a motion to approve the Minutes as submitted. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 234, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
Kevin C. Riley Appeal

Mr. Pammel made a motion to schedule the appeal for June 6, 1995. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

Mr. Pammel made a motion to subpoena William Sloan, Morbill Associates, Inc., 1364 Beverly Road, McLean, Virginia, to appear before the BZA on June 6, 1995, to testify regarding his company's involvement in the development of the property at 1836 MacArthur Drive, McLean, Virginia. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

Mr. Kelley instructed staff to research the status of the bond in this case.

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Page 234, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
Robert L. Moore Appeal

Mr. Kelley made a motion to schedule the appeal for June 22, 1995. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 234, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
Byron C. and Julie L. Hughey Appeal

Mr. Kelley made a motion to schedule the appeal for the morning of June 13, 1995. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 234, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
Antiques and Things Appeal

Mr. Kelley made a motion to schedule the appeal for June 27, 1995. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 234, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
Caprino Sign Corporation, Charles T. Caprino Appeal

Vice Chairman Ribble noted the request had been deferred from the March 14, 1995 meeting so the appellant could be present.

The appellant, Charles T. Caprino stated there was confusion over the sign permit and noted errors occurred on both his and Fairfax County's part. He said after a building permit was issued and two signs were erected, they were informed only one sign was allowed. Mr. Caprino explained that, upon his request, a Zoning Enforcement Inspector, Gerald Carpenter, visited the site and said the sign was acceptable. He noted that after Mr. Carpenter's death, the County issued a Notice of Violation and he was told the case could not be appealed.

In response to Mr. Dively's question, Jane W. Gwinn, Zoning Administrator, said the Notice of Violation was issued to Casey Automotive. Mr. Dively made a motion to deny the request on a basis of lack of standing. Mr. Pammel seconded the motion. The motion carried by a vote of 4-1 with Mr. Kelley voting nay. Chairman DiGiulian was absent from the meeting.

Mr. Caprino approached the podium and asked permission to explain the situation to the BZA. He said that Mr. Casey appointed him as his representative. He noted there was a letter in the file which would verify his statement.

Mr. Pammel withdrew his second.

After a brief discussion, it was the concensus of the BZA to defer the request and instructed staff to bring the deceased Zoning Inspector's notes to the BZA. The BZA also instructed Mr. Caprino to submit a statement from Mr. Casey.

Mr. Dively said the nature of the appeal would have to be changed to reflect Mr. Casey as the appellant. He explained that if it were to be left in the name of Caprino Sign Corporation, Charles T. Caprino Appeal, it would be an improper appeal on standing basis and it should be made clear that Mr. Caprino is the agent in behalf of the appellant, Mr. Casey.

Page 235, March 21, 1995, (Tape 1), CAPRINO SIGN CORPORATION, CHARLES T. CAPRINO APPEAL, continued from Page 234 )

Ms. Gwinn stated that staff has no documentation that the appeal was made by Mr. Casey. She expressed concern regarding amending the appeal after the thirty days time frame. Mr. Dively requested Mr. Caprino submit documentation regarding the authorization from Mr. Casey.

Vice Chairman Ribble ordered the request be deferred to March 28, 1995.

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Page 235, March 21, 1995, (Tape 1), Action Item:

Request for Date and Time
David Brown/Rock Stone and Sand, Inc. Appeal

Jane W. Gwinn, Zoning Administrator, stated that Mr. Arnold was present to speak to the request.

The appellant representative, William McCauley Arnold, 10521 Judical Drive, Suite 204, Fairfax, Virginia, explained the appellant's position and asked the BZA to accept the case.

Ms. Gwinn noted that it was not staff's position to dismiss the entire appeal, but staff had raised questions as to whether Francis Shepard was a valid party to the appeal. She noted that when the appeal was filed, staff had no knowledge of Ms. Shepard's relationship to the family partnership.

Mr. Pammel made a motion to schedule the appeal for the evening of May 30, 1995. He expressed concern that Fairfax County staff had not resolved the issue when it first surfaced approximately ten years ago.

Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:15 p.m.

Minutes by: Helen Darby

Approved on: June 6, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

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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 28, 1995. The following Board Members were present: Vice Chairman John Ribble, Robert Dively, Paul Hammack, Robert Kelley, and James Pammel. Chairman John DiGuilian was absent from the meeting.

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

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Page 237, March 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN G. & JOAN E. MATHER, VC 94-M-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 6372 Lakeview Dr. on approx. 14,600 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 129. (MOVED FROM 3/7/95 AT APPLICANT'S REQUEST)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Pat DeVito, 6333 Beechway Drive, Falls Church, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located within the Lake Barcroft Subdivision and the applicant was requesting a variance of five feet to construct an addition. She said staff's research indicated that the dwelling on adjacent Lot 128, to the south, is approximately 11.8 feet from the shared side lot line and is set back about 50 feet further on the lot than the subject dwelling. Ms. Greenlief noted that staff did not include standard Condition 3, which requires that an addition be architecturally compatible with the existing dwelling because, as could be seen on the sketch, the applicant was proposing an architectural remodeling of the entire dwelling.

Ms. Greenlief said that staff had received two letters concerning this application: One was distributed to the Board that morning and the other was from the owner of Lot 130, Dr. Ormandy, which was in the Board's package last week. She said she had received a call from Dr. Ormandy to the effect that he had been under a misconception that the addition would be closer to his side lot line; whereas, the lot line that would be affected is on the other side of the dwelling. Dr. Ormandy said he wished to withdraw his letter but had been unable to submit a written request because of time constraints.

Mr. DeVito explained that he became interested in the property when he was given a plat by the property owner of twelve years, which had been prepared approximately thirty years ago, and began to work on the property according to the plat. He said the plat showed the house to be ten feet from the left side lot line with twenty-plus feet on the right side and he proceeded on the basis of those figures. Some of his work involved preparation of information under the Chesapeake Bay Ordinance Act, because the property is adjacent to Lake Barcroft, and required a survey of the property. One of the issues raised by the surveyors was that the thirty-year-old plat was incorrect and that the house was situated approximately fifteen from both side lot lines. Mr. DeVito said the lot was very narrow and steep. He said he spoke to the property owner on the right, who would be most affected if a variance were sought in accordance with the plat of record, and that neighbor said he had no objection to the plan and thought it was a great idea. Mr. DeVito said this course of action would also correct the longstanding error in the County records, and that was the reason for his presence at the meeting.

Vice Chairman Ribble noted that the plat showed a sanitary sewer easement across the rear of the lot and Mr. DeVito confirmed that to be true, stating that was true of most of the property along the shore of Lake Barcroft.

Mr. Hammack asked if the existing deck would encroach any closer to the side lot line when repaired and Mr. DeVito said it would not. Mr. DeVito said the deck was in severe disrepair and could not be used.

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

Mr. Hammack moved to grant VC 94-M-162 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 28, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-162 by JOHN G. & JOAN E. MATHER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line, on property located at 6372 Lakeview Drive, Tax Map Reference 61-3((14))129, 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 28, 1995; 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 14,600 square feet.
4. The lot is narrow, but the overriding consideration is that the applicant is simply improving an existing dwelling, which was recorded erroneously in the land records; the variance only legitimizes the existing structure.
5. The variance has existed since the house was constructed or, at least, since the Zoning Ordinance was enacted; therefore, the granting of this application will not affect the community, nor cause disharmony.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 23, 1994, revised October 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. Pammel seconded the motion which carried by a vote of 5-0. 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 April 5, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 239, March 28, 1995, (Tape 1), Scheduled case of:

9:00 A.M. KYUNG KIM, SPA 84-M-072-2 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 84-M-072 for indoor baseball academy and certain indoor commercial recreation uses to permit additional uses and change of applicant. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21, 22. (Concurrent with VC 94-M-073.) (MOVED FROM 10/25 AT APPLICANT'S REQUEST. DEF. FROM 11/29 AT APPLICANT'S REQUEST. MOVED FROM 2/21 AT APPLICANT'S REQUEST.)

9:00 A.M. DOME BUILDING PARTNERSHIP/KYUNG KIM, VC 94-M-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking to remain 0.0 ft. and 1.5 ft. from front lot line and to vary the peripheral parking lot landscaping requirement. Located at 5633 Leesburg Pi. on approx. 2.09 ac. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((21)) 1, 2, 19, 20, 21, 22. (Concurrent with SPA 84-M-072-2.) (MOVED FROM 10/25 AT APPLICANT'S REQUEST. DEF. FROM 11/29 AT APPLICANT'S REQUEST. MOVED FROM 2/21 AT APPLICANT'S REQUEST.)

Vice Chairman Ribble asked that staff advise the Board about the rescheduling of the two cases.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the applicant had originally filed for a special permit amendment to SP 84-M-162, quite some time ago. Staff had been working with the applicant, the Office of Transportation and the Department of Environmental Management, in an effort to resolve the parking problems, during which time the special permit expired. In order to continue, a new application needs to be filed, accepted, readvertised and heard. Ms. Kelsey said that no action by the Board on either case was required. The rescheduled hearing date for both cases is the morning of June 6, 1995, provided that the new filing and subsequent requirements are facilitated in a timely fashion.

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Page 239, March 28, 1995, (Tape 1), Board Matter:

Since the next scheduled case was not yet due to be heard, Vice Chairman Ribble said that the Board would consider the After Agenda Items.

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Page 239, March 28, 1995, (Tape 1), Action Item:

Approval of Resolution
~~February~~ March 21, 1995

Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 239, March 28, 1995, (Tape 1), Action Item:

Approval of Minutes
January 10, 1995

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 239, March 28, 1995, (Tape 1), Action Item:

Request for Additional Time
J. Douglas & Carol Hertel
VC 92-V-100
New Expiration Date: December 16, 1997

Mr. Dively moved to grant the request for additional time, with a new expiration date of December 16, 19997. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 239, March 28, 1995, (Tape 1), Action Item:

Request for Additional Time
E.J.W. Enterprises, t/a The Embassy School, SPA 82-C-078
New Expiration Date: October 21, 1997

Mr. Dively so moved to grant the request for additional time, with a new expiration date of October 21, 1997. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 240, March 28, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
McLean Hamlet, SPA 74-D-037-2

Mr. Dively inquired of staff if there were any earlier dates available. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the current hearing date was June 6; all other earlier dates are fairly full with at least eight cases, including some appeals. She said June 6 is really the earliest date staff would recommend because the agendas are all so full. Mr. Dively asked Ms. Kelsey about the schedule for two weeks earlier than June 6 and she replied that May 23, two weeks earlier, had eleven cases scheduled, including two appeals.

Mr. Pammel asked Ms. Kelsey how many additional memberships the applicant was requesting and she did not know. Mr. Pammel said there is a tendency, when an expansion of membership is proposed, that controversy may arise; for that reason, he made a motion to leave the schedule as is and deny the request.

Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 240, March 28, 1995, (Tape 1), Scheduled case of:

Consider Acceptance of Withdrawal Request
Hunter Appeal

Mr. Pammel moved to accept the request, which was the consensus of the Board.

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The Board recessed at 9:20 a.m. and reconvened at 9:30 a.m., when the next case was scheduled.

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Page 240, March 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. TEACHER CHILD CARE CENTER, SP 94-L-074 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a child care center and nursery school. Located at 7686 Richmond Hwy. on approx. 23.65 ac. of land zoned C-6. Lee District. Tax Map 101-2 ((1)) 12A. (OUT OF TURN HEARING GRANTED. MOVED FROM 3/21 AT APPLICANT'S REQUEST)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Richard Baker, 8280 Greensboro Drive, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the subject property is within the Mount Vernon Plaza Shopping Center; the property is surrounded on three sides by the Shopping Center and on the north by the South Meadows multi-family residential development, zoned R-12, and presently under development. Mr. Heine said the applicant was requesting waivers for the required transitional screening and barrier requirements. He said the proposed use is located in the northwest corner of an existing shopping center, with a maximum daily enrollment of 99 children in a second-floor unit containing 6,250 square feet of gross floor area, with a 9,000-square-foot outdoor recreation area and 19 parking spaces located adjacent to the northern property line. Mr. Heine said, in staff's opinion, by requiring access from the west side of the building, having the main entrance gate on the north side of the outdoor recreation area, marking the pavement area between the parking spaces and the entrance gate, and providing traffic warning signs adjacent to the entrance of the child care center/nursery school, the proposed use will be harmonious with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and specific standards for Group 3 Uses; staff, therefore, recommended approval of this application, subject to the Proposed Development Conditions.

Mr. Baker stated that the special permit request was consistent with the General Standards to the extent that the proposed use is harmonious with the adopted Plan and the existing and proposed development in the area. He said that, in the Route 1 corridor, there is a significant demand for the type of services this use would offer. Mr. Baker said that, on September 11, 1984, the BZA granted a special use permit for a use identical to that proposed by this application.

In answer to a question from Mr. Pammel, Mr. Baker said that the applicant concurred with all of the Proposed Development Conditions imposed with the use of this special permit.

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

Mr. Pammel moved to grant SP 94-L-074 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 21, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-L-074 by TEACHER CHILD CARE CENTER, under Section 4-603 of the Zoning Ordinance to permit a child care center and nursery school, on property located at 7686 Richmond Highway, Tax Map Reference 101-2((1))12A, 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 28, 1995; 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 23.65 acres, of which 6,250 square feet on the second floor and 9,000 square feet of outdoor recreation area is allocated to the lessee.

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 at 7686 Richmond Highway consisting of 6,250 square feet of gross floor area in a second floor unit, 9,000 square feet of outdoor recreation area and associated parking and is not transferable to other land. Other by-right, Special Exception, and Special Permit uses on the lot may be permitted without a special permit amendment, if such uses do not affect the child care center/nursery school.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by The BC Consultants, dated March 1991, certified March 19, 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 as may be determined by the Director of 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.

5. The parking tab shown on the plat shall be approved by the Department of Environmental Management (DEM) subject to demonstration that there is sufficient parking for the child care center/nursery school and for the other uses on the 23.65 acre subject property.

6. Nineteen parking spaces shall be provided as shown on the plat and all parking and the drop-off and pick-up of children shall be on the north side of the shopping center building as shown on the plat.

7. The outdoor recreation area shall be enclosed by a six (6) foot high stockade fence with steel posts situated on the outside of the stockade fence. The fence and steel posts shall be maintained.

8. The maximum daily enrollment shall be a maximum of ninety-nine (99) children.

9. The daily hours of operation shall not exceed from 6:00 a.m. to 6:30 p.m., Monday through Friday.

10. The gate connecting the required parking to the day care center shall be located on the north side of the outdoor recreation area. A secondary gate may also be provided on the south side of the outdoor recreation area.

11. Pavement markings that outline the walkways between the required parking spaces and the gate to the outdoor recreation area shall be provided as approved by the Department of Environmental Management in consultation with the Office of Transportation.

12. Signs shall be posted adjacent to the parking area aisles located to the east and west of the child care center/nursery school indicating caution and the presence of the child care center/nursery school. The location of these signs shall be determined by the Department of Environmental Management in consultation with the Office of Transportation.

13. The transitional screening and barrier required adjacent to the north lot line shall be waived.

This approval, contingent on the above-noted conditions, shall not relieve 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 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. Chairman DiGiulian was absent from the meeting.

Mr. Dively moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. 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 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 242, March 28, 1995, (Tape 1), Scheduled case of:

9:30 A.M. RAFAT MAHMOOD AND NUSRAT MAHMOOD, APPEAL 95-L-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that filling and grading in excess of 2,500 sq. ft. and exceeding a depth of 18 in. and the adding of fill in Pike's Branch floodplain has occurred on appellant's property and is in violation of Zoning Ordinance provisions. Located at 5640 & 5644 Telegraph Rd. on approx. 56,935 sq. ft. of land zoned C-8. Lee District. Tax Map 83-1 ((1)) 8B.

Vice Chairman Ribble asked if the appellants were ready to be heard. William C. (Tom) Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne and Deichmeister, P.C., 1733 King Street, Alexandria, Virginia, came forward to represent the appellants.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that the subject property is unimproved and zoned C-8; the greater portion of this property is located within the Pike's Branch floodplain, to the rear of Lot 8A. The service station located on Lot 8A is operated by the appellants. As noted in the staff report dated March 21, 1995, Lot 8B has been filled and graded over an area well in excess of 2,500 square feet and at a depth exceeding eighteen inches; much of the fill material has been placed in the Pike's Branch floodplain. Mr. Shoup cited Par. 1, Sect. 2-601, which allows filling and grading, by right, up to 2,500 square feet, but not exceeding a depth of 18 inches, and Par. 2, Sect. 2-602, does not permit filling or changing contours of a floodplain, except in accordance with the floodplain regulations of Part 9 of Article 2. The filling was done in violation of those provisions since it exceeds the limitations of Par. 1, Sect. 2-601, and there is no special exception approval for filling in a floodplain, as required by Part 9 of Article 2. Mr. Shoup said the appellants believed they should not be held liable for the fill material, since it was already on the property when he purchased it; however, while it is unfortunate that the appellants purchased the property with an existing zoning violation, the fact remains that the fill material was placed in the area without proper approvals. Mr. Shoup said it was staff's position that the current owner of the property is not relieved of the responsibility to comply with the Zoning Ordinance provisions. He noted that the staff report contained a report prepared by Jack White of the Department of Environmental Management (DEM), Special Projects Branch, who was present to answer any questions.

Mr. Dively asked how the issue of the fill material came to staff's attention. Mr. Shoup said a complaint was received from a citizen in the area who drives by the site and was concerned about what had occurred on the property. In answer to a question from Mr. Dively, Mr. Shoup said the appellants had owned the property for two years but the property had been in the existing condition for several years.

Mr. Kelley asked staff how far back a current owner's liability extended, and what if the property was purchased twenty years ago and fill material was dumped there over twenty years ago. Mr. Shoup said there was no statute of limitations in the Zoning Ordinance, so a non-compliance would be pursued regardless of the timeframe.

Mr. Pammel referenced the staff report which said there was additional fill material deposited by the appellants. Mr. Shoup said he did not know whether the appellants continued to deposit fill; what they admitted to doing was bringing in one dumptruck load of gravel to level off some of the area. He said no filling activity by the appellants had been observed by staff, but that is what they admitted to.

Mr. Thomas came forward to state that he had little to add to Mr. Shoup's presentation, other than that, when the appellants purchased the property, they were totally unaware of any fill previously having been deposited there. He said it was impossible to determine if and when the fill had been placed in the area. Mr. Thomas said it appeared that fill previously had been deposited; the two truckloads of gravel which the appellants deposited, amounting to approximately 700 or 800 square feet, approximately 1 inch deep, was intended to level out existing bumps and ridges. Mr. Thomas said the appellants wished to do the right thing but needed guidance ono what to do, how it should be done, and they were concerned about the expense. He said they understood that the floodplain special exception could entail some extensive analysis, costing tens of thousands of dollars, to contend with an issue on a vacant lot. Mr. Thomas said that the appellants, unaware of an issue regarding parking on the lot, had parked vehicles there over some time. Now that they are aware of the impropriety, the lot will not be utilized for that purpose. Mr. Thomas requested guidance in an effort to come into compliance. He said efforts to discover when the fill material was deposited only revealed that it was not there in the 1960's, when the special use permit was approved for the service station use.

Mr. Hammack asked Mr. Thomas if his clients were represented when they purchased the parcel for the service station. Mr. Thomas said the appellants do not own the parcel upon which the service station is located; they rent the parcel. The parcel which the appellants own, where the fill was deposited, is vacant and is adjacent to the parcel on which the service station is located. Parking activity has taken place upon the subject property and will cease.

Mr. Hammack asked if Mr. Thomas had any knowledge of legal authority which might contradict the Zoning Administrator's contention that there is no statute of limitations on zoning violations. Mr. Thomas said he was not aware of a statute of limitations on zoning violations, but he had not scoured the journals for information of that nature. Mr. Thomas, however, said that the appellants appear to be innocent landowners who found themselves with an outstanding issue related to their property, which would be difficult to detect in a typical transaction.

Mr. Dively asked Mr. Thomas if he had an opportunity to review the memo from Mr. White, suggesting resolutions to the issue; he asked whether he had considered filing a special exception. Mr. Thomas said that advice from staff and outside consultants indicated that, in order to proceed with a retrospective special exception application, an extraordinary amount of ancillary documentation would be required, to include comprehensive floodplain studies, etcetera, costing tens of thousands of dollars.

Mr. Dively asked Mr. Thomas if he had considered removal of the fill. Mr. Thomas said he had not looked at the actual cost of that option. He further stressed that this was a vacant piece of land and stated that he hoped the Board would use their equitable powers of judgement in dealing with this issue because the violation occurred many years ago, before the appellants came on the scene. He said that, if the property is developed, several of the suggested options might come into play before the issues are resolved. He said there was a special exception approved for an office building on the property several years ago and it was not moved upon.

Bernard Fagelson, partner in the law firm with which Mr. Thomas is affiliated, came forward to speak in favor of the appellants. He quoted a passage from Shakespeare:

> The quality of mercy is not strained,
> But falleth like the gentle rain
> From Heaven upon the parched earth below,
> Helping both him who receives and him who gives.

Mr. Fagelson said the passage was appropriate for the situation before the Board because the members were dealing with equity. He said that the Board had been appointed for the very reason that there are occasions when equity is at issue and he appealed to the Board for an equitable resolution. Mr. Fagelson said that, at some future time, if the property is developed, the Board of Supervisors may need to consider the issues and make a decision.

Vice Chairman Ribble asked Mr. Shoup if he had anything to add. Mr. Shoup noted that, while the appellants indicated they would cease the parking of vehicles on the property, that would not rectify the problem and was not even a current issue, but would be pursued separately. He agreed that it might not be fair that the appellants find themselves in their present situation; however, it must be remembered that there is a serious environmental issue involved and it was staff's position that the violation should not be allowed to continue just because the appellants chose to purchase the property. He said that the violation does

continued from Page 243 )

exist and needs to be pursued; any questions about how to pursue special exception approval could be directed to Mr. White.

Mr. Kelley noted Mr. Fagelson's and Mr. Shoup's reference to equity. He said he believed there was no apparent equity shown for the appellants. As an example, he said he lived in his house for seven years and asked, if it came to light that, perhaps twenty years ago, the property was improperly filled, would he be subject to all kinds of problems. If so, he believed it would not be equitable or fair. Mr. Kelley said he also wanted to know more about the nature of the complaint and its origin. He said he was greatly troubled by the case and believed it to be totally lacking in equity.

Mr. Shoup said that, if someone filled the property twenty years ago, in violation of the Zoning Ordinance, and it was just now brought to the attention of staff, he knew of no authority for staff to ignore the discovery or to say that it is not a violation. Mr. Kelley asked what could be done; should the house be torn down? He again asked about the nature of the complaint and asked if there was any existing written record of it. Mr. Shoup said that staff had received a call from a citizen who drives by the site and had observed the condition of the stream. Vice Chairman Ribble said he believed that Zoning Enforcement did not act without a written complaint. Mr. Shoup said that, in the case of a telephone call, if the caller is willing to identify his/herself and is willing to file a complaint, staff will look into the complaint. Mr. Kelley asked if staff had a record of the phone call which precipitated this notice of violation for the Board to review it. Mr. Shoup brought the record of the complaint up to the members of the Board for their review.

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

Mr. Dively said this was a difficult case and it does appear that there are inequities involved; however, it is not the purpose of the Board to rule on every existing inequity; their purpose is to fulfill their statutory mandate. He said there was no statute of limitation applicable to this situation and there are no laches that apply to the County or the State; it is arguable that there should be and, in many cases during the last year, laches probably could have resolved a variety of issues. Mr. Dively said it was only a few months ago that the Board was discussing what the Ordinance was in 1941 and 42. He said it was absurd that rules which apply to every citizen do not apply to the State or the County. Mr. Dively further stated he believed that, because of the statutory setup, the only avenue to pursue was to go before the Board of Supervisors and have them make a decision. He said that, if the BZA were more of a legislative body than a judicial body, he would vote to let this issue go; however, the BZA is not a legislative body and, for that reason, he moved to uphold the determination of the Zoning Administrator. Mr. Pammel seconded the motion.

Mr. Pammel said he believed there clearly was a problem and, if the Board had the latitude, they might permit this to continue; his inclination, however, was for modification. Mr. Pammel said the Stream Valley area needs to be cleaned up; there must be some protection of vegetation which now, apparently, is covered with fill material, and certainly exacerbates the situation. He believed that the situation could be corrected and the appellants could move on; however, the BZA did not have the authority to rule in that direction and Mr. Dively was absolutely correct in stating that the authority was with the Board of Supervisors, who should decide what must be done.

Mr. Kelley said he would vote against the motion to uphold because it was not fair and there was no equity in the decision. He said he did not have the answer and it might be better judged and resolved by a body other than the BZA; however, acting upon the complaint of a citizen driving by and seeing some landfill having been deposited years ago, no one knows when, did not make any sense. Mr. Kelley said he did not believe a citizen should be at risk forever.

Mr. Hammack said he would support the motion and agreed with Mr. Dively; he did not believe there was a statute of limitation or laches which this body could apply because they do not sit as an equitable body. Mr. Hammack agreed that the Board of Supervisors has that legislative authority or, if the appellants so choose, they might work something out with the County Attorney's Office, along the lines of a consent order. Mr. Hammack said the BZA did not have the proper authority, under the Zoning Ordinance, to deal with this situation. He said it had not been argued that the appellants were the perpetrators of the filling, other than a very minor portion, nor has it been argued that the statutes really do not apply where it would seem clear on the face that they do, and the Board was being asked to provide relief which he did not believe they had the authority to do in this type of case. Mr. Hammack said the General Assembly had not seen fit to give the BZA any statutory authority along those lines, nor has the County Board of Supervisors.

Vice Chairman Ribble said he would reluctantly support the motion; however, he did not approve of the manner in which the case evolved. He said the nature of how this complaint evolved disturbed him a great deal because it came through a Supervisor's office and was handed down to the Zoning Enforcement Branch. It was his recollection that, in the past, the Board spoke about complaints being submitted in writing and, just as a matter of policy and consistency, a procedure should be established stating exactly what is required for complaints to be accepted for consideration. He said that, on the other hand, one just cannot help noticing violations as one drives down the road. He spoke of aerobics classes in churches, where money changes hands, and said he would like to see some consistency.

Page 245, March 28, 1995, (Tape 1), RAFAT MAHMOOD AND NUSRAT MAHMOOD, APPEAL 95-L-002, continued from Page 244 )

Mr. Kelley told Mr. Hammack he did not agree with him that the BZA had no jurisdiction to do anything about this case. He asked why, then, was it before the BZA; should only certain cases come before them, if they can only hope to uphold the Zoning Administrator. Mr. Kelley said it was a waste of time for the BZA to hear appeals if they did not have any options. He believed they should act and let someone tell them they did not have the authority. Mr. Hammack said they sat to uphold the Zoning Ordinance and not to look for every loophole. He said the appellants had not argued that the Zoning Ordinance did not apply but suggested that, perhaps, he should be grandfathered, but they did not say that. Mr. Hammack said no arguments had been presented to the effect that the appellants should be in a different zoning category or that the Zoning Administrator was in error in the application of the Ordinance. In that respect, he said, it was refreshing to have people come in and state facts and appeal to the mercy of the body. Mr. Hammack said he did not say that the appellants did not deserve relief, he only said the BZA did not have the authority to grant it.

The motion to uphold the Zoning Administrator's determination carried by a vote of 4-1. Mr. Kelley voted nay. Chairman John DiGuilian was absent from the meeting.

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Page 245, March 28, 1995, (Tape 1), Action Item:

Caprino Sign Corporation
Charles T. Caprino Appeal request
Action deferred from 3/14 and 3/21/95

This appeal was before the Board to decide if it should be accepted. It had been deferred for staff to research records and submit the original inspector's notes for the Board's review. The appellants had claimed that the original inspector had approved what was later deemed to be a violation.

Mr. Pammel said that he reviewed the records and they did not support the appellant's position. He moved to uphold the Zoning Administrator's determination that the appeal was not timely filed and to not accept the appeal.

Mr. Dively said the BZA had voted at the last meeting but agreed to review the record and reconsider that decision.

Mr. Shoup stated this was his understanding of the situation. He said Mr. Caprino submitted that the original inspector, Mr. Carpenter, had told him everything was okay.

Mr. Dively said he remembered having moved the previous week to disallow the appeal and he believed there was a 4-1 vote in favor of his motion. He moved again to disallow the appeal and Mr. Pammel seconded the motion. Mr. Kelley querried about there having been another issue on the floor. Mr. Shoup said one issue was timeliness; they had a denied a sign permit and were informed of the denied sign permit but erected the sign anyway, and 16-18 months later a notice of violation was issued; they finally appealed the notice of violation. Mr. Dively said he remembered a second issue of "standing," and Mr. Shoup said that was correct. Mr. Dively said Mr. Caprino had not shown that he was acting in an agency relationship and, therefore, even if he were to carry on the appeal, the entire nature of the appeal would need to be restructured.

Mr. Shoup said it was also his understanding that Mr. Caprino was supposed to come back before the Board with information showing that he did have "standing." Mr. Shoup said he had not talked with Mr. Caprino and had assumed that he would be present that day.

The motion carried by a vote of 5-0. Chairman John DiGuilian 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 10:25 a.m.

Minutes by: Geri B. Bepko

Approved on: April 25, 1995

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

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

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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 4, 1995. The following Board Members were present: Vice Chairman John Ribble; 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 Mr. Hammack gave the invocation.

Vice Chairman Ribble said that it was with mixed feeling that he announced it was Helen Darby's last meeting as Deputy Clerk. He expressed the BZA's thanks for her hard work and congratulated her on the promotion.

There being no further Board Matters, Vice Chairman Ribble called for the first scheduled case.

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Page 247, April 4, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THANH DUC PHAM, VC 94-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7310 Valley Crest Blvd. on approx. 15,422 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((21)) 14. (DEF. FROM 1/31 TO ALLOW STAFF AN OPPORTUNITY TO INSPECT PROPERTY. THE BZA DEF. FROM 2/28 FOR FURTHER INVESTIGATION)

Vice Chairman Ribble said that when the case was heard on January 31, 1995, the BZA determined that additional information was needed. He noted staff was requested to take additional photographs and to obtain reports from the Police and Health Departments.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated the addendum to the staff report contained the requested information and noted the concerned citizens who were present at the meeting had been given copies of the addendum. She said the addendum indicated that inspections had been made by members of the Zoning Enforcement Branch of the Office of Comprehensive Planning, the Police Department, and the Health Department. Ms. Kelsey said staff determined the only current violation were stairs which are in disrepair. Ms. Kelsey noted additional photographs were also submitted to the BZA. Vice Chairman Ribble stated the case had been deferred for decision only.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant VC 94-M-128 for the reasons reflected in the Resolution and subject to the development conditions contained in the addendum to the staff report dated March 28, 1995.

**NOTE: (LATER IN THE PUBLIC HEARING THE BZA MADE A MOTION TO RECONSIDER THE CASE AND DELETE THE DEVELOPMENT CONDITION WHICH REQUIRED A BUILDING PERMIT.**

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-M-128 by THANH DUC PHAM, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 square feet, on property located at 7310 Valley Crest Boulevard, Tax Map Reference 60-3((21))14, 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 4, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,422 square feet.
4. The applicant has satisfied the required standards for the granting of a variance.
5. The shed is located 22.37 feet back from the front lot line at the closest point to the street.
6. The lot has two front yards.
7. The request is for a variance of a little less than 8 feet.
8. The shed is located appropriately off the side lot line.
9. The shed does not impact on the sight lines on the street for visibility.
10. There would be no change in the character of the Zoning District.
11. The shed would be in harmony with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific accessory structure (shed) shown on the plat prepared by D & V Architects, P.C. dated August 26, 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 with Chairman DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 12, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 248, April 4, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LEWIS C. MEYERS, APPEAL 95-L-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of construction equipment, machinery and the keeping of a dump truck on appellant's property is in violation of Zoning Ordinance provisions. Located at 7200 Telegraph Rd. on approx. 2.0 ac. of land zoned R-1. Lee District. Tax Map 91-4 ((1)) 14.

William E. Shoup, Deputy Zoning Administrator, said the subject property is located at 7200 Telegraph Road, Tax Map Reference 91-4((1))14, zoned R-1, and approximately 2 acres in size. He stated the appellant was operating a paving and excavating business and explained that at issue was the storage activity taking place on the property. Inspections had revealed the storage of three dump trucks, a back hoe, a bobcat style front end loader, a roller, two snow plow blades, a salt and sand spreader, and miscellaneous construction debris.

Mr. Shoup referred to the staff report dated March 27, 1995, and said it was staff's position the storage activity constitutes a storage yard as defined in Article 20 of the Zoning Ordinance. A storage yard use is not permitted in the R-1 District; therefore, staff believed the appellant was in violation of that provision of the Zoning Ordinance.

Continuing, Mr. Shoup noted that the appellant was keeping three dump trucks on the property in violation of Par. 16 of Sect. 10-102 of the Zoning Ordinance. The provision addresses the parking of commercial vehicles as an accessory use on residential property and specifically precluded the parking of dump trucks. Therefore, staff believed the appellant was also in violation of that provision of the Zoning Ordinance.

Mr. Shoup noted that the appellant did not deny the activities were occurring, but claimed there are grandfathered nonconforming rights which would allow the activities to take place on the property. He said that after evaluating the case history, the zoning history, and the circumstances associated with the property, staff believed there are no nonconforming rights for the activities on the property.

Mr. Pammel asked if the term "storage yard" and "contractor equipment storage yard" were one and the same. Mr. Shoup said staff was unable to determine if an office existed on the site, so the appellant was merely cited for the "storage yard." Mr. Pammel noted that although Fairfax County does not, frequently zoning ordinances define "contractor equipment storage yard" as a specific use.

Mr. Dively asked if staff believed, under the Zoning Ordinance, the nonconforming use provisions did not apply to the appellant's activities. Mr. Shoup stated the appellant's statement cited Par. 2 of Sect. 15-101 and staff believed that the provision is not applicable to the appellant's situation. He explained that the provision related to uses which are only allowed by special permit or special exception under the current Zoning Ordinance. Mr. Shoup said the appellant's uses are not allowed under any circumstances in the R-1 District; therefore, Par. 2 of Sect. 15-101 is not applicable.

The appellant's attorney, Corinne N. Lockett, with the law firm of Tydings, Bryan and Adams, P.C., 4117 Chain Bridge Road, Suite 420, Fairfax, Virginia, addressed the Board of Zoning Appeals (BZA) and stated there were two issues to the appeal. She said the appeal stemmed from Douglas S. Leigh, Senior Zoning Inspector's, determination that the appellant's activities constituted a storage yard in violation of the Zoning Ordinance. Ms. Lockett stated, that in an attempt to reach a good-faith resolution of the matter, most of the machinery has been removed from the property.

Ms. Lockett said the appellant was appealing the decision that the storage of construction equipment on the property was not a permitted use. She referred to Par. 2 of Sect. 15-101 of the Zoning Ordinance and expressed her belief that the activities were valid nonconforming uses. She noted the provision providing that a use which existed prior to the adoption of the Zoning Ordinance's effective date, allowed in other districts under the Zoning Ordinance, may continue after the enactment of the Zoning Ordinance. Ms. Lockett said it was the appellant's position that the use was grandfathered. She addressed the history of the property and said Mr. Meyers' father had operated a farm on the property from the mid 1930's to the 1950's. In the mid 1950's, the appellant's father ran a gravel pit and continued to store various equipment for farming and hauling purposes. Ms. Lockett said the storage of equipment pre-dated the adoption of the 1941 Zoning Ordinance; therefore, the use is grandfathered under Par. 2 of Sect. 15-101. She noted that farming and storage of such equipment had been a permitted use on the property zoned Suburban Residence.

Continuing, Ms. Lockett said the second issue was Mr. Leigh's determination that the storage of dump trucks on the property violated Par. 16 of Sect. 10-102 of the Zoning Ordinance. She noted the provision allowed one vehicle per dwelling unit in a R-1 District subject to limitations, including prohibiting the parking of a dump truck on residential property. Ms. Lockett explained that the property supported two residential dwellings, one occupied by the appellant and the other by his son. She contended that since the Zoning Ordinance allowed one truck per dwelling and there were two dump trucks parked on the 2 acre property, the use conformed with the Zoning Ordinance. Ms. Lockett said Mr. Meyers and his son were contractors for local builders and hauled dirt to and from local construction sites, but not to the subject property. In conclusion, she said the appellant and his son were present to testify that the dump trucks had been parked on the site prior to the adoption of the August 1978 Zoning Ordinance which prohibited the parking of a commercial vehicle exceeding one and one-half ton capacity on residential property. Ms. Lockett said the property is well screened, there was no detriment impact on the community, and the neighbors supported the appeal.

The appellant, Lewis Meyers, 7200 Telegraph Road, Alexandria, Virginia, addressed the BZA and presented photographs of the property. Noting there were two houses on the property, he said he lives in one house and his son lives in the other. Mr. Myers explained that, although they had some equipment, there were a number of trees on the well-screened property and said he would agree to remove the cinder blocks stored on the property. He said he has always tried to be a good neighbor and a good citizen.

In response to questions from the BZA, Mr. Meyers explained the history of the storage of equipment on the property to the BZA.

Mr. Kelley asked if staff had attempted to find tax records on the vehicles and trucks. Mr. Shoup said staff had checked business licenses. He explained that staff had access to County records, and had not checked the Commonwealth of Virginia records on tags, etc. He explained that staff's ability to obtain pertinent information is limited and the burden of proof was on the appellant. Mr. Shoup stated that the appellant had not submitted any documentation to support his claims, but staff had researched the County's records and found no information which would support the appellant's statements.

Mr. Kelley stated that Fairfax County assumes, without absolute proof, that the appellant may be less than truthful. Mr. Shoup said staff's position was, based on the Virginia Supreme Court's rulings, that it is the appellant's burden to produce the evidence to prove a nonconforming right. He expressed his belief that it was not the County's burden to establish the proof because staff would not have access to the type of information that would normally prove a nonconforming right. Mr. Kelley said the appellant's testimony, under oath, should be considered proof of the nonconforming right. Mr. Shoup stated that the history of the use was jumbled and staff questioned whether a operation, which converted an accessory use into a primary use on the property when the original principle use has been terminated, was legal. He further stated staff had concerns about whether or not it was ever appropriate to store dump trucks, back hoes, etc., with a farming operation.

Mr. Pammel noted that staff could find no evidence that a quarry had existed on site. He asked Mr. Meyers if he had been a contractor hauling sand and gravel from a site other than his own property. Mr. Meyers stated that approximately 25 acres of his family's original farm was part of the gravel pit. He went on to explain that they not only sold the gravel, but hauled it to the buyers washing plants.

Mr. Pammel asked about the provisions governing quarries, and sand and gravel operations prior to the 1959 Zoning Ordinance. Mr. Shoup said since 1941 approval by the BZA would have been required. He said staff had ascertained there were approvals granted in the area, but were unable to document that the BZA ever granted such an approval on the appellant's property.

Mr. Pammel made a motion to continue A 94-L-007 to July 11, 1995, at 9:30 a.m. He explained that the BZA would need additional information in order to make a decision. Mr. Pammel expressed concern regarding the appellant's need to have two dump trucks on the property when the Zoning Ordinance defines the property as one lot. One lot, no matter how many structures are on the lot, is entitled to one residence; therefore, it is entitled to one commercial vehicle. He noted that the property would meet the minimum lot standards for subdivision. Mr. Pammel instructed the appellant to provide documentation and a complete chronological record to substantiate the claim of a nonconforming use. The BZA also requested the appellant obtain affidavits from adjoining property owners or others who can confirm the appellant's testimony. Mr. Pammel said the documentation should be provided to staff no later than June 20, 1995.

Mr. Kelley seconded the motion.

Mr. Dively noted that the legal argument had been made and that he believed it was entirely a factual question and noted that Pages 7 and 8 of Mr. Shoup's memorandum dated March 27, 1995 outlined the documentation which would be required to establish the legal nonconforming use. Vice Chairman Ribble said the BZA would like as much written documentation as possible. Mr. Hammack stated Mr. Meyers' testimony had been general in nature and asked that the documentation address the specific dates certain pieces of equipment were on the parcel.

Mr. Dively said particular attention should be paid to the Knowlton v. Browing-Ferris case. He noted that it was important to establish if the operation had been an accessory use or a primary use.

The motion carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 250, April 4, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THANH DUC PHAM, VC 94-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 7310 Valley Crest Blvd. on approx. 15,422 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((21)) 14. (DEF. FROM 1/31 TO ALLOW STAFF AN OPPORTUNITY TO INSPECT PROPERTY. THE BZA DEF. FROM 2/28 FOR FURTHER INVESTIGATION)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, asked the Board of Zoning Appeals to reconsider the case so the requirement for a building permit could be removed. She explained that a building permit is not required for a shed less than 150 square feet in size.

Mr. Dively made a motion to reconsider VC 94-M-128. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

Page 251, April 4, 1995, (Tape 1), THANH DUC PHAM, VC 94-M-128, continued from Page 250 )

Mr. Hammack made a motion to approve VC 94-M-128 for the reasons set forth in the original motion with a modification to the proposed development conditions deleting the requirement for a building permit.

Mr. Dively and Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 251, April 4, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JEANNEMARIE GARDES, APPEAL 95-L-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the approval of Site Plan 7891-SP-3 for the Huntington Commons development as such approval was based, in part, upon a determination by the Zoning Administrator that the allowable density for the Huntington Commons subdivision is not dependent upon the density of the adjacent Jefferson Manor subdivision, that open space may be utilized for a stormwater management facility, that the recommendations of the Comprehensive Plan are not applicable to the proposed development and that such site plan approval was made during the period an automatic stay was in effect pursuant to Va. Code Section 15.1-496.1. Located on the W. side of Fairhaven Ave. at the southern terminus of Edgehill Ct. on approx. 4.0 ac. of land zoned R-8 and R-20. Lee District. Tax Map 83-3 ((2)) (7) B, B1 & C.

9:00 A.M. JEANNEMARIE GARDES, APPEAL 95-L-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the allowable density for the proposed Huntington Commons subdivision is not dependent upon the density of the adjacent Jefferson Manor subdivision, that a prior covenant had no effect on the density determination and that the recommendations of the comprehensive plan are not applicable to the proposed Huntington Commons Subdivision. Located on the W. side of Fairhaven Ave. at the southern terminus of Edgehill Ct. on approx. 8.3 ac. of land zoned R-8 and R-20. Lee District. Tax Map 83-3 ((2)) (7) A, B, B1 and C. (DEF. FROM 2/14 TO ALLOW THE BZA TO HEAR BOTH APPEALS AT THE SAME TIME)

Vice Chairman Ribble stated that the Board of Zoning Appeals had received a letter requesting withdrawal of the appeals.

Mr. Hammack made a motion to allow the withdrawal of A 95-L-006. Mr. Dively seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

Mr. Hammack made a motion to allow the withdrawal of A 95-L-006. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 251, April 4, 1995, (Tape 1), Action Item:

Request for Approval of Resolutions from March 28, 1995

Mr. Dively made a motion to approve the Resolutions as submitted. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 251, April 4, 1995, (Tape 1), Action Item:

Request for Approval of Minutes for
January 17, 1995 and February 14, 1995

Mr. Pammel said he had not been listed as present in the January 17, 1995 minutes. He noted that he had informed the Clerk of the error.

Mr. Pammel made a motion to approve the Minutes as corrected. Mr. Dively seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 251, April 4, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
David L. Kirkpatrick, VC 95-B-028

Mr. Pammel made a motion to deny the request. He noted the volume of the case load and said an out-of-turn hearing would exacerbate the problem.

Mr. Dively seconded the motion.

Mr. Hammack questioned staff why the applicant could not meet submission requirements for the variance which was initiated in July 1994. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said the Application Acceptance Branch upon its review notifies the applicant if they do not meet the submission requirements. She explained the file lies dormant until the applicant meets the requirements.

Mr. Hammack noted the applicant indicated the application was delayed because of the plat. Ms. Kelsey said she would investigate the matter if Mr. Hammack so desired. Mr. Dively noted there were no allegations that the delay was caused by staff.

The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote. 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 10:10 a.m.

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Minutes by: Helen C. Darby

Approved on: May 16, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 11, 1995. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent.

Vice Chairman Ribble 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 Vice Chairman Ribble called for the first scheduled case.

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Page 253, April 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. AURELIO & YOLANDA GARCIA, VC 95-Y-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line such that side yards total 34.9 ft. Located at 11913 Bennett Rd. on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((2)) 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. Ms. Garcia replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by David Hunter. She said the subject property is 20,000 square feet in size and is located on the south side of Bennett Road east of Fox Mill Road. Surrounding lots in the Fox Mill Acres subdivision are also zoned R-1 and are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings.

This request for a variance resulted from the applicants' proposal to construct a garage addition to be located 7.0 feet from the western side lot line such that both side yards total 34.9 feet. The Zoning Ordinance requires a side yard of 12 feet with a total minimum of 40 feet on a cluster subdivision lot in the R-1 District; therefore, variances of 5.0 feet and 5.1 feet were requested.

Yolanda Garcia, 11913 Bennett Road, Herndon, Virginia, said they planned to enclose the existing carport into a garage and that she did not believe it would impact the neighbors. She said the garage would be used for housing their vehicles and storage.

In response to a question from Vice Chairman Ribble, Ms. Garcia replied the roofline would not be changed.

As there were no speakers, Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to grant VC 95-Y-003 for the reasons set forth in the Resolution and subject to the Proposed Development Conditions contained in the Staff report dated April 4, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-Y-003 by AURELIO & YOLANDA GARCIA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line such that side yards total 34.9 feet, on property located at 11913 Bennett Road, Tax Map Reference 36-3((2))7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 11, 1995; 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 20,000 square feet.
4. The applicants have satisfied the nine required standards for the granting of a variance.
5. The applicants are requesting approval to enclose an existing carport to within 7 feet of the lot line.
6. The roof line is there.
7. The enclosure will be in harmony with and will not impact the existing neighborhood.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Richard J Cronin IV, Land Surveyor, dated November 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. Pammel seconded the motion which carried by a vote of 5-0. 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 April 26, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GUENTER PFEIL, SP 94-L-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow building to remain 8.5 ft. from front lot line. Located at 6536 Backlick Rd. on approx. 42,717 sq. ft. of land zoned C-6, HC and SC. Lee District. Tax Map 90-2 ((1)) 4C. (Concurrent with VC 94-L-148). (IN ASSOCIATION WITH SEA 82-L-058).

9:00 A.M. GUENTER PFEIL, VC 94-L-148 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 6536 Backlick Rd. on approx. 55,198 sq. ft. of land zoned C-3, C-6, HC and SC. Lee District. Tax Map 90-2 ((1)) 4B and 4C. (Concurrent with SP 94-L-061). (IN ASSOCIATION WITH SEA 82-L-058).

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, Mr. Pfeil, replied that it was.

Phyllis Wilson, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. The subject property is located at 6975A Springfield Boulevard, within a Sign Overlay District and a Highway Corridor Overlay District. The parcels are bordered on the north by Springfield Boulevard, on the east by Backlick Road and on the west by Amherst Avenue. The parcels are 55,198 square feet in total size. The smaller parcel, 4B, is zoned C-3, and parcel 4C is zoned C-6. The site is presently developed with two primary buildings, one housing Springfield Motors, the other houses three businesses including Prosperity Bank and Trust, a hair salon, and a dry cleaning establishment.

The applicant was requesting a variance from the 10-foot setback requirements for off-street parking from any front lot line. As a result of construction of Amherst Avenue and Springfield Boulevard and the widening of Backlick Road, parking is presently located at distances varying from 0.7 feet to 9.75 feet from the front lot line. Therefore, the maximum variance requested was 9.3 feet.

Ms. Wilson said the applicant was also seeking approval of a special permit to allow modification to the minimum yard requirement of 40 feet based on an error in building location, to permit the existing building housing Springfield Motors to remain 8.5 feet from the front lot line. This condition was created with the new construction of Amherst Avenue and the taking of right-of-way by the Virginia Department of Transportation (VDOT).

She added this request was in conjunction with the request to amend SE 82-L-058 to permit continuation of an existing vehicle sales, rental, and ancillary service establishment, and to add a drive-in window to the existing bank and to increase land area by incorporating adjoining Lot 4B with Lot 4C. On March 2, 1995, the Planning Commission voted to recommend approval of SE 82-L-058 subject to the development conditions dated February 14, 1995. The applicant was scheduled to appear before the Board of Supervisors on May 1, 1995. Ms. Wilson said staff recommended approval of SP 94-L-061 subject to the implementation of the development conditions contained in the staff report.

Guenter Pfeil, 6536 Backlick Road Springfield, Virginia, referenced the statement of justifications submitted with the applications and asked that the BZA approve both applications. He said the requests were generated by road improvements in the neighborhood.

As there were no speakers, Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to grant SP 94-L-061 for the reasons set forth in the Resolution and subject to the Proposed Development Conditions contained in the staff report dated March 28, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-L-061 by GUENTER PFEIL, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow building to remain 8.5 feet from front lot line, on property located at 6536 Backlick Road, Tax Map Reference 90-2 ((1)) 4C, 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 11, 1995; and

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

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 case is unique because the lot has triple frontage.

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, structure and use indicated on the special permit plat, entitled Special Exception Amendment Application - Variance Application - Special Permit Application, Pfeil Center, Lee District, Fairfax County, Virginia, prepared by Urban Engineering & Associates, Inc. dated September 22, 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. Hammack seconded the motion which carried by a vote of 5-0. 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 April 26, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 94-L-148 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 28, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 94-L-148 by GUENTER PFEIL, 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 6536 Backlick Road, Tax Map Reference 90-2((1)) 4B and 4C, 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 11, 1995; and

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-3, C-6, HC and SC.
3. The area of the lot is 55,198 square feet.
4. This case is unique because the lot has triple frontage.
5. The applicant presented testimony indicating compliance with the standards for granting a variance, in particular standards 1-9.

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

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

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

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

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

1. This variance is approved for the existing parking spaces at the specific locations shown on the plat prepared by Urban Engineering & Assoc., Inc., as revised through 9/22/94, submitted with this application and is not transferable to other land.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGuilian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 26, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 257, April 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BONDY WAY DEVELOPMENT CORPORATION, SP 95-D-001 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit community club and swimming pool. Located at Seneca Rd. on approx. 1.72 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with VC 95-D-001).

9:00 A.M. BONDY WAY DEVELOPMENT CORPORATION, VC 95-D-001 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 152.48 ft. Located at Seneca Rd. on approx. 3.44 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with SP 95-D-001).

Susan Langdon, Staff Coordinator, called the BZA's attention to the applicant's deferral request and suggested a date of June 6, 1995, at 9:00 a.m.

Mr. Hammack made a motion to defer the applications to the date and time suggested by staff. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian absent from the meeting.

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Page 258, April 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ALICIA CRUZ, SP 95-V-009 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 2.0 ft. from front lot line. Located at 8650 Walutes Circle on approx. 1,550 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 101-3 ((23)) 11A. (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, Ms. Cruz, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. The subject property is located on Walutes Circle in the Terrace Towne Homes condominium complex and is zoned R-20. The request was for an error in building location to allow a deck to remain 2.0 feet from the front lot line. The minimum front yard requirement in the R-20 zoning district is an angle of bulk plane of 15%, but not less than 5.0 feet. The angle of bulk plane is met, but the deck is only 2.0 feet from the front lot line; thus, the applicant was requesting a modification of 3.0 feet to the minimum requirement. Ms. Greenlief noted the discussion in the staff report about the uniqueness of this application in that the deck is constructed on the limited area or common area to the condominium complex. She said the Board of Directors voted to allow this sort of construction on property not owned entirely by the homeowner under a deck and patio policy which is part of Appendix 4. She added that the applicant had not obtained a building permit before constructing the deck, but subsequently has applied for one. Ms. Greenlief said staff had received seven letters and one petition in support of the request, and four letters in opposition.

Mr. Hammack asked if theoretically the applicant could have built a patio on grade without a building permit. Ms. Greenlief said the applicant could build an on grade patio, but a building permit would be needed if any walls were involved. She added that depending on the amount of grading that would be necessary the Department of Environmental Management might be involved.

Alicia Cruz, 8650 Walutes Circle, Alexandria, Virginia, said after she moved into her A-frame unit she realized there was no outside place for socializing. She explained that the deck is partially constructed and that she had been unaware of the requirement for a building permit.

Jane Anderle, 8616 Walutes Circle, Alexandria, Virginia, read a prepared statement into the record in support of the request. She said she has lived at her current address for 10 years and is currently serving as President of the Board of the Condominium Association. Ms. Anderle said when the applicant approached the Board about constructing the deck, they consulted legal counsel and based upon counsel's findings the Board granted a limited easement to the applicant so she could construct a deck.

Vice Chairman Ribble expressed the BZA's concern as to whether the application had been properly submitted. Mr. Hammack said he believed the Condominium Association should be a co-applicant.

Ms. Greenlief said there letters from the Condominium Association contained in the staff report allowing the applicant to construct the deck. Vice Chairman Ribble said he understood the flow of things, but he believed that technically the Association should be a party to the application. The other members concurred.

Mr. Pammel made a motion to suspend the public hearing and directed staff to have the affidavits revised to reflect the dual involvement. Mr. Dively asked if the change would require new notices and Mr. Pammel replied that it would. Vice Chairman Ribble said the BZA would also need to see a copy of the easement.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted for the record that there were speakers present, both in support and in opposition.

Mr. Pammel said given the circumstances he believed it would be pointless to go through the public hearing process when the application was not in proper form.

Ms. Kelsey said the Zoning Administrator had reviewed the application based on its unique nature and had believed it was in order.

Following further discussion, Ms. Kelsey suggested a deferral date of May 23, 1995, at 9:00 a.m.

Hearing no objection, the Chair so ordered.

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Page 258, April 11, 1995, (Tape 1), Scheduled case of:

9:30 A.M. K-V ENTERPRISES OF MCLEAN, INC., APPEAL 95-M-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellants' use of property as a storage yard in an R-3 District is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3524 Williams Dr. on approx. 46,901 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 107.

Vice Chairman Ribble noted the applicant was requesting a deferral.

The appellant's attorney, Matthew J. Vlissides, 6867 Elm Street, Suite 102, McLean, Virginia, said the appellant was requesting a deferral to allow them an opportunity to file of a special exception.

William Shoup, Deputy Zoning Administrator, said staff believed a special exception was the appropriate channel, although he was concerned about the existing violation being prolonged. He agreed to a public hearing date of October 10th based on the expeditious filing a special exception.

Mr. Dively made a motion to defer the appeal to October 10, 1995, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 259, April 11, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MARVIN D. TOOMBS AND JEAN P. TOOMBS, APPEAL 95-M-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the appellants are allowing the operation of a Vehicle Light Service Establishment without an approved special exception. Located at 5714 Center Ln. on approx. 19,039 sq. ft. of land zoned C-8. Mason District. Tax Map 61-2 ((20)) 17A.

The appellant's attorney, Harry P. Hart, 307 N. Washington Street, Alexandria, Virginia, came forward and said the owner of the property, Marvin Toombs, and the lessee, Scott Bland, were both present.

William Shoup, Deputy Zoning Administrator, outlined the location of the subject property as noted in staff's memorandum dated April 3, 1995. He said the appellants own the property and lease the property to a business known as California Tint, which is in the business of tinting automobile glass and installing alarm and stereo systems. Mr. Shoup said it was staff's determination that this type of use is a vehicle light service establishment as contained in Article 20 of the Zoning Ordinance. He said this type of use is allowed in the C-8 district by special exception approval, which this use does not have; therefore, staff believed the appellants were in violation of Par. 1 of Sect. 2-304 of the Zoning Ordinance. Mr. Shoup referenced the discussion contained in the staff report with respect to the grandfather provision.

Mr. Hart referenced the memorandum submitted to the BZA outlining the appellant's position.

Mr. Dively said it appeared from the memorandum that the appellant's argument did not deal with the grandfather provision. Mr. Hart said that was correct. A discussion took place between Mr. Dively and the speaker with regard to the Tate v. Ogden court case. Mr. Hart explained the use is listed in the telephone directory under "glass coatings" not automotive. With regard to the installation of alarm and stereo systems, Mr. Hart said that type of work was not done on premises but was sub-contracted out to other sites. Mr. Dively asked what percentage of automobile glass tinting was done on site compared to other types of tinting. Mr. Hart said he was not sure of the percentage, but said the majority of the tinting was done on automobiles.

In response to a question from Mr. Kelley about the installation of windshields, Mr. Hart said when his windshield needed to be replaced it was done at Alexandria Glass Company and it was replaced on the premises. He added that to the best of his knowledge that business does not have a vehicle light service establishment permit.

Mr. Kelley then asked how staff viewed companies like Alexandria and Cherrydale Glass. Mr. Shoup said it depends on the primary focus of what the activity is on the property.

Mr. Hammack asked Mr. Hart what provisions of the Zoning Ordinance he believed California Tint would fall under. Mr. Hart replied the use is a retail service business. Mr. Shoup said he did not believe California Tint would be considered retail since a service is being performed.

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The BZA recessed at 10:03 a.m. and reconvened at 10:13 a.m.

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Upon reconvening, Mr. Shoup said he did not believe California Tint would be considered retail since the appellant is providing a service, and noted that the use might even be considered an industrial use. Vice Chairman Ribble asked if the Zoning Ordinance had a "catch all" for retail sales. Mr. Shoup replied it did not, and proceeded to read some of the allowed uses.

continued from Page 259 )

Mr. Hammack asked if Circuit City would be classed as a vehicle light service establishment. Mr. Shoup said it would not because the primary use is retail, with the installation of stereo equipment being an accessory component.

A discussion took place between Mr. Hammack and staff regarding staff's position should the appellant be able to prove that the smaller percentage of the glass tinting was performed on automobiles. Mr. Shoup said from staff's observations and with the number of bays in the building, it appeared to be automobile oriented.

Mr. Hart said some of the bays house the lessee's personal automobiles which he works on as a hobby. He said a product is being sold and the product is being advertised as "glass coating".

Mr. Dively questioned what generated the complaint as he believed it was awfully "petty and nit-picky". Mr. Shoup said this property is located in an area that Supervisor Trapnell has requested a multi-agency review in order to clean up the area. Mr. Hart added the area looks like "gasoline alley".

Vice Chairman Ribble called for speakers.

One of the owners and operators of California Tint, Scott Bland, explained the tinting process to the BZA and showed the materials used. He said he was glad that the area was being cleaned up, but added that his business is not part of the problem.

The appellant, Marvin Toombs, said he acquired the property in the 1950's and noted at the time he purchased the property the zoning was rural business or light industry. He said in 1981 he began leasing the property and the last tenant relocated because he could not meet the County requirements.

Mr. Hart said the point Mr. Toombs was trying to make was that because the former lessee applied for a special exception did not in any way impact the grandfathering provisions on the appellant's behalf.

Mr. Shoup responded to Mr. Toombs' comments by saying staff had not been able to find any record legally establishing previous uses on the property. He reiterated staff's belief that the use was a vehicle light service establishment; therefore, special exception approval was required.

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

Mr. Dively said he believed both sides made very good presentations and that he believed it was a close situation, but he would not consider the grandfather provisions. He said he would make a motion to overturn the Zoning Administrator's determination based on the appellant's factual statements at face value that they are in the business of glass tinting. Mr. Dively said he believed it was only a glass tinting business, and not a vehicle light service establishment. Mr. Kelley seconded the motion and noted that no tools are being used in the business.

Vice Chairman Ribble agreed with the maker's comments and that he would support the motion.

Mr. Pammel said he could not support the appellant's argument, since the building is a structure, has bays, and does primarily service automobiles. He added that just because this particular use is not specifically listed does not mean the Ordinance section is not applicable. Mr. Pammel believed the more qualified person to make this type of determination would be the Zoning Administrator who works with the Zoning Ordinance on a daily basis.

Mr. Hammack agreed with Mr. Pammel's comments and added that he was sympathetic to the appellant, and if the appellant could document that the automobile tinting is the secondary use he perhaps might be more supportive of his position.

The vote was 3-2 with Vice Chairman Ribble, Mr. Dively, and Mr. Kelley voting aye; Mr. Hammack and Mr. Pammel voting nay. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble explained that four affirmative votes were needed to overturn the Zoning Administrator's determination; therefore, the Zoning Administrator's determination was upheld.

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Page 260, April 11, 1995, (Tape 1), After Agenda Item:

Approval of April 4, 1995 Resolutions

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 261, April 11, 1995, (Tape 1), After Agenda Item:

Approval of January 31, February 21, and March 7, 1995 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted with a correction to page 17 of the January 31st Minutes reflecting "Mr. Dively as seconder" on a motion made by Mr. Pammel. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 261, April 11, 1995, (Tape 1), After Agenda Item:

Bobby Steven Creekmore Appeal

Mr. Dively made a motion to schedule the appeal for May 30, 1995, at 8:00 p.m. Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 261, April 11, 1995, (Tape 1), After Agenda Item:

Carvel and Barbara Painter Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of June 22, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 261, April 11, 1995, (Tape 1), After Agenda Item:

Reschedule Mobil Oil Corporation Appeal

Mr. Pammel made a motion to reschedule the Mobil Oil Corporation Appeal from the morning of May 9, 1995 to July 20, 1995 to allow the appellant's special exception application to be heard by the Board of Supervisors. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

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Page 261, April 11, 1995, (Tape 1), After Agenda Item:

David L. Ricketts Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA to reschedule the David L. Ricketts appeal from the morning of May 2, 1995 to the morning of June 13, 1995. Mr. Pammel so moved. Mr. Dively seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting. (This appeal was later rescheduled to September 12, 1995.)

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Betsy S. Hurtt

Approved on: June 20, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

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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 25, 1995. The following Board Members were present: Vice Chairman John Ribble 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 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 263, April 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES D. & MILDRED J. CURTIS, VC 95-V-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line. Located at 3410 Little Hunting Creek Dr. on approx. 18,474 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((14)) 57.

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. Charles D. Curtis, 3410 Little Hunting Creek Drive, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located at the intersection of Richmond Highway and Mount Vernon Highway; surrounding properties in the Sunnyview Subdivision are also zoned R-3 and developed with single family detached dwellings. The applicants were requesting a variance of 5.32 feet.

Mr. Curtis presented the statement of justification, stating that not being able to construct an addition would be a hardship. He said there was no opposition from neighbors.

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

Mr. Hammack moved to grant VC 95-V-004 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-004 by CHARLES D. & MILDRED J. CURTIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.7 feet from side lot line, on property located at 3410 Little Hunting Creek Drive, Tax Map Reference 101-4((14))57, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 1995; 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 18,474 square feet.
4. The lot has an unusual, triangular-shaped lot.
5. The location of the house within the lot lines dictates, to a great extent, where the proposed addition may be located.
6. The lot has the unusual feature of double front yards.
7. The adjoining property owner's dwelling is an adequate distance of 37.9 feet away.
8. Strict application of the Ordinance would restrict reasonable use of the property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Kenneth W. White, dated November 17, 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.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 264, April 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. J. STANLEY AND JANE C. HUCKABY, VC 95-V-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 23.3 ft. from street line of a corner lot and 23.5 ft. from other street line of a corner lot and 7.0 ft. from side lot line. Located at 6117 Edgewood Terrace on approx. 11,350 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (5) 16.

Vice Chairman Ribble advised that the Board had a letter requesting withdrawal by the applicants. He said the Board would entertain a motion to accept the request. Mr. Pammel so moved and the Board unanimously concurred. Vice Chairman Ribble pronounced the application withdrawn.

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Page 264, April 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN R. RACKOSKI, JR., SP 95-Y-002 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of deck 9.6 ft. from side lot line. Located at 15217 Sovereign Pl. on approx. 10,560 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 444.

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. Heidi L. Rackoski, wife of the applicant, 15217 Sovereign Place, Chantilly, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Pleasant Valley Subdivision are also zoned R-C and located within the Water Supply Protection Overlay District and the Airport Noise Impact Overlay District. They also are developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings. The property to the west of the site is vacant. The applicant's request for a special permit results from the applicant's proposal to construct a deck.

Mrs. Rackoski presented the statement of justification, stating that the proposed deck will be in conformance with zoning requirements in effect at the time the lot was created and will have no adverse environmental effect upon the neighborhood. She said there was no opposition from neighbors. Mrs. Rackoski asked the Board to waive the eight-day waiting period, if the application was approved.

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

Mr. Pammel moved to grant SP 95-Y-002 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-002 by JOHN R. RACKOSKI, JR., under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of deck 9.6 ft. from side lot line, on property located at 15217 Sovereign Place, Tax Map Reference 33-4((2))444, 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 25, 1995; and

WHEREAS, 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 10,560 square feet.
4. When the structure was erected, it was in compliance with the R-2 Cluster provisions and the current application meets all the requirements of that particular category.
5. The deck is actually set back from the side lot line a distance greater than the existing house, which is 8.1 feet; factors here definitely support the application and there is an easement on the other side.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Grove Landsurveying, revised by John R. Rackoski, dated November 16, 1992, revised through January 5, 1995, 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 deck.

This approval, contingent on the above-noted conditions, shall not relieve 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. Chairman DiGiulian was absent from the meeting.

Mr. Pammel moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 5-0. 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 April 25, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 266, April 25, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EKOJI BUDDHIST TEMPLE, SP 94-S-046 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 10301 Burke Lake Rd. on approx. 4.48 ac. of land zoned R-1. Springfield District. Tax Map 87-2 ((1)) 22. (MOVED FROM 3/7 AND 4/4 AT APPLICANT'S REQ.)

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, Gregory Harney, 6211 Old Keene Mill Court, Springfield, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, which she said had been prepared by Don Heine, Staff Coordinator. Ms. Kelsey advised that the property is tree-covered and developed with a single family detached dwelling; the area surrounding the property is also zoned R-1 and developed with single family dwellings to the southwest and southeast; an undeveloped cluster subdivision is across the street to the north, with a single family detached dwelling and the Accotink Unitarian Church to the east. Ms. Kelsey said the request was for a temple with 4,300 square feet of gross floor area, containing 180 seats, having 58 parking spaces and a driveway which will connect to Lake Haven Lane. She said that the residence would remain and contains 6,900 square feet. It may be converted in the future to an administrative/educational facility for the church. Ms. Kelsey said that the applicant also was requesting a modification of the transitional screening requirement, to allow the existing vegetation to meet the requirement; however, staff recommended some supplemental vegetation. She said staff believed that, with the implementation of the Proposed Development Conditions, the application would meet all applicable standards for special permit uses and, therefore, recommended approval in accordance with the Proposed Development Conditions.

Mr. Harney presented the statement of justification, stating that the temple had a relatively small congregation, presently occupying space in the Cary Building on Old Keene Mill Road in Springfield, Virginia. He said it is a small unit, one of many in the building, and they have been seeking a location to give them more flexibility. Mr. Harney said the congregation presently is comprised of approximately 100 members, representing less than 40 family units. He said the applicant originally had submitted an application in 1990 for a location at the corner of Wolf Run Shoals Road and Clifton Road; however, the application was withdrawn because of the presence of asbestos on the site and some opposition by the members of the community. Mr. Harney said the dwelling is modern and the lot is fully treed on all four sides; on the west, there is an access road serving the residences immediately behind the property, which will not be disturbed by the development plan. He said they were attempting to maintain the vegetation by disturbing the area as little as possible. Mr. Harney advised that, when the applicant originally purchased the property, there was access off Burke Lake Road and, with the development of the Fairfax County Parkway and the establishment of Lake Haven Lane, the access will be relocated from Burke Lake Road to Lake Haven Lane. Mr. Harney referenced the staff report and said there were only two items of concern. One was a question of screening and the applicant would defer to staff's requests in that regard. The other was with respect to increased traffic on Burke Lake Road and, on their plan, they have already submitted a proposed dedication of 45 feet from the center line to provide for the ultimate widening of Burke Lake Road. Mr. Harney said there were speakers present who would address the issues of transportation because of the prospective future development of the area, with the closing of Pohick Road and the reorientation of Lake Haven Lane. He asked to be able to respond to any questions which might be raised by the speakers. Vice Chairman Ribble assured Mr. Harney that he would have an opportunity for rebuttal. Mr. Harney said the engineer and architect for the project were also present, should the Board wish to ask them any questions.

Mr. Dively asked Mr. Harney if he wished to change the language of any of the Proposed Development Conditions and Mr. Harney said the applicant was in agreement with the Conditions.

There were no speakers in support of the application.

The following people spoke in opposition: Paul Young, 10207 Burke Lake Road; Paul Brown, 6821 Ox Road; Bill Worsham, 6413 Kilkenny Lane; and Alex Roselle, 6903 Sprouse Court, on behalf of the Accotink Unitarian Universalist Church (not necessarily in opposition).

The concerns of the speakers in opposition were: To maintain the preservation of a residential neighborhood; churches are like commercial facilities, attracting large numbers of people, with the resulting traffic and noise; skepticism of the applicant's claim of 15 vehicles present at any one time; joining of the additional traffic with that of Universal Unitarian Church; congestion on Burke Lake Road; the sound of drums from the temple; the attraction of worshippers from Maryland, D.C. and Virginia, rather than worshippers from the immediate neighborhood; the neighbors had never been contacted by temple representatives since the purchase of the property; off-site parking on neighbors' property; and possible adverse impact from drainage fields.

In answer to a question from Mr. Hammack, Jane C. Kelsey, Chief, Special Permit and Variance Branch, confirmed that the Baptist Temple application had been approved. She did not believe construction had begun, so she did not know if the special exception was still valid. Vice Chairman Ribble asked if it was a regional type facility. Ms. Kelsey said it was currently located on Braddock Road and she could not answer that question.

Mr. Harney came forward to offer rebuttal, stating that any church provides service to the community and is available to people in the community, not necessarily drawing worshippers from remote locations. He said the purpose of the application was to provide a place of worship and create as little impact on the community as possible. Mr. Harney said that the proximity of the temple to Fairfax County Parkway will help to meet those goals, as well as the dedication of land previously mentioned. He said that not all worshippers attend all services and services occurring on Sundays, not week days, also would lessen the impact. Other proposed churches will be larger and more severely impact the residential community than this relatively small congregation. Access to the temple will be from Burke Lake Road, onto Lake Haven Road, into the site, with no deep penetration into the residential community, other than on Burke Lake Road. Addressing the parking concerns, Mr. Harney again said there are 58 parking spaces; however, at their present location, the number of cars at any given time is 15. He said that, if any problems arise concerning drainage, they will work with the County to resolve them.

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

Mr. Kelley moved to grant SP 94-S-046 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

Mr. Dively seconded the motion and said that he concurred wholeheartedly with Mr. Kelley's comments and, from all indications, he believed this would be a wonderful addition to the community.

Mr. Pammel noted that the application met all the standards under which it was evaluated. He said the temple is in a good location and the congregation is small; accessibility is a key element, right off the Fairfax County Parkway and not requiring excessive travel through residential streets as has been required in other cases brought before the Board.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-S-046 by EKOJI BUDDHIST TEMPLE, under Section 3-103 of the Zoning Ordinance to permit a place of worship and related facilities, on property located at 10301 Burke Lake Road, Tax Map Reference 87-2((1))22, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 25, 1995; and

WHEREAS, 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 approximately 4.48 acres.
4. This place of worship for 100 members cannot be compared to a church with 1,500 seats and a 750 student enrollment.
5. This facility would have minimum impact upon the area and might be considered a favorable neighbor, occupying over 4 acres which will not be developed.
6. Activities by church members would appear to be Sunday-oriented and it not believed they would cause an intrusion in the neighborhood.

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 Gallifant, Hawes, and Jeffers, dated February 15, 1995, 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 determined 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 proposed parking lot lighting shall be in accordance with the following:

   The light standards shall be a maximum height of 12 feet

   The lights shall focus directly onto the property

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

   The lights shall be turned off within one-half hour after the completion of activities.

6. Transitional screening shall be provided in accordance with the following:

   Along the northwestern lot line, existing vegetation shall be deemed to satisfy Transitional Screening 1, except that supplemental evergreen hedge or shrub plantings shall be provided between the asphalt trail and the tree line, as determined by the Urban Forestry Branch of DEM.

   Along the northeastern lot line in the area between the temple and the percolation trench, transitional screening shall be modified to include supplemental evergreen hedge or shrub plantings that are integrated into the flowering and evergreen trees shown on the plat.

   Along the southeastern lot line, the existing vegetation shall be deemed to satisfy Transitional Screening 1, except that supplemental evergreen trees shall be provided between the percolation trench and the southeastern lot line as shown on the plat and supplemental evergreen hedges or shrubs, which do not interfere with the percolation trench, shall be provided between the parking lot and the southeastern tree line.

   Along the southwestern lot line, the existing vegetation shall be deemed to satisfy Transitional Screening 1, except that supplemental evergreen and shade trees as shown on the plat shall be provided between the parking lot and the tree line.

   The quantity, type and size of all proposed plantings and existing vegetation shall be shown on a landscaping plan that is approved by the Urban Forestry Branch of the Department of Environmental Management. The purpose of these plantings is to provide to the maximum extent possible screening which will soften the visual impact on the residential uses in the surrounding community.

7. The limits of the clearing and grading shall be as shown on the special permit plat.

8. The barrier requirement shall be waived adjacent to all lot lines except along that part of the northeastern lot line located east and southeast of the driveway where the barrier requirement shall be modified to provide the three rows of evergreen trees as shown on the plat.

9. Right-of-way to 45 feet from the existing centerline of Burke Lake Road shall be dedicated for public street purposes to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or on demand, whichever occurs first. All ancillary easements necessary for any future improvement of Burke Lake Road shall also be provided.

10. The maximum number of seats in the main area of worship shall be 180.

11. There shall be 58 parking spaces provided as shown on the special permit plat and all parking for the use shall be on-site.

12. The dwelling on the property may be converted and used for religious related uses.

13. During outdoor activities, amplified music shall be prohibited.

This approval, contingent on the above-noted conditions, shall not relieve 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. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 3, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 269, April 25, 1995, (Tape 1), Scheduled case of:

9:00 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 AND 10/25 AT APPELLANT'S REQUEST))

The appellant's agent, David C. Canfield, Esquire, Mays & Valentine, 110 South Union Street, Alexandria, Virginia, came forward and introduced himself and referred to the fact that his colleague, Mr. Hudson, had previously appeared before the Board on behalf of the appellant. Vice Chairman Ribble asked to hear from the Deputy Zoning Administrator, William E. Shoup, on behalf of staff.

Mr. Shoup described the appeal, stating that the new vehicles being stored on the property belonged to the Ted Britt auto dealership. He said the property was used mainly as a mini-warehouse facility. Mr. Shoup said, as noted in his April 12, 1995 memorandum to the BZA, this appeal has been pending for a long time; the BZA conducted a public hearing on March 8, 1994, and has continued the case several times to allow the appellant time to pursue site plan approval. He said the violations were that the activities occurring were without site plan approval or Non-Residential Use Permit (NONRUP) approval. Based upon the circumstances in his April 12 memorandum, Mr. Shoup said it was staff's position that the appellant had not vigorously pursued site plan approval; therefore, staff was requesting that the BZA take action to uphold their decision and allow staff to pursue appropriate follow-up action to gain compliance.

Vice Chairman Ribble noted that a statement had been made limiting the appellant to five minutes and specifying that the appellant must be present. He asked Mr. Shoup if he remembered what that meant and Mr. Shoup guessed that it must have been ruling from one of the previous hearings, when the case was deferred. Mr. Dively said he remembered this ruling from a previous hearing, at which the appellant did not appear, when there was a request for a continuance. Mr. Shoup found the ruling in the Minutes of the March 8 meeting, when a motion was made to continue the appeal and limit additional testimony to five minutes for each side, adding that the appellant be advised that there should be swift prosecution of the site plan approval (Attachment 3A of the memorandum).

Mr. Hammack asked if any explanation had been given to staff as to why site plan approval had not been pursued in a more expeditious fashion. Mr. Shoup said staff had some discussion with Department of Environmental Management (DEM) staff, who had discussions with the appellant's engineer. He said the concern was the stormwater drainage in the northeast portion of the site, where the majority of storage would take place; drainage would be to an off-site pond. Mr. Shoup said that the appellant needed approval to use that pond and, also, there was concern about adequate downstream outfall. He said staff had no information about what efforts the appellant had made to resolve those issues.

Vice Chairman Ribble advised Mr. Canfield that he had five minutes to present testimony. Mr. Canfield said Shurgard admitted that communication with County staff had not been as forthcoming as it should have been; they apologized and hoped to change that. He said the engineer who was responsible for submitting the site plan in October, had advised Shurguard in mid-January that he was leaving his firm and would be unable to continue working on the plan. Mr. Canfield said the engineer, at that time, was prepared to respond to the reviewer comments with the exception of the treatment of the stormwater outfall to the north, which

falls out across the adjoining property owned by the Weisburg Development Corporation. He said that, beginning in early February, they attempted both orally and in writing to communicate a number of times with Weisburg, up until the previous Wednesday, to determine whether they would be prepared to allow the appellant easements to provide outfall across their property to Ridgetop Road. On Wednesday they received a definitive response, which was "no," they would not be willing to agree to any easements across their property. Mr. Canfield said there is an existing easement for use of the stormwater detention pond on the property; they may allow runoff from the Shurgard property into the pond, and that is not an issue. He said the problem is what to do with the excess outfall which would result from paving over the new car storage area. Mr. Canfield said that Shurgard had engaged the firm of Bengston and Debell to address the site plan revisions, especially the stormwater outfall issue. He introduced David Elliott, construction manager with Shurgard, who had been working on the project since January, and Dennis Thompson of Bengston and Debell, who also was prepared to respond to any questions. He said they both had explored alternatives to obtaining easements from the Weisburg group, including whether a tie-in to the Waples Mill Road lines would be possible, to which the answer was "no," because of inadequate capacity further down the lines. Draining of the property onto Lee Highway is not an option because it involves a different shed. Mr. Canfield said Mr. Thompson and DEM staff discussed the possibility of creating an on-site detention facility that would control the outflow into the adjoining pond, so that the outflow from that pond would not be increased across the Weisburg property; the outflow from the existing pond is through natural drainage, across the Weisburg property, down to Ridgetop Road; there is a deflection of the water by another adjoining property over which they have no control. He said the desired result is better control of the outflow that currently exists. Mr. Canfield said this situation has existed for seven or eight years and Shurgard intends to diligently pursue site plan approval, to obtain the necessary approvals for use of the property, and to make whatever improvements are necessary, once they have an answer to the outfall issue. Mr. Canfield asked that the appeal be deferred for an additional 90 days to allow the appellant to obtain a response to the site plan comments and pursue site plan approval.

Mr. Dively noted that the Board had continued this appeal a number of times, out of courtesy. He asked Mr. Canfield why the Board should not vote on the appeal that day. Mr. Canfield said the principal problem at this point would be economical, not just for the client, but also for Ted Britt Ford. Mr. Dively asked if Mr. Canfield had any argument with the Zoning Administrator's determination that site plan approval is required. Mr. Canfield said "no," they were prepared to go forward with that issue; he said they needed to preserve the existing use in order to achieve that goal and avoid unreasonable interference with the existing activities.

Mr. Hammack commented that the appellant had requested a 90-day deferral in March 1994, over a year ago, and the Board had not seen any measurable progress. Vice Chairman Ribble commented that the Board had already approved three continuances. Mr. Hammack noted that DEM returned the site plan on December 6, 1994, five months ago. Mr. Canfield said they were prepared to respond to the comments DEM made on the site plan with the exception of the outfall issue, which had been complicated by changing engineers; however, he said he believed they could now promptly move forward. Vice Chairman Ribble asked the Board members if they wished to consider the matter of a deferral. Mr. Kelley said he would like to hear if Mr. Shoup had anything else to say, in addition to his printed response, concerning the delays. He asked Mr. Shoup if he believed that another 90 days would do any good. Mr. Shoup said he had concerns about allowing another 90-day deferral; it appeared to him that, historically, the appellant took action just as the next hearing approached. Mr. Shoup said he did not have any reason to believe that pattern would not continue and, when the next 90 days had passed, the appellant would be back, asking for more time.

Mr. Kelley said he believed they should move ahead with the appeal. Vice Chairman Ribble again asked if the Board wished to address the request for a deferral. Mr. Dively said he was willing to entertain a motion if someone wished to address it. Vice Chairman Ribble noted that the Board had originally limited the response to five minutes, but said he would allow the appellant to address the issue.

David Elliott said he started with Shurgard in January as Construction Manager and, in mid-January, he received the results of the first meeting from the engineers with their comments. Since then, he said, they have moved ahead and tried to obtain cost and site plan figures, preparing to proceed further as soon as they could secure the easements from Mr. Weisburg. Mr. Elliott said they had addressed all issues and were prepared to deal with all issues and comments, only to have the easement issue outstanding. He said they had learned the previous Wednesday that they would not be able to obtain the easements. Mr. Elliott said that, since last Wednesday, they had looked into Waples Mill and tried to find out if there had been a site plan submitted by Mr. Weisburg. Vice Chairman Ribble asked if Mr. Weisburg had ever given the appellant any indication that he would grant an easement. Mr. Elliott said he had not, but he had not given any indication that he would not grant an easement. He said their only option now was to construct an underground detention facility, prior to the pond, to maintain the existing flow. Mr. Hammack asked Mr. Elliott how long it would take the new engineers to submit a site plan, delineating the work necessary to satisfy the requirements. Vice Chairman Ribble commented that the appellant did not know if they could. Mr. Elliott said that Dennis Thompson stated he could have revisions done and ready to go to DEM in two weeks. Mr. Dively asked if that was dependent upon negotiating an easement. Mr. Elliott said "no"; since this is their last option, they would discuss with DEM the feasibility of maintaining the existing outflow and creating a detention system that will allow the outflow to remain the same as it has been for the last fifteen years.

Mr. Shoup said he had nothing to add. Mr. Pammel said he could see the ramifications in moving ahead and more than one party would be inconvenienced. He was not happy that this matter had not been resolved in a timely fashion, as had been represented last year.

Mr. Pammel said Shurgard had not done their job, but kept the Board dangling by promising that they would expeditiously proceed to resolve the problem; however, he did appreciate the concerns and moved, reluctantly, to grant a 90-day deferral. He said that, 90 days from that date, the Board would either see a resolution of the appeal, or they would make a decision, once and for all. Mr. Kelley asked when Mr. Weisburg was first approached about an easement. Mr. Canfield said they received the comments on the plan in mid-December; they had a meeting in January and the initial contact with Mr. Weisburg was during the first week of February. Mr. Canfield said they have copies of correspondence sent to Mr. Weisburg in February, March and April, in an attempt to get a response from him. Mr. Pammel included in his motion a limit of no more than ten minutes of explanation by the appellant as to what the status of their application is at that time.

Mr. Dively asked if it would be appropriate to add to the motion that the hearing at the end of 90 days would be the final hearing and that there will be no further continuances, whatsoever; this is a "drop dead" decision. Mr. Pammel said absolutely. Mr. Hammack asked if they really needed 90 days and Mr. Pammel said he believed they really needed 90 days for the engineering aspect and the County process. Mr. Dively seconded the motion. Mr. Kelley said it would really be more than 90 days because the Board does not meet in August. Mr. Hammack said they already have a site plan; they only need to deal with the on-site water issue, which should cut down on the required time. The consensus of the Board was to schedule the hearing for July 25, 1995 at 9 a.m.

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Page 271, April 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT/ILARA THOMAS, APPEAL 95-B-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that five unrelated persons are occupying the dwelling unit at 10812 Santa Clara Dr. in violation of Par. 2 of Sect. 2-502 of the Zoning Ordinance. Located at 10812 Santa Clara Dr. on approx. 8,500 sq. ft. of land zoned PDH-4. Braddock District. Tax Map 57-3 ((9)) 81.

Vice Chairman Ribble noted that the appellant had submitted a request to withdraw the appeal. Mr. Dively moved for withdrawal. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 271, April 25, 1995, (Tape 1), Scheduled case of:

9:30 A.M. LAURA HARRINGTON, JOSEPH C. & CAROLYN E. LYNCH, APPEAL 94-P-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the provisions of Par. 3 of Sect. 9-610 of the Zoning Ordinance do not preclude consideration and approval of other waivers or modifications in conjunction with a request to waive the minimum district size requirements. Located at 8700 Willowmere Dr. on approx. 2.46 ac. of land zoned R-2. Providence District. Tax Map 49-1 ((12)) 1. (DEF. FROM 1/31. DEF. FROM 2/28 FOR NOTICES.)

The appellant's agent, Michael McHugh, P.O. Box 17532, Arlington, Virginia, presented himself to the Board.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that the property was rezoned from the R-2 to the R-3 District on October 31, 1994, and there was a proffered proposal to develop the property into a seven-lot cluster subdivision. The appeal relates to that proposed development. The appellants are adjoining and nearby property owners. Mr. Shoup said that the owner of the subject property sought rezoning to accommodate the development and, in doing so, also requested a waiver of the seven-acre minimum-district-size requirement for cluster subdivisions, along with a request for a waiver of the open-space requirements. He said the issue was whether the Board of Supervisors had authority to approve the minimum-district-size waiver, since an open-space waiver was also needed. Mr. Shoup referenced staff's position as stated in his memorandum dated February 21, 1995, stating that Par. 3, Sect. 9-610 of the Zoning Ordinance was at issue. That provision states that the Board of Supervisors shall only approve a minimum-district-size waiver if the remaining provisions of the Ordinance can be satisfied. He said the appellants contended that, because there also was requested a waiver of the open-space requirements for the cluster subdivision, the proposal did not satisfy the remaining provisions of the Ordinance and, therefore, the Board should not grant the minimum-district-size waiver. Mr. Shoup said it was staff's position that there are specific provisions in the Zoning Ordinance which provide for other types of waivers, such as the open-space waiver that was requested and, if the Board of Supervisors found that such a request met the criteria set forth in the Ordinance and then approved such a request, that constituted satisfying the requirements of the Zoning Ordinance which, in turn, satisfied the provision in Par. 3 of Sect. 9-610. He said it was, therefore, appropriate to address both waivers at that time.

Mr. McHugh came forward to state that a letter had been sent to Board members the previous week and the Board acknowledged that they had the letter. He said he had been working with staff on this appeal. Mr. McHugh said this was not a case of Zoning Enforcement action and was not particularly contentious, nor was it an escalated argument between neighbors and a developer. He said this was an argument about principle and people who are concerned about how law is applied in their County, and the goal was that the law should be applied as it is written. Mr. McHugh said he believed the issue was to determine the meaning of "satisfy," within the context of Sect. 9-610. He believed it meant that one must meet/fulfill all of the requirements of the Zoning Ordinance and that a waiver is not satisfaction of those requirements. Mr. McHugh said the Webster Dictionary defined satisfy as "to fulfill or meet," which is what the appellant was required to do: meet all the requirements of the Zoning Ordinance. He said his first argument was, based on the clear language of the Ordinance, if one is seeking a waiver of minimum district size in an R District, the only waiver available is that waiver; in contrast, that portion of the Ordinance provides that, if one is in a C or I District, one can also obtain a waiver of minimum lot area and/or width requirements. Mr. McHugh said the Ordinance, however, does not provide in an R District for anything other than a waiver of minimum district size. He said the applicable provision is sub-section 3, which he believed was cited by staff, which states that such waiver shall be approved only if the remaining provisions of this Ordinance can be satisfied. Mr. McHugh said he believed meaning had to be given to sub-section 3; the language is different than in other sections of the Ordinance; not every provision of the Ordinance says at the end, "Oh, yes, and by the way, you must have to satisfy all of the provisions of the Ordinance." He said that, unless this provisions means something different than what is applied by the other provisions of the Ordinance, it is useless language. Mr. McHugh said he rebutted staff's argument that "satisfy" means that a waiver of open space or other waivers can be granted, and to determine that only one waiver was allowed per property could effectively inhibit or frustrate the ability to implement the Comprehensive Plan recommendation for a particular property. Mr. McHugh submitted that this interpretation only applies to Sect. 9-610, which addresses the waiver of minimum district size in an R District and, specifically, this particular case comes forward only because the applicant is seeking a waiver of open space in a cluster subdivision. He said it is very clear that, in Virginia, the specifics of the Zoning Ordinance override the Comprehensive Plan. The Comprehensive Plan is a very important guide; however, the clear language of the Ordinance is what Mr. McHugh believed to be binding. He suggested an amendment to the Ordinance, deleting the third requirement, that all other portions of the Ordinance must be satisfied, which would allow the Board to grant this waiver, as well as others such as open-space requirement waivers. Mr. McHugh conceded that the provision clearly required that the Board grant only the waiver of minimum district size. Mr. McHugh said the goal here was to maximize density on the site. He said that, when the cluster subdivision requirements were adopted, they were designed to provide usable open space so that various features of a various site could be used to advantage by clustering the houses closer together and providing usable open space. In the case in question, a storm detention pond is provided which is not large enough to provide any usable recreational area and it falls short of the one-acre requirement for cluster subdivisions in Sect. 2-309. Mr. McHugh said that, when the language is clear, staff and the Board are bound by it. He said the Virginia Supreme Court has held in the City of Richmond, County of Enrico, that we must construe the law as it is written; an erroneous construing by those charged with its administration cannot be permitted to override the clear mandates of the statute. He said that no one challenged the Board's ability to go back and amend the Ordinance in order to properly reflect its intent and, if it is concerned about applications which have gone before, it has the ability to grandfather those applications. Mr. McHugh said the law is that the Board must apply the Ordinance as it is written; it does not have the ability, in individual cases, to waive the requirements of the Ordinance.

There were no other speakers and Mr. Shoup commented that it was staff's position that the provisions of the Ordinance have been fulfilled/met, by the Board's approval of the open-space waiver. He did not believe the language in Par. 3 was useless, it clarifies that the Board cannot waive other requirements of the Ordinance as part of their consideration of a minimum-district-size waiver request. Mr. Shoup said there are other waivers provided for in the Zoning Ordinance; i.e., transitional screening waivers and parking lot landscaping waivers. He said staff believed that saying those cannot be considered in conjunction with a minimum-district-size request is not in keeping with the intent of the Ordinance provisions. Mr. Shoup referenced Zoning Administrator Jane W. Gwinn's memorandum which is the subject of the appeal, stating that he believed it was recognized that there would be a need to waive or modify district size requirements for infill parcels and where the proposed development would be in accordance with the Plan, but just could not meet the size requirement and could not be consolidated. He said, in that way, the appellant's interpretation would frustrate implementation of the Comprehensive Plan. Mr. Shoup said staff did not contend that the Plan overrides the Zoning Ordinance but, rather, provides a basis or intent of the provision. He said staff believes the Zoning Ordinance provisions have been satisfied and what the Board of Supervisors did and has done on numerous occasions since the Ordinance was adopted is in keeping with the intent of the Zoning Ordinance.

Mr. McHugh requested time to rebut and Vice Chairman Ribble said that was not in keeping with the procedure.

A member of the audience asked to speak and Vice Chairman Ribble said that the gentleman probably did not hear him when he previously asked for speakers.

Page 273, April 25, 1995, (Tape 1), LAURA HARRINGTON, JOSEPH C. & CAROLYN E. LYNCH, APPEAL 94-P-037, continued from Page 272 )

James D. Taylor, 2800 Towney View Court, adjacent property owner, said the position of the overwhelming majority (90%) of neighbors in the Willowmere Farms area petitioned the Board of Supervisors in support of Mr. Sloane's proposal for the development that became the subject of this appeal. The reason for their support was that what Mr. Sloane proposed was consistent with the development of the neighborhood and would replace an old, abandoned school which, over ten or twelve years, had become an eyesore and a health and safety hazard to the community. For that reason, Mr. Taylor asked that the BZA reject the appeal.

Vice Chairman Ribble advised Mr. McHugh that he could come forward for two minutes of rebuttal testimony, which was nor the normal procedure. Mr. McHugh said he had only one short point in response to Mr. Shoup's testimony. He said that Sect. 9-610 has a third requirement that all other provisions of the Ordinance must be satisfied but, if you review the other waiver provisions such as Sect. 9-612, none have extra language which requires that all other provisions of the Ordinance must be satisfied, leading him to believe that this difference conveyed another meaning.

Vice Chairman Ribble closed the public hearing.

Mr. Dively moved to uphold the determination of the Zoning Administrator on two grounds: The first one was that the bulk of the argument of the appellant was that a waiver does not constitute a satisfaction, which he (Mr. Dively) believed to be simplistic, because Mr. Shoup had shown that, if that line of reasoning were followed, it would create a host of problems. Second, he said he was inclined to give the Board of Supervisors some leeway in interpreting its own Ordinances; this was not a situation where the Ordinance was in conflict with a State Statute, which he believed called for a different forum or different degree of review. Mr. Dively said that, for those reasons, he moved that the Zoning Administrator's determination be upheld.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 273, April 25, 1995, (Tape 1), Action Item:

Approval of Resolutions from April 11, 1995

Mr. Pammel moved to approve the resolutions and Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 273, April 25, 1995, (Tape 1), Action Item:

Approval of Minutes from March 28, 1995 Hearing

Mr. Hammack moved to approve the minutes. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 273, April 25, 1995, (Tape 1), Action Item:

Request for Acceptance and Scheduling of Appeal
Browns of Alexandria and Douglas D. Jemal
Clerk suggested morning of June 27, 1995

Mr. Hammack moved to accept and schedule the appeal for the morning of June 27, 1995. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 273, April 25, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Larry Nixon, VC 95-M-035

Mr. Pammel advised that the applicants approached him. They subsequently found out that the variance was filed through a misunderstanding and the special permit could have been handled administratively. They apparently were under the impression, from comments and discussions, that they would not lose their place in the scheduling line for variances. Mr. Pammel stated that the applicants opted to have the fee refunded and they intended to replace the fee for the variance as soon as was practicable, believing it had been indicated that they would not lose their place in line, even if the fee were not submitted immediately. Proceeding on that assumption, they found out that they had lost their place in line and there is some urgency involved. Based upon those circumstances, Mr. Pammel moved that the applicants be granted an out-of-turn hearing for the earliest possible time. Jane C. Kelsey, Chief, Special Permit

Page 274, April 25, 1995, (Tape 1), LARRY NIXON, VC 95-M-035, continued from Page 273 )

and Variance Branch, advised that the Clerk was currently advertising for June 13, 1995. Mr. Pammel moved to schedule the case for the morning of June 13.

The motion carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 274, April 25, 1995, (Tape 1), Action Item:

Request for Additional Time
Springfield Congregation of Jehovah's Witnesses

Mr. Pammel moved to grant. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 274, April 25, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Conrad S. Allman, SP 95-B-019

Mr. Pammel said he did not believe there was any great advantage in granting an out-of-turn hearing, since the Clerk was presently advertising for June 13, 1995, and this is already scheduled for June 20. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 274, April 25, 1995, (Tape 1&2), Action Item:

Appeal Application
American PCS, L.P., and Christian and D.H. Scarborough

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that there was a problem with this appeal and that William E. Shoup, Deputy Zoning Administrator, had already left. She left the Board Room to try to locate him.

Paul T. Gallagher, Esquire, 1120 20th Street, N.W., Washington, D.C., came forward to represent the appellants, stating that the Zoning Administrator asserted that the appeal was not timely filed with regard to a special permit application. He gave the following history of the appeal. On November 30, 1994, APC wrote a letter to Barbara A. Byron, Director, Zoning Evaluation Division, requesting a waiver of submission requirements related to a special permit application. On January 13, 1995, Ms. Byron responded by saying she believed that the special permit was in conflict with various Zoning Ordinances and, therefore, made a determination that the special permit could not be granted. On January 26, James Michal responded and requested that Ms. Byron reconsider her determination. On February 24, Ms. Byron indicated in a letter to their office that she saw no reason for the reconsideration and, within thirty days of that February 24, 1995, date, APC filed its appeal.

Mr. Gallagher said they believed there are several reasons why the Zoning Administrator's determination in this matter is incorrect. He said that Sect. 15.1-496.1 of the Virginia Code requires the Zoning Administrator, in any decision or determination, to include a statement on any determination, which indicates that the applicant has 30 days within which to file an appeal of the determination or decision. In this case, the January 12 letter did not contain any such statement, nor did the February 24 letter. Mr. Gallagher said, to date, they had never received any correspondence from the Zoning Administrator's Office that included that required statement. The required statement was included in 1993 amendments to the Zoning Ordinance, and he submitted that it was included as an amendment for the reasons that have arisen in this situation. Mr. Gallagher referenced a January 12 letter to Steve Muscarella of Whalen & Company, Inc., 7202 Arlington Boulevard, Falls Church, Virginia, who is the agent for APC. He said the letter did not indicate that it represented a final decision or determination which could be appealed. He said that was the reason the 1993 amendments required the mandatory statutory statement in any determination or decision. He said, further, that the determination made by Ms. Byron did not address the issue being raised or presented to the Zoning Administrator in the November 30, 1994, letter; APC had asked for a waiver of certain submission requirements and the Zoning Administrator said, generally, the special permit could not be granted. Mr. Gallagher submitted that the January 12 letter was not a determination but was merely an advisory opinion, which is consistent with the case of Vulcan Enterprises v. The Board of Supervisors of Chesterfield County, which is a 1994 decision in which the Virginia Supreme Court stated that, "...if an application is not complete, any opinion given by the Zoning Administrator or the Zoning Administrator's staff, is merely advisory and is not a determination or decision from which the thirty-day appeal timeframe begins to run...." Finally, Mr. Gallagher stated that Mr. Muscarella contacted the Zoning Administrator's Office (sic), specifically Donna McNeally, several days after receipt of the January 12 determination from Ms. Byron to discuss the issue with her and was expressly told.... Vice Chairman Ribble interrupted to ask if it was a determination by Ms. Byron and Mr. Gallagher said that was the problem with the statute, you could call it a determination, a decision, an order and, if you believe what the Zoning Administrator

asserts, then there is a problem with applying 496; you could argue about when the thirty-day period starts to run; is it from receipt of the letter and does it require the statement. Mr. Gallagher said it was difficult for him to believe that the General Assembly wanted the amendment to apply to determinations and decisions and not notices of violation or orders.

Mr. Gallagher went on to state that Mr. Muscarella was specifically told by the Zoning Administrative personnel (sic) that the thirty days would not begin to run from the January 12 date and, therefore, no matter what the other arguments are, he submitted that the Zoning Administrator has waived any arguments that the appeal was not filed in a timely manner. Based upon all of those considerations, Mr. Gallagher said he believed that the BZA should accept the appeal as timely filed.

Mr. Hammack asked staff or the appellant for a copy of the section of the Code which was referenced.

Mr. Dively said this issue had come up before and asked Mr. Shoup if he could provide the County's position regarding the mandatory statutory language regarding the thirty days, stating what it does and does not apply to. He told him this was about a determination in a January 12 letter which should have included, but did not include, the language stating that it was an appealable decision. Mr. Dively asked when that language should and should not be included. Mr. Shoup said the County's position is that the State Code only requires that the language be provided when there is a written order or notice of violation and this situation did not fit into either category. This was only a determination in response to a question; therefore, it was staff's position that they were not required to include the language and do not include it in such letters.

Vice Chairman Ribble asked Mr. Gallagher who had said that the appeal process did not run from January 12. Mr. Gallagher said it was Donna McNeally, who is on Ms. Byron's staff and the person indicated in that letter as the point of contact. In answer to a question from Mr. Ribble, Mr. Gallagher said the call in response to the letter was made within several days of receipt and, at the extreme, possibly one or two weeks after receipt. He said it was clearly within the thirty-day period. Mr. Gallagher said he could understand staff's position that the language was only required on notices of violation and orders; however, further down in the statute it addresses decisions and, once decisions are added, the only thing left is requirements and determinations. He did not believe it was the intention of the General Assembly to eliminate decisions and there is no rationale as to why one person, because of the severity of the situation, should be given notice of when the appeal must be filed, while another person, specifically in this situation, does not receive notice that the appeal should be filed.

Mr. Hammack requested a copy of the letter dated December 5, 1994, to Mr. Muscarella, which was the subject of Ms. Gwinn's decision.

Mr. Muscarella said that, as part of the application for a special exception, he had written a letter to Ms. Byron, requesting a waiver of submission requirements for a plat. Her response, naming Donna McNeally as point of contact, was received by their attorney, who faxed it to Mr. Muscarella. Mr. Muscarella called Mike Congleton, Deputy Zoning Administrator, Zoning Administration Division, Ms. Byron, and Donna McNeally in an effort to clarify the reference to multiple use of a dwelling unit. He said their contention was that they were not constructing another dwelling unit. In his discussion with Donna McNeally in seeking an explanation of the decision, she informed him that the decision was only to deny the waiver and that he still needed to make a decision as to what to do with the application and that there was no clock running.

Mr. Pammel told staff that he could not find the location of the property, based upon the reference made in staff's response which indicated tax map reference 58-4((1))62, and that property is not located at 2301 Hunter Mill Road, Vienna. Mr. Shoup said that was correct; staff was working with several similar requests and the tax map number of another property was inadvertently used. When the appeal was received, Mr. Shoup noted that inconsistency and talked with the County Attorney's Office to find out if that would create a problem; they advised him they did not believe so because it seemed clear in the appellant's statement that they were indeed talking about the Scarborough property on Hunter Mill Road and the fact that there was an incorrect tax map reference in the letter, which the appellant had picked up in their appeal, should not jeopardize the appeal. Mr. Shoup assured Mr. Pammel that staff would, in the future, identify the Hunter Mill Road property with the correct tax map reference.

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

Mr. Pammel said that, given the testimony, he was of the opinion that any type of decision made by the County requires an indication that the citizen has the right to appeal, which the letters in question did not contain. Mr. Pammel moved that the BZA grant the request to accept the appeal and schedule it for the morning of June 27, 1995. He further noted it was the judgement of the Board that the application is timely filed, based upon the date of the request for reconsideration and the time of the response, and the fact that the County did not provide the notice of appeal. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. DiGiulian was absent from the meeting.

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Page 276, April 25, 1995, (Tape 2), Action Item:

Mr. Pammel stated that the Board had a memo from Jane C. Kelsey, Chief, Special Permit and Variance Branch, dated April 24, 1995, regarding Hayden. It was the consensus of the Board that the memo be deferred until the next meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Minutes by: Geri B. Bepko

Approved on: June 27, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Thursday, April 27, 1995. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; and James Pammel. Chairman John DiGuilian and Mr. Robert Kelley were absent.

Vice Chairman Ribble called the meeting to order at 9:13 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 277, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN J. FISCHER & FRANCES A. MOONEY, VC 95-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from side lot line. Located at 1635 Dempsey St. on approx. 14,314 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((34)) 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. Kevin J. Fischer and Frances A. Mooney, 1635 Dempsey Street, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that this 14,314 square foot property is located on Dempsey Street in the Broyhill, Glen Gary Subdivision. The subject property and surrounding lots are zoned R-3 and developed with single family detached dwellings.

This request for variance resulted from the applicant's proposal to construct a 19.5 by 28 foot garage addition to be located 5.3 feet from a side lot line. The minimum required side yard in the R-3 District is 12.0 feet. Accordingly, the applicant was requesting a variance of 6.7 feet to the minimum side yard requirement.

Mr. Fischer stated that the purpose of the garage addition was for increased security. The current Ordinance does not allow a two-car garage because of the narrowness of the lot. In response to Mr. Dively's question, the applicant stated that the garage would not be any larger than the size of the area where the cars are currently parked.

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

Mr. Hammack moved to grant VC 95-D-007 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-007 by KEVIN J. FISCHER & FRANCES A. MOONEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.3 feet from side lot line, on property located at 1635 Dempsey Street, Tax Map Reference 30-4((34))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 April 27, 1995; 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 14,314 square feet.
4. The applicant has presented testimony indicating compliance with the variance standards; in particular, the narrowness of the lot
5. The variance request is for minimal width and depth on a two-car garage.
6. The proposed addition is in harmony with the neighborhood
7. On the side of the property there is a major restriction on how the lot can be used, and a diagonal easement crosses the side and rear of the yard.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific garage addition shown on the plat prepared by Dewberry & Davis, dated December 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.

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 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 278, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES C. & GRACIE L. BLANTON, VC 95-V-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 14.85 ft. from rear lot line and decks 8.91 ft. and 9.25 ft. from rear lot line. Located at 9405 Ludgate Dr. on approx. 13,342 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-4 ((11)) 31.

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, Richard Pleasants, 6404-G Seven Corners Place, Falls Church, Virginia, requested a deferral due to the uncertainty about a private easement on the common area of the subject property which he believed needed to be further researched.

Mr. Ribble moved to defer VC 95-V-006 to the morning of May 2, 1995 at 9:00 a.m. and Mr. Dively seconded the motion. The motion carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 279, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. J. DIANE CINI, VC 95-H-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from rear lot line and deck 7.7 ft. from rear lot line. Located at 2642 Quincy Adams Dr. on approx. 15,970 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-4 ((8)) 52. (MOVED FROM 5/2 and 4/11)

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. J. Diane Cini, 2642 Quincy Adams Drive, Herndon, Virginia, Michele Cini and friend Amy Gold (visiting for National Take Your Daughters to Work Day) replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report prepared by Lori Greenlief. She stated that the subject property is located in the Fox Mill Estates subdivision, contains 15,970 square feet, is zoned R-2 and developed under the Cluster provisions of the Zoning Ordinance. The surrounding properties are zoned R-2 and developed with single family detached dwellings with the exception of the property in the rear which is Homeowners Association open space. The applicant requested a variance to allow an addition consisting of a family room to be located 11.6 feet from the rear lot line and a variance to allow a 4.8 foot high deck to be located 7.7 feet from the rear lot line. The minimum rear yard requirements in this district is 25 feet; therefore, the applicant requested a variance of 13.4 feet to minimum requirement for the addition. Since the proposed deck is not over 3 feet in height, it may extend 12 feet into the minimum yard, but not closer than 5 feet to the rear lot line. Therefore, the proposed deck may be located 13 feet from the rear lot line. The proposed location is 7.7 feet; accordingly, the applicant requested a variance of 5.3 feet to the minimum requirement for the deck.

Mrs. Cini stated that the deck existed when they purchased the house and the new room would take the place of the existing deck.

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

Mr. Dively moved to grant VC 95-H-009 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-H-009 by J. DIANE CINI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.6 feet from rear lot line and deck 7.7 feet from rear lot line, on property located at 2642 Quincy Adams Drive, Tax Map Reference 25-4((8))52, 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 27, 1995; and

WHEREAS, 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 15,970 square feet.
4. The rear of the lot is shallow, has a flood plain, and has an exceptional shape.
5. The proposed addition would not be detrimental to other properties.

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition and deck shown on the plat prepared by Gallifant, Hawes & Jeffers, dated July 20, 1994, and revised through February 21, 1995, 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 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 280, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LEWIS PATRICK RYAN, III, VC 95-Y-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from rear lot line. Located at 13590 Bare Island Dr. on approx. 10,171 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 759. (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. Lewis Patrick Ryan III, 13590 Bare Island Road, Chantilly, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report prepared by Lori Greenlief. The subject property is located in the Poplar Tree Estates subdivision, contains 10,171 square feet and is zoned PDH-2. The surrounding properties are zoned PDH-2 and developed with single family detached dwellings with the exception of the lot to the rear which is homeowners association open space.

The requested variance was to allow an addition consisting of a deck with an attached gazebo to be located 16.5 feet from the rear lot line. The residential zoning district which most closely characterizes the PDH-2 district is the R-2 zoning district developed under the cluster provisions of the Ordinance and the minimum rear yard for the R-2 district is 25.0 feet. Therefore, the applicant requested a variance of 8.5 feet to the minimum requirement.

Mr. Ryan stated that the homeowner's association had no objection to the addition, and that other variances had been obtained for similar purposes in this neighborhood.

Mr. Hammack moved to grant VC 95-Y-018 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

Mr. Ryan requested a waiver of the eight day waiting period, it carried by a vote of 4-0, Chairman DiGuilian and Mr. Kelley were absent.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-Y-018 by LEWIS PATRICK RYAN, III, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.5 feet from rear lot line, on property located at 13590 Bare Island Drive, Tax Map Reference 55-1((9))759, 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 27, 1995; and

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 10,171 square feet.
4. The applicant has presented testimony indicating compliance with the variance standards; in particular, the shallowness of the lot.
5. It is a large lot zoned PDH 2.
6. The deck addition would not be out of harmony with the neighborhood.
7. The subject property backs up to a very deep area of floodplain.
8. The proposed addition will not impact other properties in a detrimental way.
9. At the closest point, the addition is 16.5 feet off the rear lot line.

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

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

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

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

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

1. This variance is approved for the location of the specific addition (deck and gazebo) shown on the plat prepared by Dewberry & Davis dated February 6, 1995, 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. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1995. The Board of Zoning Appeals waived the eight-day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 282, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD & HOWARD, VC 95-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to remain 5.2 ft. from side lot line and 20.9 ft. from front lot line. Located at 6065 Arlington Blvd. on approx. 20,800 sq. ft. of land zoned R-3 and SC. Mason District. Tax Map 51-4 ((2)) (A) 5 and 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Howard, 6065 Arlington Boulevard, Falls Church, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Don Heine stating that the 20,800 square foot subject property is zoned R-3 and SC and is located on the south side of Arlington Boulevard within the Lee Boulevard Heights Subdivision. The property adjoins office uses on the east and west and single family detached dwellings on the south which are also in the R-3 District. Across Route 50, to the north, are townhouses which are zoned PDH-20.

The applicant requested two variances, required by an approved special exception which changed the use of the subject property from residential to office. Variance 1 was a request to allow the uncovered entrance steps to remain 20.9 feet from the front lot line. The Zoning Ordinance allows uncovered steps to extend 5 feet into the required 30 foot minimum front yard. Therefore, a variance of 4.1 feet was requested from the minimum front yard requirement. Variance 2 was a request for an addition to remain 5.2 feet from the side lot line. The Zoning Ordinance requires a 10 foot minimum side yard for non-residential structures. Therefore, a variance of 4.8 feet was requested from the minimum side yard requirement.

Mr. Howard stated that the property was originally leased to operate as a law office, and that similar variances had been obtained in the area.

In response to Mr. Pammel's question, Mr. Howard stated that the buildings were constructed in the 1950's and the taking of right-of-way for Arlington Boulevard and the service road was the direct reason why the structures are closer to the street than they had been when originally built.

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

Mr. Pammel moved to grant VC 95-M-008 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18,1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-M-008 by HOWARD & HOWARD, under Section 18-401 of the Zoning Ordinance to permit building to remain 5.2 feet from side lot line and 20.9 feet from front lot line, on property located at 6065 Arlington Boulevard, Tax Map Reference 51-4((2))(A)5 & 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 April 27, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 20,800 square feet.
4. The applicant is in compliance with the standards for granting a variance.
5. The structures are located closer to the lot line than they were when originally built because of an additional acquisition of right-of-way.
6. To require conformance with the Ordinance would cause a severe hardship on the applicant.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Cervantes and Associates, P.C., dated March 31, 1994, revised September 9, 1994 through November 28, 1994, submitted with this application and is not transferable to other land.

Mr. Hammack seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 283, April 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MARILYN AND PETER STEORMANN, SP 95-Y-004 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 14 ft. 2 in. from side lot line. Located at 6616 Pelhams Trace on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (5) 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. Marilyn Steormann, 6616 Pelham Trace, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 13,000 square feet in size and is located on the west side of Sovereign Place west of Pleasant Valley Road. Surrounding lots in the Pleasant Valley subdivision are also zoned R-C, and WSPOD, were developed under the cluster provisions of the Zoning Ordinance, and are developed with single family detached dwellings. Property to the west of the subject property is vacant.

The request for a special permit resulted from the applicants' proposal to construct a porch addition to be located 14.2 feet from the eastern side lot line. Section 3-C07 of the Zoning Ordinance requires a side yard of 20 feet on a lot zoned R-C.

Mrs. Steormann stated a screened-in porch was requested because of the sun's impact on the subject property.

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

Mr. Dively moved to grant SP 95-Y-004 for the reasons set fort in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-004 by MARILYN & PETER STEORMANN, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 14 feet 2 inches from side lot line, on property located at 6616 Pelhams Trace, Tax Map Reference 53-3((4))(5)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 April 27, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-C & WS.
3. The area of the lot is 13,000 square feet.
4. The applicant is in compliance with the variance standards.
5. The proposed addition will not be detrimental to other properties.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 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 porch 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 Patton, Harris, Rust & Associates and dated January 30, 1990, revised by Marilyn Steormann through January 27, 1995, 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 screened porch.

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

Page 285, April 27, 1995, (Tape 1), MARILYN AND PETER STEORMANN, SP 95-Y-004, continued from Page 284 )

Mr. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 285, April 27, 1995, (Tape 1-2), Scheduled case of:

9:00 A.M. FAIRFAX UNITARIAN CHURCH, SPA 83-P-053 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-053 for church and related facilities to permit private school of general education, child care center, building additions, and change in development conditions. Located at 2709 Hunter Mill Rd. on approx. 10.57 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 23.

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

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 10.57 acres in size and is located on the east side of Hunter Mill Road. The Church of Jesus Christ of Latter Day Saints is located to the south, and single family detached residences are located along all other property lines. Access to the site is and remains via an asphalt commercial entrance located at the southwest corner of the site. The applicant has expanded the parking lot to include 165 gravel parking spaces which are located on both sides of the asphalt entrance drive.

The applicant, Fairfax Unitarian Church, requested an amendment to SP 83-P-053 for church and related facilities to allow a private school of general education, child care center, three temporary trailers, and a change in the development conditions to increase parking from 76 spaces to 165 spaces.

The existing church sanctuary has 300 seats. The private Montessori School will have 80 students, and the child care center will have a maximum of 60 students before and/or after school. The hours of operation for the church are Sundays, 9:15 a.m. to 12:30 p.m. Afternoon and evening group meetings, as well as weekly meetings are held as well.

The hours of operation for the private school & child care center are 7:30 a.m. to 6:00 p.m. The church has 3 full time, and 2 part-time employees, and the private school & child care center will have 8 employees.

The applicant has reduced the number of requested trailers from five to three and the three proposed trailers are shown on the revised plat along the northwest side of the circular driveway. The trailers measure 12 feet by 50 feet each. The closest trailer is located 65.0 feet, and the farthest trailer is located 115.0 feet from the northwestern property line.

Ms. Strobel noted that SPA 81-C-054-1 permitted a school of general education, and this use was limited to a five year term; consequently, this special permit expired on October 13, 1992. The church is amending SP 83-P-053 in order to continue the school and child care center uses with this application.

Staff concluded that the proposed use would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions.

Staff recommended that SPA 83-P-053 be approved subject to the Proposed Development Conditions Revised through April 27, 1995. It was noted that staff recommended that the applicant provide right and left turn deceleration lanes. The revised special permit plat also shows right of way dedication to 46 feet from the centerline of Hunter Mill Road. It was also noted that Proposed Development Condition No. 17 limits use of the three trailers to a five year term.

Staff also recommended approval of a modification of the transitional screening requirement and a waiver of the barrier requirement as noted in the Revised Proposed Development Conditions.

Mr. Hunter answered affirmatively when asked by Mr. Hammack if the Montessori School has been operating since the expiration of its special permit. Mr. Hunter responded that the school is in the northernmost part of the building closest to the trailer. When asked if the trailers are to be used for expansion of the school, Mr. Hunter replied that the applicant had indicated they were only for church purposes and that the trailers are temporary with a recommended term of five years.

Lynne Strobel approached the podium stating that the church developed a master plan for the property in the 1960's and began construction in 1962, the larger sanctuary building was constructed in 1985 after receiving approval from the BZA in 1983. A school and a day care center have previously been operated on the site, the church did not operate the facility but granted a lease to various organizations over the years. The expiration of the permit was

due to an oversight. The main purpose for filing this application was to permit the use of temporary trailers to supply space until the church could raise funds to expand. A certified landscaper was hired to prepare a planting plan which will visually screen the trailers. Revisions to Proposed Development Condition numbers 10, 13, and 16 were proposed by staff. A landscaping plan would be worked out by the applicant at the time of the site plan. The applicant would provide supplemental evergreen trees along the northwestern property line in accordance with the landscaped drawing prepared by Pacullii, Simmons, and Associates, which will be reviewed by the Fairfax County Urban Forester.

In response to Mr. Hammack's question if there were other complaints about the classrooms being near residential property as opposed to the institutional side of the property, Lynne Strobel replied that the topography slopes upward and it would be difficult to put the trailers there. She said and an existing power line would have to be put underground at a substantial cost.

Vice Chairman Ribble asked if there was anyone to speak in support of the application and James Nelson, Minister of Fairfax Unitarian Church, 5415 Silverfox Lane, Reston, Virginia, spoke in support of the application stating that the church offered a variety of services to the community; Peter Crone, 12881 Rexham Road, Fairfax County, Co-Chairman of Fairfax Unitarian's trailer committee, discussed the decisions involved in placing the trailers; Burton Kaufman, 2710 Hunter Mill Road, emphasized the positive effect the church has on the community; David Stanley, 9229 Arlington Boulevard, Fairfax, Virginia, one of the founders of Fairfax Unitarian Church, emphasized the service of the church to the community.

Vice Chairman Ribble noted the letters in support and in opposition.

Vice Chairman Ribble asked if there were any to speak in opposition, Mark Dombroff, President of home owners association, 10301 Hickory Forest Drive, spoke in opposition stating that the church was no longer a good neighbor. He presented photographs of debris, dumpsters, and tires in the woods and stated that the church has outgrown the property. In response to Vice Chairman Ribble's question as to whether there had been dialogue with the church on these issues, Mr. Dombroff indicated that the church stated they were looking for an alternative facility, but they had not had dialogue about the trash. Bob Kramer, 10327 Hickory Forest Drive, indicated that the statements made to the Board were conflicting with those made to the community and that the church needed a comprehensive plan.

The public hearing recessed at 10:27 a.m. and reconvened at 10:35 a.m.

Laura Neale, 10331 Hickory Forest Drive, stated that trailers would be unsightly and create more noise and they wouldn't be able to enjoy their yard

Walter Neale, 10331 Hickory Forest Drive, prepared alternate architectural plans for the church that he felt were not considered.

Lynne Strobel gave a rebuttal stating that the trash does not belong to the church, and it was never called to the church's attention that the community wanted the church to clean up, but they are willing to do what it takes to satisfy the communities' concerns. Ms. Strobel emphasized that the trailers would not be for the montessori school and apologized for not reviewing Mr. Neal's design.

Mr. Gatuso, a certified landscape architect in Virginia, discussed the landscaping plan for the church.

Mr. Hammack made a motion to deny SPA 83-P-053 for the reasons set forth in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 83-P-053 by FAIRFAX UNITARIAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 83-P-053 for church and related facilities to permit private school of general education, child care center, building additions, and change in development conditions, on property located at 2709 Hunter Mill Road, Tax Map Reference 37-4((1))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 27, 1995; 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 10.57 acres.
4. The applicant has not presented testimony indicating compliance with the general standards of special permits uses.

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 3-103 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 3 to 1 with Vice Chairman Ribble, Mr. Hammack, and Mr. Pammel voting aye; Mr. Dively voting nay. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1995.

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Page 287, April 27, 1995, (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, 9/13, 11/29, AND 2/14 TO ALLOW BOS TO HEAR REQUEST FOR SHARED PARKING AGREEMENT.)

Vice Chairman Ribble stated there was a letter of withdrawal. Mr. Dively made a motion to accept the withdrawal. It was seconded by Mr. Pammel and the motion carried by a vote of 4-0, with Chairman DiGuilian and Mr. Kelley absent from the meeting.

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Page 287, April 27, 1995, (Tape 2), Scheduled case of:

9:30 A.M. RICHMOND AMERICAN HOMES OF VIRGINIA, INC., APPEAL 94-H-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that PCA 87-C-060-3 and FDP 87-C-060-2 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family attached units must be affordable. Located S.E. of the Virginia Power Easement between Fox Mill Rd. and Thomas Jefferson Dr. on approx. 22.35 ac. of land zoned PDH-16. Hunter Mill District. Tax Map 16-3 ((1)) 15A. (BZA RESCHEDULED FROM 1/10/95 TO 2/28/95. DEF. TO 4/27 FOR NOTICES AND AT APPL.'S REQUEST)

Vice Chairman Ribble called the appellant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, with the firm of WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, replied that they would like to request a deferral to allow the Advisory Board to meet.

Mr. Pammel moved to defer Richmond American Homes Appeal 94-H-041, to the morning of May 23, 1995. It was seconded by Mr. Dively. The motion carried by a vote of 4-0, with Chairman DiGuilian and Mr. Kelley absent from the meeting.

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Page 287, April 27, 1995, (Tape 2), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL. DEF. FROM 2/28)

Vice Chairman Ribble asked if the appellant was present, Lynne Strobel approached the podium stating that the appellant would like to go forward with the appeal on April 27, 1995.

Vice Chairman Ribble stated that Mr. Kelley had previously made a motion to hear Richmond American Homes and Tate Terrace Realty Investment Inc. together and the Board would like to defer this case.

Page 288, April 27, 1995, (Tape 2), TATE TERRACE [redacted] INVESTMENT, INC., APPEAL 94-Y-039, continued from Page 287 )

John Coles, Tate Terrace, stated that he felt they were being held hostage on this issue, with continued deferrals. In response to Mr. Hammack's question, Mr. Coles replied that the deferrals were not impairing the appellant's ability to go forward, but further deferrals might cause an impact. In response to Vice Chairman Ribble's question, Mr. Coles replied that it been 60 to 90 days since they submitted plans to the county. Mr. Dively moved to defer Tate Terrace Realty Investment Inc. Appeal to the morning of May 23, 1995 with the condition that there will be no further deferrals. It was seconded by Mr. Pammel. The motion carried by a vote of 4-0, with Chairman DiGuilian and Mr. Kelley absent from the meeting.

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Page 288, April 27, 1995, (Tape 2), After Agenda Item:

9:00 A.M. EILEEN T. & WILLIAM J. HAYDEN, VC 94-D-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16.

Mr. Dively moved to reconsider the subject application and Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Pammel stated that Mr. Hayden had refused to submit a revised plat and moved that the variance sought by the applicant be denied. Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGuilian and Mr. Kelley absent from the meeting.

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

Minutes by: Regina Thorn

Approved on: June 20, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 2, 1995. The following Board Members were present: Vice Chairman John Ribble; 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 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 289, May 2, 1995, (Tape 1), Scheduled case of:

9:00 A.M. CLAWES CARPETS, INC., VC 95-M-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.0 ft. from rear lot line. Located at 8716 Little River Trnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B.

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, Donald Smith, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 8,150 square foot subject property is zoned C-5 and is located on the north side of Little River Parkway. The property adjoins office uses on the north; a convenience store on the east, which are in the C-5 District; a home professional office for a dentist on the south in the R-1 District; and a bank on the west in the C-2 District. The applicant was requesting a variance to allow a building addition to be located 3.0 feet from the rear lot line. The Zoning Ordinance requires a 20 foot minimum rear yard. Therefore, a 17.0 variance was requested.

Donald Smith, 5618 Wharton Lane, Centreville, Virginia, represented the applicant and read a prepared statement into the record. (A copy is contained in the file.) He said on July 3, 1984, a variance was granted for a storage addition on the property. The applicant applied for and received a team inspection, a site plan waiver, a building permit, and approved structure plans, which are still on file in the County. Mr. Smith said the applicant was unable to obtain a contractor to undertake the job due to the "building boom" during the 1980's. He said the applicant was again requesting variance approval in order to complete his plans to relocate his headquarters to the subject property. In 1984, the Floor Area Ratio was 50% but due to a Zoning Ordinance amendment the ratio was reduced to 30%, thereby reducing the size of the building 20% as it had been in 1984. Mr. Smith said there is a 26 foot wide service drive along the front of the property which was dedicated by the prior owner. He concluded by saying that the application met all the standards, the variance was necessitated by the land dedication, and the applicant agreed with all the development conditions.

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

Mr. Hammack made a motion to grant VC 95-M-010 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 25, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-M-010 by CLAWES CARPETS, INC., under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.0 feet from rear lot line, on property located at 8716 Little River Turnpike, Tax Map Reference 59-3((1))8B, 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 2, 1995; and

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-5.
3. The area of the lot is 8,150 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance.
5. The applicant was granted a variance 11 years ago which was allowed to lapse.
6. The history of the site, having been zoned commercial and having a new district overlay in the area, is the same now as it was then and justifies granting the variance for the same reason.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc., dated November 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.

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 4-0 with Chairman DiGiulian and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 10, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 290, May 2, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ALFRED B. JUDD, VC 95-V-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 7.6 ft. from side lot line. Located at 1914 Prices Ln. on approx. 13,579 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((4)) pt. 25 and 26.

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, Mr. Judd, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The 13,579 square foot subject property is zoned R-3 and is located on the northeast corner of the intersection of Prices Lane, an undeveloped street, and Linton Lane within the Sulgrave Subdivision. The property adjoins single family dwellings on the north and west, a vacant lot on the east and the

Church of the Latter Day Saints on the south, all of which are in the R-3 District. The applicant was requesting a variance to allow an existing dwelling to be located 7.6 feet from a new lot line. Part of Lot 25 and all of Lots 26, 27, and 28 were originally and are currently part of the building lot for the dwelling on the subject property. The Zoning Ordinance requires a 12 foot minimum side yard. A part of Lot 27 was originally used to meet the side yard requirement. Therefore, a variance was requested for 4.4 feet from the minimum side yard requirement in order to establish a new lot line which will be used to make Lots 27 and 28 a new buildable lot.

Vice Chairman Ribble asked if the request was to allow the existing dwelling to remain. Mr. Heine said that was correct. In response to Mr. Pammel's questions with regard to the plat submitted by the applicant, Mr. Heine said the 13,579 square feet was what the applicant was proposing. He said the lot was a recorded lot.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the proposal was part of a larger building lot as defined in the Zoning Ordinance and the house originally had all four lots as part of one building lot. She said the applicant's request would allow him to sever two lots from the one building lot. Mr. Pammel asked the size of the other two lots and if they were owned by the applicant. Mr. Heine said he had not checked the acreage nor the ownership.

Alfred B. Judd, 1914 Prices Lane, Alexandria, Virginia, said the existing house was originally constructed as part of Lots 25, 26, 27, and 28 with the intent of separating Lots 27 and 28 for future construction. The original house was to be sited facing Linton Lane, but because of the 50 foot setback requirements at that time the dwelling had to be sited on Prices Lane. Mr. Judd said this revision was done without a house type change because Fairfax County assured him that this change would in no way restrict or hinder future development on Lots 28 and 29. He said circumstances has now caused an extraordinary situation on the subject property that would restrict development on Lots 27 and 28. Mr. Judd said he purchased the property in 1972 with the idea of building on the other lots, but when his older son decided to build on the lot they discovered the existing house was too close to the lot line.

In response to a question from Vice Chairman Ribble, Mr. Judd said he owned the lots.

Mr. Pammel questioned where the 50 foot setback came from, if the house was built under the 1959 Zoning Ordinance. Mr. Judd said he had originally wanted the house to face Linton Lane, but the house had to be shifted in order to fit on the lot.

In response to a question from Mr. Pammel with regard to the zoning at the time the property was developed, Mr. Heine said it was R-12.5. Ms. Kelsey said the setbacks in the 1959 Zoning Ordinance required a 50 foot setback from the front lot line and 12 foot from the side lot line.

Vice Chairman Ribble asked if the gift lot provision would be applicable in this case. Mr. Heine said he was not familiar with the gift lot provisions.

In response to the earlier question from the BZA, Mr. Heine said an application for a building permit on the adjoining lots was denied, because the dwelling on Lots 25, 26, and 27 were used to meet the rear yard requirements. It was noted that a variance would be needed in order to meet the requirement. Vice Chairman Ribble pointed out that was why the applicant was before the BZA.

There were no speakers in support and Vice Chairman Ribble called for speakers in opposition.

Charles Douglas Walker, 1906 Prices Lane, Alexandria, Virginia, said he was resident and owner of the adjacent lot. He expressed concern with respect to: 1) the likelihood of increasing congestion on Prices Lane, which is a one lane street; and, 2) the possibility of the proposed grading exacerbating the existing drainage problems.

Vice Chairman Ribble noted that the BZA had received one letter in opposition from the Young family.

In rebuttal, Mr. Judd said there four vacant lots between his house and the speaker's property, all of which meet the requirements for buildable lots. He explained there is a natural drainage ditch and that he did not believe the proposed construction would adversely impact the area.

Vice Chairman Ribble asked the speaker if he had considered the possibility of applying for a resubdivision. Mr. Judd said he and the engineer had discussed that possibility, and the engineer had believed the variance was more appropriate.

In response to a question from Mr. Pammel with regard to the R-3 setbacks, Mr. Heine replied the lot size is 11,500 square feet with a frontage of 80 feet for an interior lot and 105 feet for a corner lot.

Mr. Walker came back to the podium and reiterated his concern with regard to the drainage problems associated with the proposed construction. Mr. Pammel noted for the record that the BZA could not prevent the applicant from developing the lot if it is legally recorded. He

added that the speaker should follow the process through the Department of Environmental Management to ensure that proper drainage is provided.

Mr. Heine corrected an earlier statement by saying that the minimum lot size for the R-3 District is 10,000 square feet.

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

Mr. Pammel made a motion to deny VC 95-V-014 for the reasons noted in the Resolution.

Vice Chairman Ribble said he would reluctantly support the motion altough he believed the applicant had been given incorrect information. He added that although the resubdivision process may be a little more difficult it would be the better way to go in this instance.

Mr. Dively said he would oppose the motion as he believed either process will have the same outcome, the variance is minimal, and resources will be wasted.

Mr. Hammack said he would support the motion as stated and that he believed the hardship was self-inflicted. He believed the resubdivision process was the more appropriate avenue.

Vice Chairman Ribble said he did not agree that the hardship was self-created.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-014 by ALFRED B. JUDD, under Section 18-401 of the Zoning Ordinance to permit existing dwelling to remain 7.6 feet from side lot line, on property located at 1914 Prices Lane, Tax Map Reference 111-1((4))pt. 25 and 26, 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 2, 1995; and

WHEREAS, 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 13,579 square feet.
4. In looking at the residue of Lots 27 and 28 and making calculations on the plat that shows the entire property, it clearly shows that there would be a residual of 27 and 28 if an additional 5 feet were removed to bring the current dwelling into conformance with the side yard requirements. There would be a residual of 117 feet and a depth of 111 feet which calculates to be 12,065 square feet which meets the average lot size requirements, the minimum lot size requirements, and the frontage requirements. Therefore, the obvious conclusion would be that the applicant can meet the requirements of the Fairfax County Zoning Ordinance for building a structure on the lot without obtaining a variance. A variance can only be granted if there is a hardship which clearly shows that the applicant is being deprived of reasonable use of the property which is not the case in this instance. The applicant can develop an appropriate lot and build a house by simply going through the resubdivision process.

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.

Page 293, May 2, 1995, (Tape 1), ALFRED B. JUDD, VC 95-V-014, continued from Page 292 )

6. That:

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

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

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

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 3-1 with Vice Chairman Ribble, Mr. Hammack, and Mr. Pammel voting aye; Mr. Dively voting nay. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 10, 1995.

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Page 293, May 2, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DARWIN A. & NANCY D. KOPPIE, VC 95-M-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. and eave 1.5 ft. from rear lot line. Located at 6626 Braddock Rd. on approx. 20,156 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((10)) 507.

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, Mr. Koppie, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. This 20,156 square foot property is located on Braddock Road in the Braddock Hills Subdivision. The subject property and lots to the north, east and west are zoned R-2, the lots to the south are zoned R-3, and all are developed with single family detached dwellings.

This application involved two variance requests. The first request was to allow an accessory structure 3.0 feet from a rear lot line. A minimum rear yard of 20 feet is required by the Zoning Ordinance for this structure. The second variance request was to allow a roof overhang or eave on the structure, 1.5 feet from the rear lot line. An eave is allowed to extend three feet into a minimum rear yard but no closer than 2 feet to any lot line; therefore, a minimum rear yard of 17 feet is required by the Zoning Ordinance for the eave. Accordingly, the applicant was requesting a variance of 17.0 feet to the minimum rear yard requirement for the accessory structure and a variance of 15.5 feet to the minimum rear yard requirement for the eave.

Darwin A. Koppie, 6626 Braddock Road, Annandale, Virginia, said he would like to construct a garage in the rear of the lot so he will have a place to maintain his vehicles. He said there are no objections from the neighbors, the garage will be placed in the rear of the lot under the canopy of trees to lessen the visual impact, and the adjacent houses will be approximately 100 feet from the proposed structure. Mr. Koppie said he purchased the property in 1968 when he was transferred to the area by the military and proceeded to address each of the standards. He said the house is not sited on the lot in such a way to allow the construction on the side of the house and since the house is a split foyer there is a difference in the elevation.

Mr. Hammack asked what the applicant planned to do with the existing carport. The speaker said at the moment nothing, but he did plan to do something about the structure in the future.

Mr. Koppie continued his presentation by saying that he believed the proposed location would be more suitable than that allowed by the Zoning Ordinance, the variance will not be detrimental to the surrounding properties, the structure would be located at a convergence of several half acre lots with more than ample room between the garage and other houses. He submitted a letter in support from the adjacent neighbor who would be the most affected by the granting of a variance. Mr. Koppie asked that the BZA grant him a waiver of the 12-month time limitation, if it was their intent to deny the request. Mr. Koppie submitted and explained photographs of the subject property to the BZA.

There were no speakers in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Dively made a motion to deny VC 95-M-012 for the reasons noted in the Resolution. The BZA 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 95-M-012 by DARWIN A. AND NANCY D. KOPPIE, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 feet and eave 1.5 feet from rear lot line, on property located at 6626 Braddock Road, Tax Map Reference 71-4((10))507, 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 May 2, 1995; 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 20,156 square feet.
4. The proposed structure would be so large it would almost be like adding another house in the back yard.
5. The proposed structure would be too close to the lot line and would be an 85 to 90 percent variance.
7. It would be very difficult to maintain the proposed structure without trespassing on the neighbor's property.
8. The application does not meet the nine required standards.

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 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting. The Board of Zoning Appeals waived the 12-month time limitation for filing a new application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 10, 1995.

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Page 295, May 2, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BRADLEY E. LOWE, VC 95-B-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. 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.

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, Mr. Lowe, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 15,300 square foot property is located on Braeburn Drive in an area east of Guinea Road in the Springbrook Forest Subdivision. The subject property and lots to the north, east and west are zoned R-2 and developed with single family detached dwellings. To the south is the Long Branch Stream Valley Park, zoned R-2.

This request for variance resulted from the applicant's proposal to construct a garage addition to be located 7.0 feet from a side lot line. A minimum side yard of 15 feet is required by the Zoning Ordinance on an R-2 lot. Accordingly, the applicant was requesting a variance of 8.0 feet to the minimum side yard requirement

Brad Lowe, 9101 Braeburn Drive, Annandale, Virginia, referenced the statement of justification submitted with the application. He said he would like to construct a two car garage in place of a one car carport, which would consume 8 feet of the required 15 feet. Mr. Lowe said the adjacent house adjacent sits 29.9 feet from the side lot line, leaving approximately 37 feet between the houses after the construction. The subject property is exceptionally narrow and consists of a storm sewer easement on the left side, and a floodplain easement along the entire rear of the lot. Mr. Lowe said the proposed location is the only feasible place for the garage, the garage would allow him to protect his vehicles, and to provide needed storage.

Mr. Lowe said the BZA denied his previous variance request for construction of a two story addition consisting of a garage with a bedroom above the garage to be located 5 feet from the side lot line. He said the BZA had suggested that perhaps he could reduce the size of the addition, which he has done. Mr. Lowe said there are no objections from the neighbors, the granting of the variance will not adversely impact the area, and will not change the character of the zoning district.

Mr. Hammack asked why the structure's length needed to be 29.9 feet. The speaker said he was merely staying with the existing roofline and tying an expansion of the kitchen into the addition.

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

Mr. Hammack made a motion to grant VC 95-B-013 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 20, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-B-013 by BRADLEY E. LOWE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line, on property located at 9101 Braeburn Drive, Tax Map Reference 69-2((7))(2)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 May 10, 1995; and

WHEREAS, 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 15,300 square feet.
4. The BZA denied a previous application which requested a two story addition.
5. the applicant was now requesting a minimal addition in order to expand the existing carport into a two-car garage.
6. The roof line will remain the same.
7. The minimal width results in a minimal variance.
8. The applicant has now eliminated the request for the second story addition which eliminated something which would have been visually obtrusive and perhaps objectionable.
9. There are some severe constraints on the property because of the drainage easement and floodplain.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Larry N. Scartz, Certified Land Surveyor, dated November, 22, 1993, revised by Bradley E. Lowe, P.E., dated January 5, 1995, 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 and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 10, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHARLES C. & GRACIE L. BLANTON, VC 95-V-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 14.85 ft. from rear lot line and decks 8.91 ft. and 9.25 ft. from rear lot line. Located at 9405 Ludgate Dr. on approx. 13,342 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-4 ((11)) 31. (DEF. FROM 4/27 AT THE APP.'S REQUEST FOR ADDITIONAL INFORMATION)

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 attorney, Mr. Martin, reaffirmed the affidavit revised and dated May 1, 1995.

Lori Greenlief, Staff Coordinator, said this application was deferred from April 27, 1995 at the applicant's request in order to resolve two issues. One issue dealt with whether the structures covered more than 30% or more of the rear yard. As shown on the plat, they only cover 26%; therefore, that provision is met. The second issue was regarding the area shown as private, exclusive easements to the rear of the lot. That issue is still being considered by the Zoning Administrator and the County Attorney's office, but staff did not believe this was a separate issue nor would it affect the rear lot line. Staff believed the variance could proceed if the BZA believed it was appropriate.

Keith C. Martin, attorney with Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington Virginia, said the application property consists of 13,342 square feet within the Washington Woods on the Potomac. He said he had been involved in the special exception application, which approved a cluster subdivision development several years ago. The primary focus of that special exception application was to provide an open space system along subdivisions along Potomac River frontage in anticipation of the Chesapeake Bay Ordinance. Mr. Martin said the resulting design of the subdivision and open space system left Lot 31 as the smallest in size. The public street system, with the cul-de-sac running in front of the lot, made Lot 31 irregularly shaped with a very shallow lot depth. He said due to the valuable location of these water front lots, and in an effort to adhere to the open space and conservation easement placed on the Potomac River frontage of the subdivision, Lots 29 through 33 each have a benefit of a private, exclusive use easement. Mr. Martin said Lot 31's easement was shown on the variance plat. He said exclusive use of approximately 25,612 feet of open space behind Lot 31 relieves the physical constraints imposed by the lot's unusually small size, depth, and irregular shape. Mr. Martin said whether it is open space for the entire community or open space for exclusive use behind Lot 31 is irrelevant. Although Lots 29 through 33 are entitled to similar exclusive use easements, Mr. Martin said those lots are significantly larger in size and have much greater depth which will allow them a house of similar size but not require a variance. He believed the application met all the required standards.

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

Mr. Pammel made a motion to grant VC 95-V-006 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-006 by CHARLES C. AND GRACIE L. BLANTON, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 14.85 feet from rear lot line and decks 8.91 feet and 9.25 feet from rear lot line, on property located at 9405 Ludgate Drive, Tax Map Reference 110-4((11))31, 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 2, 1995; 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 13,342 square feet.
4. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance as prescribed by 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 dwelling and decks shown on the plat prepared by Pleasants and Associates, Inc. dated January 9, 1995, 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. Hammack seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 10, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 298, May 2, 1995, (Tape 1), Scheduled case of:

9:30 A.M. HOLLAND M. EDMUNDS, APPEAL 95-V-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is maintaining a junk yard and a recycling center in an R-3 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8136 and 8140 Holland Rd. on approx. 1.29 ac. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((1)) 19 & 20.

Mr. Hammack noted that staff had discovered that the appellant had entered into a Consent Order under which he had agreed to cease using the property in the manner for which he is seeking a special permit. Staff will seek a remedy in court. Mr. Hammack made a motion to dismiss the appeal. Mr. Dively seconded the motion based on the fact that the Notice of Violation has been rescinded. The motion carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 299, May 2, 1995, (Tape 1), After Agenda Item:

Request for Reconsideration
Fairfax Unitarian Church, SPA 83-P-053

The applicant's attorney, Lynne J. Strobel, said she had submitted a request for reconsideration on behalf of the applicant, but that she would like to verbally amend the request. She said the applicant would like to withdraw the request for reconsideration and request a waiver of the 12-month time limitation for filing a new application. Ms. Strobel also asked the BZA to grant an out of turn hearing to allow the new application to be heard prior to the August recess. She said the main reason for the request is for the school to obtain approval and continue operating. The church would also like to continue to work with the neighborhood to reach an agreement with regard to the neighbors' concerns that were brought out at the public hearing.

Vice Chairman called for speakers.

Mark Dombroff, 10301 Hickory Forest Drive, president of the neighborhood homeowners association, said based upon his discussion with the applicant's attorney the association would not oppose the church's request. He said the church has agreed to present an overall plan to the community and have agreed to giving the community at least 72 hour notice before presenting an amendment to the County.

Mr. Dively made a motion to waive the 12-month time limitation for filing a new application. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

Mr. Pammel made a motion to grant the applicant's request for an out of turn hearing once all the requirements for the filing a new application have been met. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 299, May 2, 1995, (Tape 1), After Agenda Item:

Approval of April 25 and April 27, 1995 Resolutions

Mr. Hammack so moved approval. Mr. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Betsy S. Hurtt

Approved on: June 6, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

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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 9, 1995. The following Board Members were present: Chairman John DiGuilian, Robert Dively, Paul Hammack, and John Ribble. Robert Kelley and James Pammel were absent from the meeting.

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

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Page 301, May 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT S. & MARIANN MARONA, VC 95-Y-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from rear lot line. Located at 15081 Stillfield Pl. on approx. 13,068 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) (2) 40.

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 S. Marona, 15081 Stillfield Place, Centreville, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Pleasant Hill Subdivision. The surrounding property is also zoned R-C and WS and developed with single family detached dwellings on the south and west and partially on the north, Cub Run Stream Valley Park adjoins the site on the east and partially on the north. He said that the applicant was requesting a variance of 15.7 feet to allow a screened porch.

Mr. Marona presented the statement of justification, previously submitted in writing and incorporated into the record. He said he was requesting a variance because of a hardship created by extremely shallow lot, with extraordinary topographical conditions which made the back yard virtually useless. Mr. Marona said that, when he purchased the lot from Toll Brothers, it was graded flat but, when the house was built, the lot topography was modified, becoming extremely sloped, to the point where he had to have the builder come back and regrade the property into a condition more conducive to utilization; he said that was to no avail. He proposed the addition to have a level area in which his son could play. Mr. Marona said the addition would not impact the visibility of neighbors and the condition of the property is unique in the area.

Mr. Hammack moved to grant VC 95-Y-015 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 2, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-Y-015 by ROBERT S. & MARIANN MARONA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.3 feet from rear lot line, on property located at 15081 Stillfield Place, Tax Map Reference 53-4((5))(2)40, 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 9, 1995; 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 13,068 square feet.
4. The rear lot line impacts the rear of the dwelling in a very unusual fashion.
5. The applicant testified to unusual topographical conditions.
6. The property behind the dwelling is shown as floodplain and will not be developed; therefore, the proposed addition will not impact adjoining property owners and will not change the zoning district.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific screened porch addition shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated December 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. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 302, May 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NORMAN P. LEMIEUX, VC 95-D-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line and eave 1.5 ft. from side lot line and accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. Located at 1648 Birch Rd. on approx. 10,149 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((3)) (2) 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. Norman P. Lemieux, 1648 Birch Road, 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-3, except the dwelling to the southeast which is zoned R-1. He said that the applicant was requesting approval of three variances, as noted above. A variance of 10 feet was being requested for a garage; a variance of 0.5 feet was being requested for the eave of the garage; a variance was being requested to allow an accessory shed to remain in the front yard of a corner lot.

Mr. Lemieux presented the statement of justification, previously submitted in writing and incorporated into the record. He stated that the property contained unusual characteristics when compared to other properties in the area. Mr. Lemieux said the lot is narrow and is

bordered on one side by a State road which is Hitt Avenue, and is bordered on the other side by an adjacent property. He said the side of the lot bordering Hitt Avenue is shallow, approximately 35 feet shorter than on the side bordering the adjacent property. Mr. Lemieux said that the unusual size and shape of the lot created a problem when trying to locate the garage anywhere else on the property, which was further complicated by the way the house is situated on the lot. He said that he would run into problems with the Department of Transportation setback requirements if he tried to build toward Hitt; the same is true if he tried to bring the addition forward and locate it in the front of the house, facing Birch Road; the location of the existing carport and driveway make the proposed location of the addition the ideal spot. Mr. Lemieux said there are similar two-story colonial dwellings in the area, with garages, which are situated on the lots in positions that do not create problems in selecting locations for the garages. He said the strict application of the Ordinance does not allow for the location of a garage anywhere else on the property, without encountering other setback requirements. Mr. Lemieux said the shed was there when they purchased the property; it is actually located on the back property line but, because it is a corner lot, it is considered a front yard. If the shed were moved approximately 20 feet, it would be in the back yard because it would be past the corner of the house. He said there had been no objections from neighbors about the wood shed during their ten years in the house. In order to move the shed, which is on a foundation, they would be required to completely tear it apart.

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

Mr. Ribble moved to grant VC 95-Y-015 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 2, 1995.

Mr. Hammack seconded the motion for the purpose of discussion and asked whether the maker of the motion might consider a fourth development condition stating that the shed shall be maintained in good condition at all times and, if the shed is allowed to fall into disrepair, it shall be removed.

Mr. Ribble said he would include that condition in his motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-016 by NORMAN P. LEMIEUX, under Section 18-401 of the Zoning Ordinance to permit construction of addition 2.0 feet from side lot line and eave 1.5 feet from side lot line and accessory structure to remain in the front yard of a lot containing less than 36,000 square feet, on property located at 1648 Birch Road, Tax Map Reference 31-3((3))(2)6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 9, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 10,149 square feet.
4. The lot has an unusual shape, with two front yards.
5. The placement of the house on the lot is skewed and, with the location of the existing driveway, the proposed location is the only place to locate the garage.
6. Testimony indicated that the shed was built by a previous owner; while accessory structures in the front yard are normally not acceptable, it would not appear equitable to force the applicant to tear down the shed; and circumstances support having the shed remain.
7. It was deemed appropriate to add a fourth condition concerning the maintenance of the shed.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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, eave and accessory structure (shed) shown on the plat prepared by Schiller and Associates, dated August 29, 1994, and revised February 6, 1995, submitted with this application and is not transferable to other land.

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

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

4. The shed shall be maintained in good condition at all times. If the shed is allowed to fall into disrepair, it shall be removed.

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 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 304, May 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BETTY SHAW, VC 95-D-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.7 ft. from front lot line and 6.0 ft. from side lot line. Located at 1511 Linden Hurst Ave. on approx. 11,250 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-4 ((3)) 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. Betty Shaw, 1511 Linden Hurst Avenue, McLean, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that surrounding lots are also zoned R-4 and developed with single family detached dwellings. The applicant was requesting a variance of 8.3 feet to the minimum front yard requirement and 4.0 feet to the minimum side yard requirement, to construct a garage.

Ms. Shaw said she guessed her problem was similar to the problem of others in that her dwelling was located squarely in the middle of the lot. They need a garage and there is not enough room on either side to put a two-car garage and, if they put it in the back, they would have to run a long driveway along the side of the house. She said the only place where they could locate the garage would be in the front of the house and somewhat to the side. Ms. Shaw said the side where the garage would be located overlaps new construction which they envision to be another garage, siting two garages next to each other. She said that it would cost them a lot more money to move than it would cost them to add a garage and add to their house. It would also give her added security when she comes home late at night. Ms. Shaw said she believed she met the nine criteria for a variance. She said the lot is exceptionally narrow.

Mr. Dively asked Ms. Shaw why she was not proposing to locate the garage on the right side, facing the house, where the driveway currently is located. She said there is not enough room. He asked if there was enough room for a one-car garage there and she said there was but, if they did that, they would not be able to add to the house on that side and that is also the side where the dining room and kitchen are located.

Mr. Hammack said it appeared from the plat that they proposed to enlarge the house 5 feet to the front and that, if the garage were brought back flush to the house, she would require a variance to the front lot line of 5 feet less. She said that was true but, if they did that, they would lose their large maple tree on the side of the house because the garage would sit on its roots.

Mr. Hammack said the requested variance to the front lot line is very substantial and, in addition, they are requesting a variance to the side lot line to construct a 22-foot garage. He said he knew that was not as large as some two-car garages, but it could be smaller and he could see from the footprint that they could redesign a little and might have to lose a tree, but they would require lesser variances. Mr. Hammack referenced Ms. Shaw's mention of a proposal to enlarge the other side of the house and she confirmed that.

Mr. Ribble followed up on Mr. Hammack's reference to the proposed additions on the other side of the house and, in answer to Mr. Ribble's question, Ms. Shaw said they would not need a variance to do that.

Mr. Hammack asked Ms. Shaw why the garage could not be placed in front of the additions and moved in slightly. She said that would require taking down the other tree and placing the garage directly in front of the dining room and living room, so that the living room would not have much window space.

Mr. Ribble asked to see the architectural plans and Ms. Shaw provided them to the Board.

The Board reviewed the plans and asked questions. In response to a question from Mr. Hammack, Ms. Shaw said that the addition would be one-story, with a basement addition.

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

Mr. Dively moved to deny VC 95-D-017 for the reasons set forth in the Resolution.

Mr. Hammack seconded the motion, adding that he believed Ms. Shaw had made an effort to locate the additions where she believed they should be. He said he could understand, from her point of view, why she believed that the requests should be granted; however, he concurred with Mr. Dively's opinion that the encroachment to the front property line is significant and he was concerned about that. Mr. Hammack said that, with some re-engineering, the variances could be minimized; it might require the removal of a tree, but sometimes those things need to be done. For those reasons, he supported the motion.

Mr. Ribble said he also would support the motion. He said the architect had come up with at least one plan that would not require a variance, which called for a garage on each side, which made no sense at all to Mr. Ribble. He said the issue was whether to construct a one-car garage or a two-car garage, and he believed the two-car garage was a convenience the Board could not support.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-017 by BETTY SHAW, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.7 feet from front lot line and 6.0 feet from side lot line, on property located at 1511 Linden Hurst Avenue, Tax Map Reference 30-4((3))38, 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 May 9, 1995; and

WHEREAS, 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 11,250 square feet.
4. The amount of encroachment by the proposed addition on the side and the front is too great.
5. Historically, the Board has not favored variances and encroachments upon the front yard setbacks; given that stand, the Board could not allow this variance, when they have disallowed others which have proposed encroachment to a lesser degree.
6. Given the nature of the neighborhood and the size of the lots, the proposed variance is too great.

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 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995.

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Page 306, May 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RAINBOW NURSERY SCHOOL, INC., SP 95-M-006 Appl. under Sect(s). 3-203, 8-914 and 10-104 of the Zoning Ordinance to permit a child care center/nursery school and reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 9.3 ft. from rear lot line and 5.0 ft. from western side lot line and 5.5 ft. from eastern side lot line. Located at 7712 Thor Dr. on approx. 21,852 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((12)) 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. Jennifer Ok, 2746 Sweet Clover Court, Silver Spring, Maryland, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property was located within the Holmes Run Heights Subdivision and is developed with a one-story single family detached dwelling. He described the application and said the applicant was also

requesting a modification of transitional screening and barrier requirement adjacent to all lot lines, to allow a double row of evergreen trees, both medium and high, along the east, west and portions of the south lot lines, and a single row of small evergreen trees adjacent to the proposed parking lot located in the southeast corner of the property; the applicant also was requesting permission to use a stockade fence on the east side of the property and a portion of the north side of the property, behind the garage, and a chainlink fence on the west side and portions of the north side of the property. Mr. Heine said the applicant also was requesting a waiver of the barrier requirement along the northern lot line. The proposed child care center/nursery school for 42 children would occupy the existing structure and the proposed addition, totaling 1,817 square feet of gross floor area; in addition, a 6,900 square foot outdoor recreation area was proposed within the rear yard and eight parking spaces were proposed in the front yard. Mr. Heine said staff believed that, because of the number of children proposed and the corresponding traffic they will generate, the proposal is too intense for the size of the property and the existing residential neighborhood. In staff's opinion, the proposed child care center/nursery school were not in harmony with the Comprehensive Plan and did not meet all the Comprehensive Plan's location guidelines for child care centers. In addition, the proposed use did not meet all of the General Special Permit Standards, including Standard 5, regarding the provision of transitional screening and barriers to mitigate the adverse impacts of the use on the neighboring properties. For these and other reasons stated in the staff report, staff recommended denial of that part of the special permit application applicable to the child care center/nursery school.

Mr. Heine further stated that staff did not take a position on the errors in building location; however, if it was the intent of the Board to approve the special permit for the child care center and nursery school, staff recommended that the approval be subject to the imposition of the Proposed Development Conditions contained in Appendix 1 of the staff report. If it was the intent of the Board to approve the errors in building location for the garage and/or shed, staff recommended that the approval be subject to Proposed Development Conditions contained in Appendix 2.

Mr. Dively asked staff if a building permit had been issued for the garage and Mr. Heine said it had. Mr. Heine said the reason the applicant required a special permit for the error in building location for the garage is that it was built as an accessory use to the dwelling. Now that the applicant was requesting a change in the use, the garage must meet the yard requirements for a non-residential structure and, thus, required a special permit for an error in building location. The shed was built without a building permit.

Mr. Hammack asked when the building permit for the garage was issued and Mr. Heine said April 1976.

Mr. Dively asked what would be required if the child care center/nursery school were denied and Mr. Heine said a special permit still would be required for the shed, but no action was required on the garage issue.

Ms. Ok presented the statement of justification, previously submitted in writing and incorporated into the record. She said the nursery school would operate Monday through Friday during the hours of 7:30 a.m. to 6:00 p.m., with an maximum enrollment of 42 children between the ages of 2-1/2 and 5 years, and approximately four teachers. She said they understood there might be many concerns about the proposal; one of the main concerns she anticipated was traffic. Ms. Ok said it had been suggested that the child care center would result in a deluge of vehicles, all at one time; however, they did not anticipate that all 42 children would arrive at one time and, in line with their proposed hours, they would restrict times of arrival and departure. Some children would arrive between 7:30 and 8:00 a.m. and others would arrive between 8:00 a.m. and 8:30 a.m., etc.; departures would be varied in a similar manner, stretching from 1:00 p.m. through 6:30 p.m. Ms. Ok anticipated a concern over intensity caused by the 42 children all outside at one time. She said they did not plan to have all 42 children playing outside at the same time; they would send a maximum of 15 children outside at any one time, according to the age groups. Ms. Ok said they also were willing to put a solid wood fence around the play area and would work with their engineers concerning the environmental concerns. She said the reason they chose a residential home for their nursery was because they wished to provide an atmosphere more suitable to children's needs; one that would make them feel at home and not in a commercial facility.

There were no speakers in support of the application.

The following people spoke in opposition to the application: Loraine Norvin, 7800 Thor Drive, two doors down from the subject property, on a corner lot; Thomas Bevis, 7710 Thor Drive; Victor Hannan, 7714 Thor Drive, next door to the proposed facility; and Robert Clark, 7807 Rebel Drive. Ms. Norvin said a group from the neighborhood, which was present at the hearing, had spoken to everyone in the neighborhood and there is not one resident on that street or on Astin, who was in support of the application. She said everyone was vehemently opposed to the plan because they believed it would impact very negatively upon the entire neighborhood. Ms. Norvin said the neighborhood agreed with staff and what was contained in the staff report. She said the plan called for an area much like a parking lot in the front yard, which would have a severe visual impact; the road has no sidewalks and drops off into a grass ditch and the applicant is proposing to put parking spaces next to the ditch without allowing for any backing up by cars; they were concerned about cars backing out onto the street. Ms. Norvin said they had no objection to the accessory structure request but object to someone from Maryland coming into their neighborhood and establishing a commercial

facility, required by VDOT to provide a commercial entrance in the middle of a bucolic R-2 District. The concerns of the other speakers were that the roads were not geared to the presence of a commercial type facility; the proposed facility was compared to a 7-11 store; too many children are involved for the character of the neighborhood; and the planting of evergreen trees under large oak trees, where the evergreens could not grow.

Mr. Dively asked Chairman DiGiulian if it would be appropriate to ask any other speakers to just stand and say whether or not their views are in accordance with the previous speakers. Mr. Dively asked all the other potential speakers, who stood, to raise their hands if they had the same feelings as stated by the previous speakers. All did.

Chairman DiGiulian told Mr. Ok she had two minutes for rebuttal, which she declined.

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

Mr. Hammack moved to grant SP 95-M-006 in part for the reasons set forth in the Resolution. The child care center/nursery school was denied. The errors in building location were allowed. The shed was permitted to remain, so long as it is maintained properly. No action was required regarding the garage. The portion granted is subject to the Proposed Development Conditions contained in the staff report, as modified. Mr. Hammack motioned to exclude reference to the "garage" and "specified enclosed porch" contained in the introductory paragraph in the staff report. A third condition was added concerning the maintenance of the shed.

Mr. Dively seconded the motion, stating that this proposal was not even close to being acceptable and he was not sure it would even qualify for a home child care facility, which is much more restrictive. He said the proposed facility represented commercial development within a residential neighborhood and was completely out of harmony with the Comprehensive Plan and the neighborhood.

Mr. Ribble said the proposed plan would be an intrusion into the neighborhood and would be far too intense. For those reasons, he would support the motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-M-006 by RAINBOW NURSERY SCHOOL, INC., under Sections 3-203, 8-914 and 10-104 of the Zoning Ordinance to permit a child care center/nursery school **(THE BOARD DENIED THE CHILD CARE CENTER/NURSERY SCHOOL)** and reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 9.3 feet from rear lot line and 5.0 feet from western side lot line and 5.5 feet from eastern side lot line **(THE BOARD GRANTED THE REQUEST FOR THE SHED TO REMAIN 5.0 FEET FROM SIDE AND 9.3 FEET FROM REAR LOT LINES)**, on property located at 7712 Thor Drive, Tax Map Reference 59-2((12))14, 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 9, 1995; and

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

1. The applicant is the future lessee of the land.
2. The present zoning is R-2.
3. The area of the lot is approximately 21,852 square feet.
4. The Board concurred with staff's opinion and analysis in the staff report.
5. This an R-2 neighborhood with which the Board was familiar.
6. Forty-two students is far too great a number to allow the establishment of a child care center in a neighborhood such as this.
7. The parking lot requirements for the child care center would change the character of the lot, which is too small for an operation of the proposed size, barely 1/2 an acre.
8. The hours of operation are not in harmony with the residential character of the neighborhood and would effectively establish a commercial operation in a residential neighborhood.
9. There is no need to deal with the accessory garage so long as the use remains residential.
10. It was deemed appropriate to amend Proposed Development Condition 1 in approving the balance of the request by deleting "...specific enclosed porch and...."
11. It was also deemed appropriate to add a third Proposed Development Condition dealing with the maintenance of the shed.

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 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART (THE BOARD DENIED THE CHILD CARE CENTER/NURSERY SCHOOL)** with the following limitations:

1. This special permit is approved for the location and the storage structure 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 20, 1994,** submitted with this application, as qualified by these development conditions.

3. The shed shall be maintained in good condition. If the shed falls into disrepair, it shall be removed.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 309, May 9, 1995, (Tape 1), Scheduled case of:

9:00 A.M. NEHZAT MOMTAZY & JILL S. IMAGIRE, SP 95-Y-010 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 13470 Stream Valley Dr. on approx. 8,502 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 45-1 ((9)) 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. Nehzat Momtazy, 13470 Stream Valley Drive, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Poplar Tree Woods Subdivision, west of Stringfellow Road. Surrounding lots are also zoned R-3 (Cluster) and developed with single family detached dwellings to the north, south and west; to the east is a Colonial Pipe Line utility easement. Ms. Langdon advised that the site is currently developed with a two-story single family residence with a full basement. She advised that the applicants were requesting approval of a special permit to allow an accessory dwelling unit within the single family dwelling, approximately 1,024 square feet in size and containing one bedroom; a total of four parking spaces would be provided for the main dwelling and the accessory dwelling unit, within an existing two-car garage and driveway. She said the only proposed new construction was the installation of a sidewalk from the driveway to the entrance of the accessory dwelling unit. Ms. Langdon said it was staff's opinion that, with the revised 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 Standards for All Group 9 Uses. For those reasons, staff recommended approval of this application, subject to the revised Proposed Development Conditions.

Ms. Momtazy came forward to request approval of a special permit to rent her basement for two reasons: One, she is 65 years old and needs the financial support to keep up with the house payments, etc. Second, because she is living alone in the big house, she needs security and someone else there in case of an emergency.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

Joseph Chavez came forward, stating that he was a friend of the applicant and knew her well. He said he had helped her to prepare the application. Mr. Chavez made the following observations: The applicant is elderly and has worked all of her life; she lives alone and plans to retire soon. He called the Board's attention to the Fairfax County Board of Supervisors' Policy on Accessory Dwellings, which he said was a very worthwhile objective. It said, "...to provide elderly homeowners with a means of obtaining through tenants and accessory dwelling units, rental income, companionship, security and services...." Mr. Chavez said he believed the application was entirely in keeping with the Policy and hoped the Board would show favorable consideration to the applicant.

Elizabeth P. Barracks, 13478 Stream Valley Drive, Lot 20, directly across the pipestem from the subject property, spoke in opposition to the application citing negative impact on surrounding properties developed with single family detached homes. She said her further concern was the intent of Fairfax County exceptions that are designed to aid senior citizens who often, after significant residency, find themselves alone in a oversized unit or experience changes in their income that adversely affect their quality of life. Ms. Barracks said that, approximately three years ago, the applicant bought the home and almost immediately built a basement apartment. Upon completion, at least two different groups have resided in the basement to generate revenue. Ms. Barracks said the Poplar Tree Homeowners Association, like many others, was established to protect all residents of the community. Article 5, Section 6, Item F, which is mandated by law to be presented to all buyers at settlement, clearly states: "No lot shall be divided or subdivided and no portion of any lot, other than the entire lot, shall be transferred or conveyed for any purpose. No portion of any dwelling, other than the entire dwelling, shall be leased." Ms. Barracks said that moving into the area meant accepting the existing controls to ensure property values for all. She requested that the Board not approve the application because of the negative impact upon surrounding property values, and because it was not consistent with the Homeowners Association guidelines, or with Fairfax County concerns in establishing criteria for granting senior citizens exceptions to existing zoning.

Mr. Ribble advised that the Homeowners Association covenants were not a matter for the Board to consider. He said a different channel should be pursued to address violations of the covenants. Ms. Barracks said she understood that. Mr. Ribble asked about her statement that other people were residing at the subject property, apparently in violation, prior to the hearing. Ms. Barracks said the accessory dwelling unit had been occupied for a significant period of time, prior to the request for a special permit. In answer to a question from Mr. Dively, Ms. Barracks said the matter had been brought to the attention of the Homeowners Association; she was unaware of whether they had taken any action because they had recently experienced a transition in office holders.

Chairman DiGiulian advised Ms. Momtazy that she had two minutes for rebuttal. Mr. Chavez came forward to speak for the applicant, stating that he had spoken with the President of the Homeowners Association, who in turn spoke with their Board. The President told him there had been one or two inquiries, especially one busybody, and he had asked them to stop being such a busybody. Mr. Chavez said the President told him that was the general attitude of the Homeowners Association. Regarding impacting the neighborhood, Mr. Chavez said they were talking about one woman who had rented to some relatives, a young couple who were trying to get on their feet and could not afford a house of their own. They are now engaged, they do not have any children, and they plan to marry and get a place of their own. When the relatives move out, he said the special permit is required to allow the applicant to rent to people who are not relatives. He said this would be the only way the applicant could keep her home when she retires on a fixed income. Mr. Chavez said he did not see how one person, plus a couple with no children, could impact the neighborhood. They all work and traffic is minimal. He said the situation is entirely in keeping with the Zoning Ordinance; appropriate inspections of the accessory dwelling unit have been conducted and there will be no safety nor environmental impacts.

In answer to a question from Mr. Hammack, Mr. Chavez said the applicant's daughter and her fiancee did not plan to move upstairs so that the basement could be rented to non-relatives. Mr. Chavez said the relatives would be moving entirely out of the house and getting a place of their own. He said no one would be moving upstairs; the applicant would be living upstairs alone.

Mr. Ribble and staff discussed the five-year renewable term required by the Zoning Administrator. He said he assumed that complaints could influence the status of the special permit.

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

Mr. Ribble moved to grant SP 95-Y-010 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions dated May 8, 1995.

Mr. Dively seconded the motion, adding that, as Mr. Ribble previously had stated, the actions of the Board had no connection whatsoever with the Association's covenants and bylaws and, if there are any violations, they are left to the Association Board and their counsel, or the individual homeowner, to pursue.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-010 by NEHZAT MOMTAZY & JILL S. IMAGIRE, under Section 8-918 of the Zoning Ordinance to permit accessory dwelling unit, on property located at 13470 Stream Valley Drive, Tax Map Reference 45-1((9))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 May 9, 1995; 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 8,502 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 8-918 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, and is for the location and 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 Puciulli, Simmons & Associates, Ltd., dated August 13, 1987, revised December 22, 1994, and approved with this application, as qualified by these development conditions.

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

4. A minimum of five (5) evergreen trees, a minimum of six (6) feet in height at time of planting, shall be planted in a staggered row approximately twelve (12) feet on center in the area of the lot between the dwelling and the rear lot line to provide transitional screening.

5. The accessory dwelling unit shall contain no more than one bedroom.

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

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

8. 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.

9. 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 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, the special permit for an accessory dwelling unit 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 seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. ERNEST A. & KATHLEEN F. MEREDITH, SP 95-S-008 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 8941 Victoria Rd. on approx. 13,502 sq. ft. of land zoned R-3. Springfield District. Tax Map 78-2 ((6)) 303.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ernest A. Meredith, 8941 Victoria Road, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Kings Park Subdivision are also zoned R-3 and are developed with single family detached dwellings. The site is developed with a one-story brick and frame structure with a basement, where the accessory dwelling is located. The rear yard is wooded and mature evergreen trees are located along the eastern lot line. Mr. Hunter said that the principal dwelling is 2,355 square feet in area and the accessory dwelling unit is 722 square feet or 31% of the principal dwelling, with two bedrooms. He said the applicant's statement indicated that parking for the accessory dwelling unit can be provided on the street; however, the current Zoning Ordinance provisions require two parking spaces for the residential unit and it appears that at least one space should be provided for the accessory dwelling unit, for a total of 3 parking spaces. Mr. Hunter said that, with the implementation of the Proposed Development Conditions which include a requirement for the provision of three spaces, this issue will be resolved. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions, including the additional standards for accessory dwelling units.

Mr. Meredith presented the statement of justification, previously submitted in writing and incorporated into the record. He said they would like to have space for the reasons outlined in their statement; mainly, the income. He said it is also very nice to have someone in the house when you travel, which they do. Mr. Meredith said that the requirement of three parking spaces would not be difficult to comply with, but he did not understand why they needed three. He said they have had only one vehicle for 32 years and it has worked well.

Mr. Dively moved to grant SP 95-S-008 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 2, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-S-008 by ERNEST A. & KATHLEEN F. MEREDITH, under Section 8-918 of the Zoning Ordinance to permit accessory dwelling unit, on property located at 8941 Victoria Road, Tax Map Reference 78-2((6))303, 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 May 9, 1995; 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 13,502 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 8-918 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 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.

Page 313, May 9, 1995, (Tape 1), ERNEST A. & KATHLEEN F. MEREDITH, SP 95-S-008, continued from Page 312)

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, Dewberry & Nealon, Civil Engineers, Land Surveyors dated October 31, 1962 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 two (2) bedrooms.

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

6. Three (3) parking spaces shall be provided on site.

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

8. The accessory dwelling unit shall be approved for a period of five (5) years from the 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.

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 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 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 313, May 9, 1995, (Tape 1), Scheduled case of:

9:30 A.M. YOUR CHILD'S PLACE, INC., SP 95-H-007, Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 2578 Chain Bridge Rd. on approx. 15,054 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 46A. (Concurrent with VC 95-H-011).

9:30 A.M. KULDIP K. SANDHU/YOUR CHILD'S PLACE, INC., VC 95-H-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 4.0 ft. from front lot line. Located at 2578 Chain Bridge Rd. on approx. 15,054 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 46A. (Concurrent with SP 95-H-007).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kuldip K. Sandhu, 3612 Ordway Street, N.W., Washington, D.C., replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located at the western edge of the Town of Vienna. He said the lot has a narrow, rectangular configuration, with the rear portion of the site having a triangular shape. The site is developed with a renovated and expanded single family detached dwelling containing 2,258 square feet. Surrounding properties to the north and east are zoned R-20; the Berkley Square Apartments are located north of the site and a vacant wooded lot lies to the east; property developed with a single family detached dwelling and zoned R-1 lies to the west. Mr. Hunter further advised that the Emmanuel Lutheran Church and office uses are located across Route

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123, to the south. The applicant was requesting approval for a child care center with an enrollment of 35 children, ranging in age from infancy to 6 years. Mr. Hunter said the applicant's statement indicated that the center will be staffed with three full-time employees; the proposed hours of operation are from 6:30 a.m. to 6:30 p.m., Monday through Friday; seven parking spaces are shown on the special permit plat.

Mr. Hunter advised that the applicant was requesting concurrent approval of variance application VC 95-H-011 to allow the existing structure to remain 4 feet from the front lot line; access to the property is from the westbound lanes of Route 123, by way of a fourteen-foot-wide entrance at the southeastern corner of the site. He said the plat shows that the entrance is located 12.5 feet from the eastern property line. Mr. Hunter said that the revised special permit plat showed a one-way circulation pattern around the existing two-story structure; the seven parking spaces are located at the rear of the building and the exit is located on the west side of the structure. He said that the rear triangular portion of the site is wooded and the plat showed a proposed 1,000 square foot outdoor play area in that location. Mr. Hunter said that the plat also showed plantings along the eastern and western property lines, in the area between the driveways and the property lines, tapering down from 12.5 feet to approximately 4 feet. He said that, in response to staff's concern's, the applicant had reduced the maximum daily enrollment from 45 to 35 children and reduced the number of employees from ten to three. The applicant also indicated that a van service would be provided to pick up and drop off approximately 40% of the children; the parking area was redesigned; the on-site circulation pattern was improved and proposed screening was added along the eastern and western property lines. Mr. Hunter said that, while it is noted that the existing structure is located 4 feet from the front lot line, and within the area needed for right-of-way dedication for the planned widening of Chain Bridge Road, the plat shows 45 feet of existing right-of-way dedication and the applicant had indicated that a waiver of the service drive was requested. He said the applicant had committed to dedication of the necessary right-of-way when the property develops or when the Virginia Department of Transportation (VDOT) determines that right-of-way is needed, whichever is the latter. Because the widening of Route 123 is not listed in VDOT's six-year plan, staff was of the opinion that a term limit would be preferable to future dedication, since future dedication is contingent upon the continuation of the use. In addition, a child care facility with 35 children is expected to generate 175 vehicles per day and the magnitude of traffic volume impacting Chain Bridge Road is far greater than would be generated by a by-right use. In order to address that concern, the applicant had stipulated that 40% of the children would be bused to the site. In addition, staff recommended that conditioned access be provided to the apartments at the rear of the site. Mr. Hunter said staff concluded that, with the implementation of the Proposed Development Conditions, the proposed child care center would be in harmony with the Comprehensive Plan and in conformance with applicable Zoning Ordinance provisions. The Proposed Development Conditions include Number 12, which states that the special permit shall expire seven years from the date of approval, or at such time as VDOT determines that the right-of-way for the widening of Route 123 is imminent, whichever occurs last. Mr. Hunter said staff recommended approval under the proposed development conditions contained in the staff report. He referenced the fact that the applicant had submitted development conditions to the Board for their review, as well as a revised Affidavit.

Mr. Dively asked why a 90% variance was being requested. Mr. Hunter said the existing structure was built in 1932 in its present location and the structure has since been expanded to the rear; the widening of Route 123 in 1971 brought the right-of-way within 4 feet of the existing structure.

Ms. Sandhu presented the statement of justification, previously submitted in writing and incorporated into the record. She said the proposed child care center was an aesthetically pleasing, community-oriented facility, which intends to provide a much-needed quality service to the families living and working in the general vicinity of the site. She said that she intends to support the local tax base and provide job opportunities for the mothers and elderly members of the community. Ms. Sandhu said staff initially had three concerns: Intensity of the use - which was addressed by reducing the number of children from 45 to 35; circulation pattern - which caused the applicant to provide a one-way, loop-type traffic pattern, which will ensure safer access to and from the site and she offered to provide a van service to 40% of the children and financial incentives to families walking to the facility from the neighborhood; and buffering - she intends to provide as much buffering as possible for Lot 50, as shown on the revised special permit plat.

Ms. Sandhu said she and her family plan to live in the house on Lot 50 and will not be impacted by the child care facility next door. She said they had reviewed the Proposed Development Conditions which were submitted by staff and, in turn, had proposed modifications, copies of which were submitted to the Board for their review.

Mr. Hunter directed the Board's attention to the fact that they had the applicant's modified Proposed Development Conditions before them. Mr. Ribble said he wished to study the differences, acknowledging the fact that we had a professional staff which imposed conditions for good and sufficient reason.

In answer to a question from Mr. Hammack, Ms. Sandhu said she and her family now live in Washington, D.C., but have owned the property in Vienna for 25 years and now planned to occupy that property, if the applications were approved. She explained to Mr. Hammack that she was requesting a waiver of the 6-foot-high fence because, since she would be living right next door, she wished to keep an eye on the child care facility.

Robert Panier, Great Falls, Virginia, said he holds title to the property east of the Sandhu property. It is a wooded, vacant lot and he owns the property as trustee for Esper, Inc., a Virginia Corporation, of which he is 100% owner. He said he has known the Sandhu's for most of the time during which they have owned the Vienna property; he has owned the property to the east since approximately 1985 or 1986. Mr. Panier said he believed that using the property as a child care center is appropriate because of a great need in the area for this service, and he strongly supported the application.

Mr. Hammack asked staff why they believed that the applicant should dedicate 68 feet of right-of-way on demand, when it is not even in the Plan at this point. Mr. Hunter said staff inserted that condition in the event that the project is expedited, so that staff would be prepared by having acquired the necessary right-of-way. Mr. Hammack said the opportunity to acquire is there; all they have to do is pay for it. He said it effectively condemns the property and he did not see why the Sandhu's should have to convey the right-of-way to VDOT, because a small child care center could not be a reason for widening to that extent.

Mr. Ribble said he was not sure VDOT would want a child care center; however, if they owned the property, they would be partially responsible.

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

Mr. Ribble moved to grant SP 95-H-007 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions, dated May 9, 1995, submitted by the applicant, with one small modification: Under Condition 9, second paragraph, "...barrier requirement shall be waived along all the property lines until such time as the Sandhu's no longer own the adjacent property...." At a later meeting, the condition was modified to more clearly express Mr. Ribble's intent. That modification is 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 95-H-007 by YOUR CHILD'S PLACE, INC., under Section 3-103 of the Zoning Ordinance to permit a child care center, on property located at 2578 Chain Bridge Road, Tax Map Reference 38-3((1))46A, 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 9, 1995; and

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

1. The applicant is the lessee of the land.
2. The present zoning is R-1.
3. The area of the lot is approximately 15,054 square feet.
4. It was deemed appropriate to adopt the Proposed Development Conditions submitted by the applicant, with a minor amendment.

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 Site Design Engineering, Inc. dated December 30, 1994, revised through April 12, 1995 and approved with this application, as qualified by these development conditions.

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

4 The maximum daily enrollment shall not exceed thirty five (35) children.

5. The hours of operation shall be limited to 6:30 a.m. until 6:30 p.m., Monday through Friday.

6. A maximum of seven (7) parking spaces shall be provided for this use as shown on the special permit plat. All parking shall be on-site. Vans shall be provided for forty (40) percent of the children enrolled. If permitted by the adjacent apartment complex to the north, pedestrian access to the rear of the site shall be provided to facilitate parents who wish to walk their children to the center by providing a gate in the fence located on the property of the apartment complex.

7. Transitional screening shall be modified to allow plantings along the eastern and western lot lines as generally shown on the revised special permit plat and as determined and approved by the County Urban Forester. If permitted by VDOT, plantings shall be provided within the right-of-way along the southern property line which will soften the visual impact of the use. The transitional screening requirement shall be waived along the southern property line.

   The barrier requirement shall be waived along the western lot line until such time as the Sandhu's no longer own the adjacent property. The barrier requirement shall be waived along all other property lines.

8. All trash shall be stored on site in appropriate containers and shall be screened from view of the adjacent single family dwelling and Chain Bridge Road.

9. No free-standing signs associated with the child care facility shall be located on the subject property.

10. This special permit shall expire seven years from the date of approval, or at such time as VDOT determines that the planned Route 123 road improvements are imminent, whichever occurs last.

This approval, contingent on the above-noted conditions, shall not relieve 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. Hammack seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to grant VC 95-H-011 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 2, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-H-011 by KULDIP K. SANDHU/YOUR CHILD'S PLACE, INC., under Section 18-401 of the Zoning Ordinance to permit existing dwelling to remain 4.0 feet from front lot line, on property located at 2578 Chain Bridge Road, Tax Map Reference 38-3((1))46A, 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 9, 1995; and

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

1. The applicant is the lessee of the land.
2. The present zoning is R-1.
3. The area of the lot is approximately 15,054 square feet.
4. It is extraordinary that the house was built in the 1930's.
5. In 1971, VDOT took part of the applicant's front yard, leaving the building within 4 feet of the new front lot line and creating the need for this variance.

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

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

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

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

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

1. This variance is approved for the location of the existing structure shown on the plat prepared by Site Design Engineering, Inc. dated December 30, 1995 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any new 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. Hammack seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1995. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:40 a.m. and reconvened at 10:45 a.m.

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9:30 A.M. SPRINGFIELD GOLF AND COUNTRY CLUB, SPA 76-S-182-4 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-S-182 for country club to permit building additions and site renovations. Located at 8301 Old Keene Mill Rd. on approx. 157.60 ac. of land zoned R-3, C-5 and HC. Springfield District. Tax Map 89-1 ((1)) 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. William H. Gordon said he represented the applicant and replied that it was.

Julie Schilling, Staff Coordinator, presented the staff report, stating that the property is planned for private recreation and the application requested the addition of numerous site renovations, the proposed addition of a chemical storage building and an above-ground storage tank; the special permit amendment plat indicated that some improvements were recently constructed but not approved. She said the applicant was requesting reaffirmation of previously approved modifications to transitional screening and proposed to include traditional screening along a small area adjacent to Old Keene Mill Road and the parking lot of the Country Club, as well as an area adjacent to a proposed cart path and residential Lots 36 through 42 of the West Springfield Subdivision. Ms. Schilling said that, in staff's opinion, all transportation and land use issues, including the modification of transitional screening and barrier requirements, would be addressed with approval of the Proposed Development Conditions, most of which were carried forward from previous special permit approvals. Three additions to the Proposed Development Conditions would, first, require the review and approval of new transitional screening by the Urban Forester; second, would require shielding of lights for the existing tennis courts from residential areas, in response to citizens' complaints regarding glare; and, third, would eliminate proposed parking spaces that do not meet Public Facilities Manual (PFM) requirements. Ms. Schilling said that several environmental issues had been identified pertaining to proposed improvements and to those improvements that had been constructed but not approved, within the vicinity of the stream bed on the south side of the property, including modification of the existing stream, encroachment within Environmental Quality Corridors (EQCs) and pesticide and fertilizer use and storage. Proposed Development Conditions 13 through 19 would address those issues. Ms. Schilling said that, since publication of the staff report, the applicant had provided additional information regarding delineation of the EQC and the reconstruction of some existing improvements within the EQC. She said that revised Proposed Development Conditions dated May 8, 1995, were distributed to the Board that morning and reflected changes to the proposed Conditions 14 through 19; those proposed revisions would eliminate the requirement for the use of vegetated filter strips and would permit all, but one, of the site renovations previously proposed, to be prohibited within the EQC. Ms. Schilling advised that Noel Kaplan of the Office of Comprehensive Planning, Environmental Planning, was present to answer any questions pertaining to environmental issues. She said staff recommended approval of SPA 76-S-182-4, subject to the revised Proposed Development Conditions dated May 8, 1995.

Mr. Hammack asked staff if they had discussed the applicant's proposed revisions to staff's original Proposed Development Conditions. He said some of them appeared to him to be reasonable, such as not wanting to replace and remove asphalt. He asked if there was any reason why it was not considered. Ms. Schilling said she believed staff would not object to not removing the asphalt; it was their intent just to not have the parking spaces if they are not in accordance with the PFM, and staff would not object to restriping and not removing the asphalt. Mr. Hammack asked if staff had seen the revisions submitted by the applicant and Ms. Schilling said they had received a copy of them the previous evening. Mr. Hammack said he would like to hear what the applicant had to say.

Chairman DiGiulian said he believed there was a question regarding the affidavit and the fact that Mr. Gordon was not identified on it. Chairman DiGiulian advised Mr. Spindel that, if he wished to have Mr. Gordon present the application, he should introduce him and so specify.

Robert D. Spindel, General Manager, Springfield Golf and Country Club, stated that he would like Mr. Gordon so speak on behalf of the Club.

Mr. Gordon said there were quite a few members of the club present and some would speak. He discussed the revisions to the Proposed Development Conditions reflected in their submission that morning. He said the second sheet, dated May 9, was their justification on each one of the changes, which he wished to go over, one by one. The submission is part of the file and is based upon the original Proposed Development Conditions contained in the staff report and not the revised Proposed Development Conditions dated May 8.

Mr. Dively said he had four separate and different sets of Proposed Development Conditions and the problem appeared to be that the May 8 staff submission and the applicant's recommended Proposed Development Conditions were not in sync. He said he would not object to having people speak; however, he did not believe the Board members should vote until they had only two sets of Proposed Development Conditions before them, instead of four. In answer to a question from Mr. Dively, Mr. Gordon said that the previous evening they had reviewed the latest conditions prepared by staff. He reiterated that they would prefer using their Proposed Development Conditions because they believe they address the concerns they have with the original conditions prepared by staff, as well as the revised staff-prepared conditions. Mr. Hammack said he agreed with Mr. Dively in that he would prefer to wait until the Board had only two sets of conditions to work from and asked to hear Mr. Gordon's testimony.

Mr. Gordon again asked to be allowed to work with staff's original conditions and the applicant's latest revised rendition. Mr. Hammack said he would not agree to serious consideration until he had only two sets of conditions, including staff's revised conditions in response the latest rendition of the applicant's revised conditions. Mr. Gordon said he would like to discuss some of the conditions and give the Board some examples of why staff's conditions needed to be changed to the wording that the applicant had submitted. For example, one of the conditions addressed the tennis court lighting. Mr. Gordon said the tennis court standards had been there since the 1960's; to recommend now that they be limited to 20 feet in height does not, in his opinion, make much sense. He said the existing tennis bubble contains standards in excess of 12 feet, according to the particular condition; however, the tennis bubble is now opaque, filtering out all outside light. He said staff is now recommending a reforestation plan for the entire golf course; besides being a nightmare to have to come up with a reforestation plan, the proposed repairs and improvements do not call for removing a single tree and calling for reforestation does not make much sense. Mr. Gordon said there was one other condition he would like to mention, because he knew that one of the adjacent property owners would later speak about it. He said they had shown the location of an asphalt cart path going up the right side of the fairway, which is where the carts now go without any asphalt. The adjacent property owner, he believed, was concerned about the Transitional Screening 1 that is being proposed adjacent to the cart path on the property owner's side. Mr. Gordon said the County condition says they absolutely have to put Transitional Screening 1 there. He said they suggested in their recommended change to that condition that they be allowed to modify the transitional screening as the property owners along there would like and, if it is less than Transitional Screening 1, that is alright, because they feel Transitional Screening 1 would be taking away their view.

Mr. Hammack addressed Condition 6 and asked Mr. Gordon why he wanted to add the following words: "...unless the adjacent lot owners request less plant material than required under Transitional Screening 1...." Mr. Gordon referenced his previous comments addressing that condition, stating that the thick evergreen wall would cut off the view of the adjacent property owners, who did not want their view mitigated.

Mr. Hammack asked if there were any proposed changes within the transitional screening area. Mr. Gordon said that, outside the transitional screening area, they proposed to put in an asphalt cart path where there now is mud. They proposed no changes within the transitional screening area. Mr. Ribble asked if Mr. Gordon was suggesting that, if they plant a lot of trees, the neighbors would not have the kind of view they might want. Mr. Gordon said that was correct, and they would like to please the adjacent property owners, who he believed would object to a wall of evergreens.

Mr. Hammack asked staff why a reforestation plan was required of an existing golf course. Mr. Ribble said he believed staff was probably trying to do its job, but sometimes got rather severe.

In answer to a question from Mr. Ribble, Mr. Gordon said the bubble stayed up year-round; however, the applicant had no problem agreeing to the conditions and, if the lighting has an adverse impact on adjacent properties, they will take appropriate action. Mr. Gordon said that limiting the height of the standards, which have been in place for thirty years, and changing the lighting within the bubble, which cannot be seen from the outside, seemed unreasonable. Mr. Ribble explained, as a president of a country club not too far away from the applicant that, anytime an amendment is sought, a whole new, fresh look is taken at the special permit to see if it complies with current ordinances.

Mr. Hammack asked Mr. Gordon to stand by in case the Board had more questions.

Robert D. Moss, 7731 Carley Parkway, Springfield, Virginia, immediate past president of the Country Club, spoke in support of the applicant and recited the history of the Club. He said that, because of financial constraints, the Club had done very little repair and maintenance, and very little attention was given to the aging infrastructure; a considerable amount of repairs were needed on the golf course, some involved severe erosion. The repairs were eventually accomplished. He asked the members who were present to stand, some of whom were surrounding property owners.

The following people also spoke in support of the application: Edward Downing of 7909 Jansen Court, an adjacent property owner, and Earl Voss, 8109 Ainesworth Avenue, off the eighth hole.

The following people spoke in opposition: Elaine and Barry Simmerman, 8103 Ainesworth Avenue, off the eighth fairway, said the view of the golf course was a pleasure to behold; however, they said, because of the changes in the past years and the fact that the elevation of their property is lower, they get a lot of golf balls on their property, some golf carts, and they anticipated that the proposed asphalt would cause the balls to bounce to the area near their hot tub and, also, break more windows. They did not want the proposed asphalt to be approved.

Mr. Hammack asked staff why they believed that the applicant should reforest part of the golf course where there originally were no trees. Noel Kaplan of the Environment and Development Review Branch, said it was because of the County's Environmental Quality Corridor (EQC) requirement; because much of the course runs along an existing stream, compliance with the

Comprehensive Plan is required. Mr. Kaplan said staff recognized that what was done prior to this application was done legally, and they did not take issue with that; however, because the EQC policy explicitly calls for the restoration of EQC areas to a more natural condition, and because there are some areas on the golf course where it is feasible to do this without compromising the function of the golf course, by proceeding according to the legal uses, staff believed that, for the application to be in conformance with the Plan, there should be some restoration efforts pursued. Mr. Kaplan said the areas they identified, in staff's view, are not part of the golf course operation, not part of the fairways, the rough, or the greens of the holes, and could be restored without compromising those functions. He said one of the specific areas is along the southern side of the stream that flows along hole 5, which Mr. Gordon referred to as a tremendous problem. Mr. Kaplan said that the riprap in that area is not only on the sides of the channel, it is also on the bottom of the channel, which can have a severe impact on water temperatures downstream. He believed that, by shading areas south of the stream which are not currently wooded, some level of temperature mitigation could be provided. Mr. Kaplan said staff was attempting to restore the EQC to the extent possible.

Mr. Hammack asked if any temperature studies had been done on the water and how much riprap was being referred to. Mr. Kaplan said he believed they were talking about a 1,000-foot-stretch of riprap in the stream. He could not give any quantification of the temperature impacts. Mr. Hammack asked what the damage downstream represented and Mr. Kaplan said aquatic life forms could be affected. Mr. Hammack asked Mr. Kaplan if he had actually looked downstream or was just saying that, maybe, this could happen. Mr. Kaplan said, typically, in a perennial stream of this type, there will be some species of fish inhabiting the waters, and animals that live in the sediment and support the food chain in the stream system. He said there had not been an analysis or survey conducted downstream; however, he had coordinated with the Council of Governments (COG), which has some expertise in this area, and they advised that temperature impacts are of significant concern in this type of situation. Mr. Kaplan said COG believed that, by restoring a wooded filter area along the banks of the stream, impacts could be mitigated to some extent.

Mr. Hammack referenced the original Development Condition 17, and said the applicant indicated that the proposed berm had been omitted, so the BZA should delete that condition. He asked staff if they agreed with that and Ms. Schilling said staff had been working with the applicant on delineation of the EQC and, as part of those efforts, she believed those berms had been marked out. She said, however, that was part of a working draft and not an official submission at this point.

Mr. Hammack asked why staff wished to have the Integrated Pest Management (IPM) plan prepared prior to the site plan and asked why it could not be done concurrent with the site plan. Ms. Schilling said she believed it was staff's concern that the preparation of the IPM be tied in with an event and approval of a site plan was normally when staff would check on the conditions. She said there would not be a Non-Residential Use Permit (NonRUP) issued, and there is no other subsequent occurrence when staff could check to see that the conditions had been fulfilled. Mr. Hammack asked if he could just insert a condition stating that the applicant must prepare the IPM within 90 days or six months or a year. Ms. Schilling said she believed that would be acceptable to staff.

Mr. Hammack said he would probably have more questions but had not figured out yet what they were, because this was all so disjointed.

Chairman DiGiulian asked Mr. Gordon if he had any additional comments. Mr. Gordon addressed Mr. and Mrs. Simmerman's comments about the cart path and said the applicant would be more than willing to modify the Transitional Screening 1. Mr. Gordon said two fairway bunkers had been installed immediately in front of the cart path to keep balls from going out of bounds in that area, which he believed would resolve the situation. He said the transitional screening would also prevent many of the potentially out-of-bounds balls from going into the Simmerman's yard and it would also prevent any carts from going into their yard. Mr. Hammack asked Mr. Gordon how far the Simmerman property line is from the proposed cart path. Mr. Gordon said it is about 20 feet away, and the outside edge of the cart path is 25 feet away from the property line; the transitional screening is between the property line and the cart path. Mr. Gordon said they considered re-routing the cart path to the left side of the fairway and, from the golfing standpoint, it would not work out; it must go behind the green or the carts would have to cross the green and the path would be adjacent to the next tee. He reiterated that the applicant was prepared to modify that particular Transitional Screening 1 to meet the Simmerman's concerns if the Board so wished. Mr. Gordon addressed Mr. Kaplan's comments, stating that his firm had been hired by the Department of Public Works (DPW) to do many projects just like this one, with public money. He said that Fairfax County and many country clubs have done what the applicant had done in trying to save the stream. Mr. Gordon said they have put in riprap which has helped upstream and downstream property owners, as well as saving the stream, using their own money instead of public money.

Mr. Hammack asked Mr. Gordon if he had a chance to review staff's revisions to development conditions 14 through 18. Mr. Gordon said they had problems with everything but condition 19, which refers to the riprap and is acceptable to the applicant; he believed that all the other conditions should follow the language of the conditions proposed by the applicant.

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

Page 321, May 9, 1995, (Tape 1&2), SPRINGFIELD GOLF AND COUNTRY CLUB, SPA 76-S-182-4, continued from Page 320 )

Mr. Dively moved to defer the final vote on this application until the following week, Tuesday, May 16, 1995, at 8:00 p.m., and advised that the members of the club who were present need not return at that time. He said he needed a representative from staff and the applicant. Mr. Dively said he did not want to merge four different sets of conditions, but he would be willing to merge two versions. He said staff did not have to revise their latest version of the conditions and he asked the applicant to respond to that May 8 submission.

Mr. Dively said it was his intention to grant the special permit amendment; however, he needed to decide what conditions to include in the granting.

Mr. Hammack seconded the motion. Mr. Ribble said he would support the motion because he believed they had too many sets of conditions to review.

Chairman DiGiulian reiterated what Mr. Dively had said about the applicant submitting a set of conditions in response to the version submitted by staff dated May 8, 1995.

Mr. Hammack said he would like to have those conditions well in advance of the hearing.

Mr. Gordon committed to having the new set of conditions in the hands of the Board members by the following Friday.

The motion passed by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 321, May 9, 1995, (Tape 2), Scheduled case of:

9:30 A.M. BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a freestanding sign advertising an individual enterprise within a shopping center, in violation of Zoning Ordinance provisions. Located at 6461 Edsall Rd. #305 on approx. 5.25 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7A.

Chairman DiGiulian acknowledged that the Board had been advised about the notices not being in order. William E. Shoup, Deputy Zoning Administrator, stated that the appellant had advised him that they had undergone a reorganization around the time that the notices should have been sent out and the notices were inadvertently not sent out. He said they would like to defer the appeal and he suggested the morning of July 6, 1995. Mr. Ribble so moved. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 321, May 9, 1995, (Tape 2), Action Item:

Approval of Resolutions from May 2, 1995, Hearing

Mr. Dively so moved. Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 321, May 9, 1995, (Tape 2), Action Item:

Ekoji Buddhist Temple, SP 94-S-046
Memo dated April 28, 1995, from Jane C. Kelsey, Chief
Special Permit and Variance Branch, ZED, OCP

Mr. Hammack said he did not have a problem with the Resolution as it was written, to the effect that the Board referenced 100 current members and granted permission for seating up to 180 persons in the Proposed Development Conditions. The consensus of the Board was that the Resolution should stand as it was written and that it required no amendment.

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Page 321, May 9, 1995, (Tape 2), Action Item:

John C. and Ramona Speicher Appeal

Mr. Dively moved to accept the appeal and schedule it for the morning of July 20, 1995. Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 322, May 9, 1995, (Tape 2), Action Item:

Party City of Bailey's Crossroads Appeal

Mr. Dively said it appeared that the documents were complete and timely-filed. He said the Board would not prejudge the merits of the matter and scheduled it for the morning of August 1, 1995. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 322, May 9, 1995, (Tape 2), Action Item:

Request for Rescheduling
Robert E. Grady Appeal

Mr. Hammack moved to reschedule the appeal for the morning of July 6, 1995. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 322, May 9, 1995, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Ronald J. Earyes, SP 95-S-027

Mr. Dively moved to deny the request due to the fact that the heavy schedule would not permit the case to be moved up a significant amount of time, and no chance of it being scheduled for the date of June 22, which the applicant had requested. Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 322, May 9, 1995, (Tape 2), Action Item:

Request for Out-of-Turn Hearings
Crisafulli and Jarman
SP 95-L-024 and SP 95-Y-025

Mr. Dively moved to grant the request and reschedule both cases from July 20 to June 22, which Jane C. Kelsey, Chief, Special Permit and Variance Branch, said did not have quite as heavy a schedule as other dates, before and after that date.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 322, May 9, 1995, (Tape 2), Action Item:

Chairman DiGiulian said the Board should probably discuss the expiration of Mr. Hammack's term. Mr. Dively moved that Mr. Hammack be reappointed by the Circuit Court. Mr. Ribble said he believed the Board had already drafted a document to go to the Court, based upon the time element.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Geri B. Bepko

Approved on: July 18, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 16, 1995. The following Board Members were present: Chairman John DiGiulian, Robert Dively, Paul Hammack, Robert Kelley, James Pammel, and John Ribble.

Chairman DiGiulian called the meeting to order at 8:15 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 323, May 16, 1995, (Tape 1), Scheduled case of:

8:00 P.M. SPRINGFIELD GOLF AND COUNTRY CLUB, SPA 76-S-182-4 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-S-182 for country club to permit building additions and site renovations. Located at 8301 Old Keene Mill Rd. on approx. 157.60 ac. of land zoned R-3, C-5 and HC. Springfield District. Tax Map 89-1 ((1)) 9. (DEF. FROM 5/9 TO ALLOW APPLICATION TO PREPARE REVISED DEVELOPMENT CONDITIONS IN RESPONSE TO STAFF'S REVISED CONDITIONS.)

Chairman DiGuilian said he believed this matter was before the Board for decision only.

Mr. Hammack advised that he was prepared to make a long motion on this application and would work his way through it. He moved to grant the application, subject to Proposed Development Condition, submitted by the applicant and dated May 10, which he said were substantially the same as those proposed by staff. Mr. Hammack said he had made some modifications and he would work his way through them.

In the applicant's submission, Mr. Hammack moved to modify the applicant's Proposed Development Conditions 5, 6, 11, 14, 15 and inserted a new Condition 16. Mr. Kelley observed, regarding Condition 16, relative to supplemental plantings, that the area had been that way for many years. Mr. Hammack acknowledged that the area had been that way for many years and referenced the criteria in the Comprehensive Plan, stating that the modification would be a step toward bringing the golf course into compliance with environmental considerations that had been adopted since the golf course came into use, while not requiring a restoration site plan as proposed by staff; however, he believed the applicant could comply with the modified condition without excessive expense or interference with the ongoing approvals being sought; also, it would environmentally benefit the County and community and render the golf course more attractive.

Mr. Kelley asked staff if they would go through this procedure with every golf course in the County. Mr. Hunter responded that, whenever a special permit, special exception, or rezoning application is received, it is reviewed against the policies of the Comprehensive Plan, including the environmental policies; staff would identify an Environmental Quality Corridor (EQC), research the history of the site, and make some recommendations as to how the proposal could best comply with those recommendations.

Mr. Ribble asked to review Condition 16 and Mr. Hammack said he believed, to the extent that it would not interfere with the operation of the golf course, based upon the applicant's determination, he would add the appropriate language. Mr. Hammack said he would come back to Condition 16 after he finished with the remaining conditions.

Mr. Hammack continued through the conditions, stating that the applicant's Condition 17 could be deleted as being redundant. He said he did not modify the conditions that were identical to staff's conditions.

Mr. Hammack returned to the subject of supplemental planting and said that, before the hearing began, he had staff come up and identify the areas where they proposed supplemental plantings. He said they were in small areas and may not be needed. Mr. Hammack said the applicant had pointed out one particular area around a green where they did not want supplemental plantings because the area sometimes is overdriven and golfers have to go into the area to look for their balls. He said he intended for his motion to give the applicant the authority to determine how they wish to operate their golf course but, to the extent that it would not interfere with the operation of the golf course, if the area is designated EQC, they should add some supplemental plantings that would help protect the EQC.

Mr. Hammack said he did not believe his proposal was unreasonable and that it was something the applicant could live with. He recognized that this was an existing use; however, laws and requirements change regularly and, if an existing use comes before the BZA, it is reviewed for compliance with current requirements.

Chairman DiGiulian asked if the applicant had an option regarding where and how many trees they would plant, or if the County would make that designation. Mr. Kelley said that, if it was up to the applicant, no condition was required. Mr. Hammack said the supplemental planting was proposed to be done in conjunction with the Urban Forestry Branch, DEM, only within the EQC, and there was a limit on how much could fit into the EQC. He said it was at the applicant's discretion; however, the Urban Forestry Branch might have some authority over anything within the EQC. Mr. Hammack said that the project was not intended to be a reforestation of the entire golf course, but only involved certain areas within the EQC. He said he was attempting to acknowledge the new criteria, without adversely affecting the golf course; however, if the other Board members felt it was inappropriate, he would like to discuss it.

Mr. Ribble said he believed that Conditions 16 and 14 should be deleted. Mr. Hammack said that he had finished with his motion. Mr. Kelley referenced the condition allowing the neighbors a choice of whether or not planting would be done and said he believed it was too "fuzzy." Chairman DiGiulian observed that the applicant had made that proposal. Mr. Hammack said that the applicant had proposed that and, the previous week, neighbors testified that they did not wish to have transitional screening affecting their view: specifically, Lots 36 through 42. Mr. Kelley said that a lack of continuity would occur with the potential change of ownership in adjacent properties and the opinions of the new owners on the issue. He said it was not clear and could lead to problems, but he would go along if the rest of the Board so wished.

Mr. Dively seconded the motion for purposes of discussion. He said he did not believe they would arrive at anything vastly different than what was on the table at the time. Mr. Hammack suggested a requirement that Condition 6 be complied with before the issuance of a Non-Residential Use Permit (NONRUP). He observed that the applicant took no issue with providing transitional screening, except where adjacent neighbors objected to it, in the area of Hole Number 8; nor did the applicant take issue with the requirement in the original Development Conditions in 1984, as Condition 5, at least in part.

Mr. Ribble moved to amend the motion to delete Condition 16 in its entirety. Mr. Kelley seconded the motion, which carried by a vote of 4-1-1. Mr. Hammack voted nay and Mr. Pammel abstained. Condition 16 was deleted and the balance of the conditions were renumbered.

The amended motion carried by a vote of 5-0-1. Mr. Pammel abstained.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 76-S-182-04 by SPRINGFIELD GOLF AND COUNTY CLUB, under Section 3-303 of the Zoning Ordinance to amend SP 76-S-182, on property located at 8301 Old Keene Mill Road, Tax Map Reference 89-1((1))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 May 16, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3, C-5 and HC.
3. The area of the lot is approximately 157.6 acres.
4. It was deemed appropriate to use the applicant's proposed Development Conditions, as amended.

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, is for the location indicated, 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 William H. Gordon and Associates, dated December 1994, as revised through April 10, 1995 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 determined by the Director, Department of Environmental Management. Any plan submitted pursuant to this Special Permit Amendment shall be in conformance with the approved Special Permit plat and these development conditions.

5. Two hundred and eight (208) parking spaces shall be provided as shown on the special permit plat.* All parking for the use shall be on site. Prior to issuance of a Non-Residential Use Permit for the use, existing parking spaces that are presently located within the turn-around adjacent to the driving range which do not meet Public Facilities Manual (PFM) requirements shall be painted over; in effect, eliminating the parking spaces but not the asphalt.

6. Transitional screening shall be provided as shown on the special permit plat. In addition, Transitional Screening 1 shall be provided without modification along the lot line south of the tennis courts and swimming pool to completely screen the uses from the Rhygate subdivision. The existing vegetation east of the tennis courts shall be maintained with evergreen plantings, the amount and type of plantings that were determined by the Urban Forester, to ensure that screening in this area is equivalent to Transitional Screening 1. Landscaping and screening shall be maintained around the restroom facility as determined by the Urban Forester, to effectively reduce the visual impact to adjacent residences.

   The amount and type of landscaping provided in the transitional screening located adjacent to residential lots 36-42 of the West Springfield subdivision shall be determined by the Urban Forester, to ensure that screening in this area is equivalent to Transitional Screening 1, unless the adjacent lot owners, within sixty (60) days of the approval of the application, request less plant material than that required under Transitional Screening 1.

7. The maximum number of family membership shall be seven hundred (700).

8. The maximum hours of operation for the swimming pool shall be 11:00 AM to 9:00 PM.

9. After-hours 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.

   Shall not extend beyond 12:00 midnight.

   Shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

   Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

10. The maximum hours of operation for the tennis courts shall be 8:00 AM to 10:00 PM except that the use of the tennis courts enclosed within the bubble shall be permitted between 6:00 AM and 12 midnight.

11. Any existing outdoor lighting used in conjunction with all on-site tennis courts shall be shielded and directed toward the application property in a manner that would prevent light from projecting beyond the lot lines.

12. All necessary permits shall be obtained prior to any construction.

13. Prior to approval of a site plan, the applicant shall provide documentation from the U.S. Army Corps of Engineers (USACOE) and the Virginia Department of Environmental Quality (DEQ) demonstrating that all permits required from the USACOE and/or DEQ have been obtained with respect to the subject property, as shown on the approved plat and as qualified by these conditions of approval. If required permits have not been obtained, the site plan shall not be approved.

14. The applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides, which shall be submitted for review to the Director, DEM, and approval prior to the issuance of a Non-Residential Use Permit for this use. The IPM Plan shall be developed in accordance with the Virginia Cooperative Extension Pest Management Guide (PMG) and shall be designed to manage the application of fertilizer, herbicides and other chemicals to protect water quality in the watershed. The IPM Plan shall include an on-going monitoring and reporting method that will document the progress of the plan. The monitoring and reporting method for the IPM shall be used to document the intent and success of the IPM program and shall be made available if required by the Director, OCP.

15. Irrespective of that shown on the Special Permit Plat, boundaries of the stream flowing along the southern boundary of the property of the 100-year major and minor floodplain, and the Environmental Quality Corridor (EQC) associated with this floodplain, as determined by DEM, shall be shown on the site plan. Limits of clearing and grading shall be established such that no existing trees within the EQC will be cleared.

16. The proposed berms along hole #15 as shown on the special permit plat shall not be permitted, unless it is demonstrated to the satisfaction of DEM and OCP that such site renovation is not located within the EQC, as established pursuant to Development Condition 15.

17. Prior to site plan approval, the applicant shall demonstrate that rip-rap channels already constructed within the 100-year floodplain have not or will not create or aggravate drainage or streambank erosion problems downstream from the subject property, as determined by the DPW and DEM. The applicant shall submit information to DEM and DPW regarding the design of the streambank stabilization measures established on the property to enable DEM and DPW to determine if those measures conform with the design practices of DPW for streambank stabilization. If DPW determines that the existing rip-rap channels do not meet the above referenced design practices, the rip-rap shall be modified or removed, to the satisfaction of DPW and DEM.

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

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 5-0-1. Mr. Pammel abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 24, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 326, May 16, 1995, (Tape 1), Scheduled case of:

8:00 P.M. DAR AL-HIJRAH, SPA 84-M-009, Progress Report on the status of SPA 84-M-009, approved on October 5, 1993, for place of worship which permitted additional parking spaces and modified development conditions. Located at 3159 Row St. on approx. 3.48 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B.

Chairman DiGiulian advised that a progress report was scheduled on the status of this special permit amendment.

David Hunter, Staff Coordinator, stated that the subject property is located at the northeast corner of Leesburg Pike and Row Street and contains 3.59 acres of land. The special permit amendment was approved on October 5, 1993, with the condition that the Non-Residential Use Permit (NONRUP) be obtained within 24 months of approval. In addition, another condition required that staff and Mosque officials prepare a progress report for review. Mr. Hunter said he would highlight a portion of the report, as follows: The Board of Supervisors approved a shared parking agreement for the Mosque at the Church of Christ and the First Christian Church for a period of four years from the date of approval. A site plan was filed on April 6, 1995, for 60 additional parking spaces on the Mosque site, approved with SPA 84-M-009. The plan was in the process of review. Mr. Hunter said that inspections performed by the Zoning Enforcement Branch, Zoning Administration Division, Office of Comprehensive Planning, during the past year, indicated that as many as 525 vehicles associated with the Mosque have been parked off-site on Friday afternoons between 12:00 Noon and 2:00 p.m. In addition, a memorandum from the Mason District Police Substation and a letter received from the Lee Boulevard Heights Civic Association were attached to the progress report for the Board's information.

The applicant's agent, Larry E. Becker, 1427 Dolley Madison Boulevard, McLean, Virginia, advised that they had been making steady progress in dealing with the parking problem. He said he believed that the residents of the area would agree that it has abated somewhat. Regarding addressing the specific special provisions of the special use permit which was granted in 1973, he said they were continuing to utilize their satellite parking at the Church of Christ and the First Christian Church, and had coordinated with them during the celebrations of Ramadan; that evening they had provided staff with letters dated in January 1995, from the two churches to the Mosque, acknowledging that the applicant could use their shared parking during Ramadan, in addition to the already agreed-to parking on Friday afternoons. The agreements continued to be in effect, with the provision that both agreements could be terminated upon 7-days notice to the Mosque. Mr. Becker said that the

Mosque continued to experience good relations with both churches. Regarding the continuing parking problems, Mr. Becker said that, in 1993, the Mosque entered into a 3-year contract with a local towing service with specific instructions that they should tow away any illegally parked cars within the Mosque parking lot and the parking lots of the two churches; to the extent that anyone contacts the Mosque to report an illegally parked car blocking a driveway, the towing service will be made available to tow that car. The Mosque is endeavoring to cooperate with the community to ensure that parking does not inconvenience anyone in the local neighborhood. They are continuing their public awareness program within the Mosque itself; at least once a month, they urge the worshippers to use the Metro Bus Service, to carpool, and to use whatever other means are available to come to the Mosque without having to park a car when they arrive.

Mr. Becker said that the Mosque is continuing to employee additional police officers; they now have 2 off-duty police officers policing on Friday afternoons and at least 5 Mosque personnel who are assigned to monitor the parking lots to ensure orderly and legal parking within the areas under their control. He said one of the highlights of their efforts was the use of HOV-3 parking on-site. During the last hearing, the imposed conditions did not include a specific number of HOV-3 parking spaces; however, they have converted 66 parking spaces to HOV-3 on-site, which have been full. Mr. Becker said the Mosque hopes to continue to increase the number of HOV-3 parking spaces, with the hopeful goal of eventually utilizing the entire site for HOV-3 parking, so long as the worshippers continue to modify their behavior and are able to fill the spots with 3 people to a vehicle. He said they are continuing to look for large sites to accommodate the larger number of people who attend the twice a year events, without success. The sites under consideration have been the Patriot Center and other similar facilities that would accommodate several thousand, to include the many additional people in Northern Virginia who would like to go to the Mosque but are unable to do so now. The search for such a site continues.

Mr. Becker said the number of prayer services has been modified during the celebrations; the recent one on May 10th had four separate prayer sessions in the morning, in a specific effort to thin out the number of people who would attend any given service. Finally, the continuing effort to increase the parking by adding 62 spaces is expected to be resolved by the first week in June. The construction estimate is two to three months, which would result in the parking spaces being completed by the end of the summer, well before the current deadline of October 13, 1995, even if a second submission of a site plan were required. Mr. Becker said, while he would not say that all the problems have been resolved, he believed they were making progress.

Mr. Ribble asked Mr. Becker if there were any other Mosques he knew of that were being planned for other areas, such as Maryland or Washington, D.C., which might alleviate some of the traffic at the Mosque. Mr. Becker said he was aware of a group in Springfield that recently purchased property and was planning to come before the Board of Zoning Appeals with an application for a special use permit. He also believed there was a Mosque planned for somewhere in Maryland, but he would let Dr. Hajjaj respond to that question.

Mr. Hammack asked Mr. Becker what efforts the Mosque had made to obtain shuttle buses for the holy days. He referenced a complaint in a letter to Supervisor Trapnell. Mr. Becker asked if he was referring to the two large annual celebrations and Mr. Hammack said he was. Mr. Hammack said that original Development Condition 11, imposed in 1984, said that a shuttle bus shall be used to transport worshippers from off-site parking locations to the Mosque during those celebrations. He said the Condition further stated that notice of the location of such satellite parking and shuttle bus service shall be provided to worshippers via handouts at Friday worship services or mailings at least one month prior to the celebration. Mr. Hammack said it appeared that plan could be implemented without undue effort. Mr. Becker said they attempted to do that during the celebrations in 1993, utilizing the shuttle bus from the Lord & Taylor parking lot. He said they found that the shuttle bus in that case proved to be ineffective and people did not use it. The Mosque continued to do studies, including surveys of the people who attend the prayers, asking them specifically when and where they would use the satellite shuttle buses, etc. Mr. Becker said, after much study, the consensus was that the shuttle bus service would not be used and would be a tremendous expense to the Mosque. Mr. Becker said the large sites which might be available, such as J.E.B. Stuart High School and the shopping center parking lots, are not available on Friday afternoons, so that they really do not have any close, large parking lot from which a satellite service could be run on Friday afternoons. He said the other two big annual occasions still continue to present a problem and the consensus within the Mosque is that a facility must be found outside the Mosque which will accommodate the large number of Muslims who are living in Northern Virginia; the Mosque cannot accommodate the expected large number of people on those days.

Chairman DiGiulian asked if there was anyone else who would like to address the Board in support of the Mosque.

Dr. Anwar Hajjaj, ex-president and Executive Member of the Board of the Mosque, said they had committed only one-third of the number of spaces on site to HOV-3 at the time of the last public hearing; they now have 66 spaces committed, which is more than two-thirds of the total number of spaces. He said this showed that the worshippers who came to the Mosque were willing to make an effort to solve the problem. Dr. Hajjaj stated that, in 1994, the Mosque used only four off-duty police officers and the private security people to monitor and direct traffic at a cost of $18,822 for the entire year. This year, during the month of Ramadan alone, the Mosque spent $7,680 to police the area. Those records were available for the Board's review. Regarding available places of worship, Dr. Hajjaj cited Friday prayers in

Fairfax at the Institute of Islam Economic Sciences; Adams Center in Herndon, which has obtained or is in the process of obtaining a permit to build a mosque; the Islamic Center in Washington, D.C.; American University; George Washington University; George Mason University; IMF and the World Bank in Washington, D.C.; in Springfield, the Jema'tul Musleemeen purchased an old computer building and were offering Friday prayers. Chairman DiGiulian advised Dr. Hajjaj that his time was up and asked him to sum up.

Other speakers raised their hands and Chairman DiGiulian said he would limit testimony to two minutes each. Some of the speakers donated their speaking time to Dr. Hajjaj.

Dr. Hajjaj further stated that public transportation was being used by worshippers coming to the Mosque. He said the Mosque's relationship with the churches was very good and the Mosque was very pleased with their cooperation, especially in the month of Ramadan. Dr. Hajjaj said they had hoped to utilize shuttles from satellite parking areas but found that the diversity of origination of the worshippers traveling to the Mosque made it difficult to choose a central location from which to shuttle them. He said he believed the towing service had discouraged many people from parking illegally. Dr. Hajjaj said he believed the Mosque had done its part and the extra spaces would ease the situation.

The following people spoke in opposition: Sylvia Johnson, 6110 Brook Drive, Falls Church, Virginia, said she had been attending meetings for 4 years in an attempt to find a solution to the parking problem at the Mosque. She had attended an earlier meeting when the shuttle service had been declared a success and this was the first time she heard that it did not appear to be successful. Ms. Johnson said that, if a new mosque takes eight or ten years to build, it would not be an answer to the present problem. New temporary solutions and facilities were needed. She said the mosques that Dr. Hajjaj described in other areas would not alleviate the situation in this area. Ms. Johnson said that, after the last meeting with the BZA, a "FOR SALE" sign went up on the shuttle buses, giving the impression that the applicant believed the crisis was over. She said she had spoken with Dr. Hajjaj shortly after Ramadan 1994 about the possibility of renting a facility for the heavily-attended holiday services. Because of the uncertainty of the precise date, the facility would have to be rented for two days, but only used for one, and they were unwilling to do that. On May 10, there were 750 to 800 cars and thousands of occupants looking for a place to park. The entire surrounding area was overflowing. Ms. Johnson expressed concern for potential traffic fatalities.

Robert Mace, President, Lee Boulevard Heights/Lower Munson Hill Civic Association, 6109 Brook Drive, said the HOV-3 system adopted by the Mosque had somewhat alleviated the traffic and the litter problems. He said, however, that the fundamentals had not changed: the level of attendance continued to be far too intense for the site; the parking spaces are inadequate to accommodate the number of vehicles generated; County staff has documented from 221 to 257 vehicles parked outside of the approved areas on the three occasions they checked since the revocation hearing; the 62 additional parking spaces could not begin to address the overflow; there has been no visible progress in the parking expansion project since the revocation hearing. Further, the Mosque has not complied with the 26 Development Conditions imposed by the BZA at the end of the revocation hearing: the Mosque did not submit documentation to the Zoning Administrator by October 1 of the continued availability of the 990 shared parking spaces; any small progress made was made only under threat of revocation. Mr. Mace went on to address each condition. He submitted his presentation in writing and the entire text may be found in the file.

Chairman DiGiulian asked if there were any questions of staff or Mr. Becker. Receiving no reply, he declared the public hearing closed.

Mr. Kelley moved to accept the Report. Mr. Hammack seconded the motion, which carried by a vote of 6-0.

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Page 328, May 16, 1995, (Tape 1), Action Item:

Approval of Resolutions from May 9, 1995

Mr. Ribble moved to approve the Resolutions with a modification to SP 95-H-007, Your Child's Place, under Condition 7. He said it should read: "The barrier requirement shall be waived along the western lot line until such time as the Sandhu's no longer own the adjacent property. The barrier requirement shall be waived along all other lot lines." Mr. Hammack seconded the motion which carried by a vote of 4-0-1. Mr. Pammel abstained because he had not been present for the hearing. Mr. Kelley was not present for the vote.

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Page 328, May 16, 1995, (Tape 1), Action Item:

Approval of Minutes dated February 28 and April 4, 1995

Mr. Pammel moved to approve. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 329, May 16, 1995, (Tape 1), ACTION ITEM:

Request for Additional Time
George Summers, VC 86-D-061

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote. The new expiration date is January 19, 1996.

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Page 329, May 16, 1995, (Tape 1), Action Item:

Request for Rescheduling of Appeal 95-H-016
John F. and Anne M. Lefevere
from May 30 to September 26, 1995

Mr. Pammel moved to grant the request. He said the appellants were in the process of working with staff to resolve the issues associated with their plan and, given enough time, he believed they could resolve the differences, thereby rendering the appeal moot. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 329, May 16, 1995, (Tape 1), Action Item:

Request for Intent-to-Defer
Ridgeview County Club, SP 95-Y-003

Mr. Ribble asked why the applicant wished to defer. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that a revised plat had been submitted, which required review by staff. The applicant requested that staff do an addendum and change some of the Development Conditions previously proposed. Ms. Kelsey acknowledged that the applicant would also go before the Planning Commission regarding filling in the floodplain. Mr. Pammel moved to issue an intent-to-defer for one month, from May 23 to June 22. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 329, May 16, 1995, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Groveton Baptist Church, SPA 88-V-079

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant had requested an out-of-turn hearing because their camp was going to start on June 26. She said staff suggested squeezing it in for June 22, since staff was advertising for that date. Mr. Dively so moved. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 9:20 p.m.

Minutes by: Geri B. Bepko

Approved on: September 12, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

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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 23, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 331, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ALICIA CRUZ, SP 95-V-009 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 2.0 ft. from front lot line. Located at 8650 Walutes Circle on approx. 1,550 sq. ft. of land zoned R-20. Mt. Vernon District. Tax Map 101-3 ((23)) 11A. (OUT OF TURN HEARING GRANTED. DEF. FROM 4/11 TO AMEND THE APPLICATION. NOTICES ARE REQUIRED.)

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. Cruz, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the public hearing on this case was continued from April 11, 1995, to allow the applicant to submit additional information, which was before the BZA. Ms. Greenlief said the special permit was for a building in error to allow a deck to remain 2.0 feet from the front lot line. She added that staff had received eight letters and a petition in support of the application, and three letters in opposition. Ms. Greenlief said staff had also received a letter from the previous property manager explaining the creation of the deck policy, which was also a part of the BZA's packet.

Alicia Cruz, 8650 Walutes Circle, Alexandria, Virginia, said she had nothing to add to her comments from the previous public hearing.

Chairman DiGiulian called for speakers and the following came forward.

Rene Anderson, 8652 Walutes Circle, Alexandria, Virginia, said she objected to the deck's location because it had an adverse impact on her property value. She said it was an eyesore, but that she had no objections to the applicant building a nice looking deck.

Mr. Hammack asked the speaker how she would feel if the deck were properly constructed and maintained. Ms. Anderson said she would have no objections if the deck was constructed in line with the building.

Paul Nelson, 8678 Walutes Circle, Alexandria, Virginia, opposed the application for the same reasons as the previous speaker. He said he had served on the Architectural Review Committee and participated in the creation of the deck policy and it had never been their intent, at least his and one other member, that decks would be allowed for the specific reason of intrusion onto other property owners.

Mr. Hammack asked if the speaker objected to the shape of the deck. Mr. Nelson said he objected to both the shape and construction of the deck. He added that he believed the deck was a safety hazard.

An unidentified woman came forward and said she was the former resident of the subject property and that she would like to see the applicant treated fairly and be allowed to bring the deck into compliance with the County regulations. She said she would not like to see the applicant penalized for receiving misinformation from the association and that she would like to see the deck approved.

In rebuttal, Ms. Cruz said the first speaker's comments were based on her prejudice feelings against "Puerto Ricans".

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

Mr. Hammack made a motion to deny SP 95-V-009 for the reasons noted in the Resolution.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-V-009 by ALICIA CRUZ, 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 2.0 feet from front lot line, on property located at 8650 Walutes Circle, Tax Map Reference 101-3((23))11A, 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 23, 1995; and

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

1. The applicant is not the owner of the land.
2. The present zoning is R-20.
3. The area of the lot is 1,550 square feet.
4. The BZA deferred the application to allow the council of homeowners to become a co-applicant on the special permit. The council submitted a limited easement to the BZA in lieu of becoming a co-applicant.
5. The applicant has tried to comply with all the applicable regulations and has acted in good faith by halting the construction and removing a portion of the deck.
6. It would be a bad precedent for the BZA to grant an application when the council of homeowners is not a part of the application.
7. There seems to be a lot of disagreement among the council and that needs to be resolved prior to the BZA making a motion to grant such an application.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-903 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 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995.

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Page 332, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PHILLIP G. DZYAK, VC 95-S-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from rear lot line. Located at 7507 Mullingar Ct. on approx. 10,455 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((21)) 48.

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. Dzyak, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 10,455 square foot subject property is zoned R-3 and is located on the east side of Mullingar Court within the Donegal Oaks Subdivision. The property adjoins single family detached dwellings on the north, northeast, and west with community open space on the east and south, all of which are in the R-3 District developed under the cluster provisions of the Zoning Ordinance.

Mr. Heine said the applicant was requesting a variance to allow a room addition to be located 12.9 from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, a variance was requested for 12.1 feet from the minimum side yard requirement.

Philip Dzyak, 7507 Mullingar Court, Springfield, Virginia, said the property was acquired in good faith on October 12, 1987, and is the only lot that is exceptionally narrow in the rear yard. He said there are five houses in the neighborhood that have constructed similar structures and he believed it would be a hardship not to be able to utilize his property in the same way as other property owners. Mr. Dzyak said the proposed structures would not be detrimental to the adjacent properties, and noted that he planted white pines eight years ago which make a natural barrier and lessen the visual impact on the neighbors. He discussed the architectural design of the proposed structure and submitted photographs to the BZA for its review.

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

Mr. Pammel made a motion to grant VC 95-S-022 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-S-022 by PHILLIP G. DZYAK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.9 feet from rear lot line, on property located at 7507 Mullingar Court, Tax Map Reference 89-4((21))48, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1995; and

WHEREAS, 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 10,455 square feet.
4. The applicant has presented testimony that he meets the criteria as required for the granting of a variance; specifically, the lot is shallow and has an unusual configuration leaving the applicant with very little back yard in which to build any addition whatsoever.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 sun room addition shown on the plat prepared by Charles P. Johnson and Associates, P.C., recertified on January 20 1995, 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 sun 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. Hammack seconded the motion which carried by a vote of 6-0.

Page 334, May 23, 1995, (Tape 1), PHILLIP G. DZYAK, VC 95-S-022, continued from Page 333)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 334, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR MONTES, VC 95-P-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from street line of a corner lot and permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 8002 Iliff Dr. (8006 Woodcroft Ct.) on approx. 10,757 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((25)) 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, Mr. Montes, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 10,757 square foot subject property is zoned R-3. It is a corner lot which fronts on the undeveloped Iliff Drive, Ithaca Street, and Woodcroft Circle. The site is surrounded by single family detached dwellings on three sides and on the north by vacant land in the R-3 District.

Mr. Heine said the applicant was requesting approval of two variances. The first variance request was to allow a two-story addition with a room over a garage to be located 7.2 feet from a front lot line. The Zoning Ordinance requires a 30.0 foot minimum front yard; therefore, a variance of 22.8 feet was requested. The second variance request was to allow an accessory shed to remain in the front yard of a corner lot. The Zoning Ordinance does not allow accessory structures such as storage sheds in the front yards of lots that are less than 36,000 square feet; therefore, a variance was requested from the minimum lot size which would permit accessory structures in the front yard.

In response to a question from Mr. Ribble, Mr. Heine said Iliff Drive was not scheduled for completion.

Victor Montes, 8002 Iliff Drive, Dunn Loring, Virginia, said all the neighbors have larger lots and his is the only lot with three front yards. He said the oddity being that Iliff Drive was planned for construction in the 1860's when Dunn Loring was developed and Woodcroft Court was constructed in the late 1970's or early 1980's. Mr. Montes said his lot is really a peninsula and he would like to expand the house to accommodate his expanding family.

Mr. Ribble asked when the shed was constructed and the applicant replied that the shed was on the lot when they purchased the property. Chairman DiGiulian asked when they purchased the property and Mr. Montes replied 1983.

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

Mr. Ribble made a motion to grant VC 95-P-023 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-P-023 by VICTOR MONTES, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.2 feet from street line of a corner lot and permit accessory structure to remain in front yard of a lot containing less than 36,000 square feet, on property located at 8002 Iliff Drive (8006 Woodcroft Court), Tax Map Reference 39-4((25))1, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1995; and

WHEREAS, 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 10,757 square feet.
4. The applicant has met the nine required standards for the granting of a variance, in particular there is an extraordinary situation with the subject property and also with the adjacent property in this case.
5. The lot has three front yards and is a peninsula.

6. Iliff Drive is a 60 foot right-of-way, is unimproved, and will probably not be improved in the future.
7. The applicant might want to request the County to vacate Iliff Drive in order for him to purchase part of the land.

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

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

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

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

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

1. This variance is approved for the location of the specific two-story addition and accessory shed shown on the plat prepared by Nicholas Lucarelli, Architect, dated January 20, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the two-story addition prior to any construction and final inspections shall be approved.

3. The two-story 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 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PHILLIP S. AND ELIZABETH HARRINGTON, VC 95-L-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.7 ft. from rear lot line. Located at 4348 Rolling Stone Way on approx. 8,415 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 8075.

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. Harrington, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on the north side of Rolling Stone Way south of South Kings Highway. The application property and the surrounding lots in the Stoneybrook Subdivision are zoned R-3 and were developed under the Cluster provisions of the Zoning Ordinance. Mr. Hunter said the applicant was proposing to construct a bedroom addition 22.7 feet from the rear lot line, where a 25 foot rear yard is required.

Elizabeth Harrington, 4348 Rollingstone Way, Alexandria, Virginia, said they would like to expand two small bedrooms on the rear of their rambler.

Mr. Pammel asked if the addition would extend any further into the rear yard than the existing structure. The applicant replied that it would not.

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

Mr. Kelley made a motion to grant VC 95-L-024 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-L-024 by PHILLIP S. AND ELIZABETH HARRINGTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.7 feet from rear lot line, on property located at 4348 Rolling Stone Way, Tax Map Reference 92-1((10))8075, 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 23, 1995; 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 8,415 square feet.
4. The applicant has met the nine required standards for the granting of a variance.
5. The request is for a minimal variance.
6. The addition will not be any closer to the lot line than the existing building.

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

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

Page 357, May 23, 1995, (Tape 1), PHILLIP S. AND ELIZABETH HARRINGTON, VC 95-L-024,
~~Continued~~ from Page 336)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Robert B. Adams, Architect, dated February 25, 1995 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 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 337, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LOUIS E. SIDNEY, VC 95-L-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line. Located at 3311 Collard St. on approx. 10,800 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 47.

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. Sidney, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on the south side of Collard Street west of Richmond Highway. The site is zoned R-2 and developed with a single-family detached dwelling. Mr. Hunter said the applicant was proposing to construct a kitchen and porch addition 12 feet from the side lot line, where a 15 foot side yard is required. He said the existing structure is located 10 feet from the side lot line, a pre-existing condition.

Louis E. Sidney, 3311 Collard Street, Alexandria, Virginia, said the lot is 60 feet wide and if he is required to maintain the 15 foot setback it would not be practical to build the addition. He said the addition would be located to the rear of the lot and would not adversely impact the neighborhood.

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

Mr. Dively made a motion to grant VC 95-L-025 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-L-025 by LOUIS E. SIDNEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.0 feet from side lot line, on property located at 3311 Collard Street, Tax Map Reference 92-2((19))47, 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 May 23, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 10,800 square feet.
4. The property is very narrow.
5. The BZA granted a variance which allowed the house to be constructed 10 feet from the lot lines, and the proposed addition will be 12 feet.
6. Many of the houses in the neighborhood are constructed within 10 feet of the side lot lines; therefore, the request will be in harmony with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Andrew P. Dunn, Land Surveyor dated February 7, 1995, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 6-0.

Page 339, May 23, 1995, (Tape 1), LOUIS E. SIDNEY, VC 95-L-025, continued from Page 338 )

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 339, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BERTRAND A. PAGE, II, VC 95-L-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. from front lot line and 8.0 ft. from each side lot line. Located at 8508 Engleside St. on approx. 5,600 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-3 ((7)) 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. Page, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 5,600 square foot property is located on Engleside Street in Lee District. The subject property and surrounding lots are zoned R-2 and the lots to the north, south, and east are developed with single-family detached dwellings. To the west is a R-2 zoned lot developed for parking for the Engleside Plaza. Ms. Langdon said the applicant was proposing to construct a single-family detached dwelling on a 40 foot wide lot with the dwelling being located 8 feet from each side lot line and 25 feet from the front lot line. She said side yards of 15 feet and a front yard of 35 feet are required by the Zoning Ordinance; thus, the applicant was requesting 7 feet to the minimum side yard requirement and 10 feet to the minimum front yard requirement. Ms. Langdon said staff had received a letter in opposition to the request, which the applicant had not yet had an opportunity to review.

The Chairman asked the applicant if he had seen the opposition and Mr. Page said he had not. The BZA provided him with copies and proceeded with the next scheduled case to allow the applicant to review the opposition letters.

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Page 339, May 23, 1995, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM RIVELLINI, VC 95-D-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.0 ft. from each side lot line. Located at 9058 Jeffery Rd. on approx. 21,780 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-2 ((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, Mr. Rivellini, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 21,780 square property was located on Jeffery Road in the Dranesville District. The subject property and surrounding lots are zoned R-E and developed with the single-family detached dwellings. Ms. Langdon said the applicant was proposing to construct two additions. One was a two car garage with a second story bedroom 15 feet from the east side lot line; the second addition was a dining room/family room addition 15 feet from the west side lot line. She said a side yard of 20 feet is required by the Zoning Ordinance; thus, the applicant was requesting variances of 5 feet for each addition.

William Rivellini, 9058 Jeffery Road, Great Falls, Virginia, said they purchased the property in July 1994 because they liked the area and because they saw the potential for growth on the lot. He said they would like to expand the living space and provide a play area for their children. Mr. Rivellini said there is a septic system in the rear of the lot which precludes any construction to the rear. He believed the additions would bring their property more in line with the other houses in the neighborhood and noted there was no opposition to the request and no adverse impact.

In response to questions from Chairman DiGiulian as to the purpose of the ground floor of the addition on the east side of the lot, Mr. Rivellini said the rear would be a garage with office space on the front.

Mr. Hammack asked if the asphalt in the front of the lot would be removed. The speaker said the driveway would be extended around the house.

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

Mr. Hammack made a motion to grant VC 95-D-020 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-020 by WILLIAM RIVELLINI, under Section 18-401 of the Zoning Ordinance to permit construction of additions 15.0 feet from each side lot line, on property located at 9058 Jeffery Road, Tax Map Reference 8-2((9))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 23, 1995; and

WHEREAS, 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 21,780 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the lot is undersized as it is a half acre lot in a two acre category.
5. The lot is narrow with respect to most of the other lots.
6. There is a septic field in the rear of the lot which precludes construction.
7. The variances are 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 specific additions shown on the plat prepared by Richard C. Lessard, Architect, received by the Office of Comprehensive Planning February 22, 1995, submitted with this application and is not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0 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 May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 341, May 23, 1995, (Tape 1), Scheduled case of:

BERTRAND A. PAGE, II, VC 95-L-019

(NOTE: This case came before the BZA earlier in the public hearing and was passed over to allow the applicant an opportunity to review opposition letters.)

The applicant, Mr. Page, said he would like to construct a single family house 24 feet wide by 45 feet long 8 feet from each side lot line on an exceptionally narrow lot. He said in order to avoid floodplains in the rear of the lot and in his interest of maintaining environmental standards in the area he would like to build closer to the front of the lot. Mr. Page said similar variances had been granted in the area and in his judgment would have no adverse impact on the neighborhood, and would enhance the area. With respect to the letters received in opposition, Mr. Page did not believe the anonymous letter should have standing and pointed out that the letter objected to the establishment of a residence on the lot, rather than the variance and for very obscure reasons. He said the issues raised in the second letter with respect to a boarding house was not valid, as he planned to occupy the proposed dwelling.

Chairman DiGiulian asked if it was correct that the justification for the variance was the existence of the floodplain on the lot, which generated the need to locate the proposed dwelling closer to the front lot line. Mr. Page said that was correct. He added that there are other structures along Engleside that are much closer to the street than the one he was proposing.

There were no speakers in support of the request and the following citizen came forward to oppose the request.

Donna Richey, 8518 Engleside Street, Alexandria, Virginia, submitted a letter of opposition from a neighbor who could not be present. She said her main concern was the impact on an already overcrowded street and she submitted photographs to the BZA to emphasize her point.

In rebuttal, Mr. Page said he has lived in the area since 1987 and during that time the floodplain has not been encroached upon.

A discussion took place between the BZA and the applicant with regard to references made in the opposition letters regarding a boarding house and other properties the applicant owns in the neighborhood. Mr. Page said he does not own Lot 13 or 15 and that he was not aware of a boarding house operating in the neighborhood.

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

Mr. Pammel made a motion to grant VC 95-L-019 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 95-L-019 by BERTRAND A. PAGE, II, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 feet from front lot line and 8.0 feet from each side lot line, on property located at 8508 Engleside Street, Tax Map Reference 101-3((7))14, 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 23, 1995; and

WHEREAS, 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 5,600 square feet.
4. If the BZA does not grant the variance, the applicant cannot develop the lot and has bought a "pig in a poke."
5. The applicant has presented testimony that he complies with the nine criteria required by the Ordinance; specifically, the lot is exceptionally narrow.
6. The lot is encumbered by a 100-year floodplain in the rear, thus the need for variance requests amounting to a 10 foot front yard variance and 7 foot side yard variances on the north and south.

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

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

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

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

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

1. This variance is approved for the location and the specific dwelling shown on the plat prepared by Alexandria Surveys, Inc., dated August 29, 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 5-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RICHARD N. & HOPE BRODKORB, VC 95-Y-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.2 ft. from side lot line and eave overhang 1.2 ft. from side lot line. Located at 5705 Ottawa Rd. on approx. 12,495 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2)) (7) 22.

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

Susan Langdon, Staff Coordinator, presented the staff report. She said this 12,495 square foot property is located on Ottawa Road in the Sully District. The subject property and surrounding lots are zoned R-2 Cluster and developed with single family detached dwellings. The request for variance resulted from the applicant's proposal to construct a carport 2.2 feet from a side lot line with an eave 1.2 feet from a side lot line. The minimum required side yard in the R-2 Cluster District developed under the cluster provisions of the Ordinance is 8.0 feet. Ms. Langdon said a carport may extend 5 feet into a side yard, but no closer than 5 feet to the side lot line. An eave may extend 3 feet into any minimum required yard, but not closer than 2 feet to any lot line; thus, a variance of 2.8 feet was requested for the carport, and a variance of 3.8 feet was requested for the eave.

Richard and Hope Brodkorb, 5705 Ottawa Road, Centreville, Virginia, said they bought the house in 1986 and have always wanted to construct a carport in order to store their boat and minivan. Mr. Brodkorb said there are no objections from the neighbors, the materials used in the construction will match those on the original dwelling, and there will no adverse impact on the neighborhood.

Mr. Ribble said it appeared that the 2 foot protrusion of the existing chimney necessitated the need for the variance. Mr. Brodkorb said that was correct.

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

Mr. Ribble made a motion to grant VC 95-Y-021 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 16, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-Y-021 by RICHARD N. AND HOPE BRODKORB, under Section 18-401 of the Zoning Ordinance to permit construction of carport 2.2 feet from side lot line and eave overhang 1.2 feet from side lot line, on property located at 5705 Ottawa Road, Tax Map Reference 53-2((2))(7)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 May 23, 1995; 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 12,495 square feet.
4. The applicant has met the nine required standards for the granting of a variance; in particular, the 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 specific carport shown on the plat prepared by Cook and Miller, Ltd., dated February 17, 1995, submitted with this application and is not transferable to other land.

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

3. The carport 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 and Mr. Pammel seconded the motion which carried by a vote of 5-1 with Mr. Hammack voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 31, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 344, May 23, 1995, (Tape 1), Scheduled case of:

9:30 A.M. RIDGEVIEW COUNTRY CLUB LIMITED PARTNERSHIP, SP 95-Y-003 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course, golf driving range, and accessory uses such as swimming pool, tennis courts, club house with eating establishment. Located at 16850 Sudley Rd. on approx. 546.20 ac. of land zoned R-C and WS. Sully District. Tax Map 52-1 ((1)) pt. 1, 2; 52-2 ((1)) pt. 4; 52-3 ((1)) 1. (IN ASSOCIATION WITH SE 95-Y-007) (APPLICATION AMENDED AND MOVED FROM 4/25)

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the BZA had issued an intent to defer the application at its May 16th meeting. She suggested July 11, 1995, at 9:30 a.m.

Mr. Ribble made a motion to defer the case to the date and time suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 345, May 23, 1995, (Tape 1), Scheduled case of:

9:30 A.M. RICHMOND AMERICAN HOMES OF VIRGINIA, INC., APPEAL 94-H-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that PCA 87-C-060-3 and FDP 87-C-060-2 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family attached units must be affordable. Located S.E. of the Virginia Power Easement between Fox Mill Rd. and Thomas Jefferson Dr. on approx. 22.35 ac. of land zoned PDH-16. Hunter Mill District. Tax Map 16-3 ((1)) 15A. (BZA RESCHEDULED FROM 1/10/95 TO 2/28/95. DEF. TO 4/27 FOR NOTICES AND AT APPL.'S REQUEST. DEF. FROM 4/27 AT APP.'S REQ. TO ALLOW ADU COMMITTEE TO HEAR REQ.)

Mr. Kelley made a motion to grant the applicant's request to withdraw A 94-H-041. Mr. Dively seconded the motion which carried by a vote of 6-0.

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The BZA recessed at 10:30 a.m. and reconvened at 10:40 a.m.

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Page 345, May 23, 1995, (Tape 2), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL. DEF. FROM 2/28. DEF. FROM 4/27 IN ORDER TO HEAR CONCURRENTLY WITH A 94-H-041, A RELATED CASE.)

William Shoup, Deputy Zoning Administrator, said the issue on appeal was applicability of the Affordable Dwelling Unit (ADU) Ordinance to a Proffered Condition Amendment (PCA). He said the appeal concerned property that is located generally west of West Ox Road and north of Fair Lakes Parkway. Mr. Shoup said the property is currently zoned PDH-20, which was the result of a rezoning application, RZ 87-P-016, approved by the Board of Supervisors subject to proffers in 1987 allowing a total of 778 multi-family dwelling units for the entire development. Mr. Shoup said the appellants filed a PCA on a portion of the land to change the previous approval from 586 multiple-family dwelling units to 41 single-family detached dwellings, 241 single-family attached dwellings, and 116 multiple-family dwelling units. The PCA was approved on February 27, 1995.

Mr. Shoup said prior to the 1987 approval of the original rezoning, the Board of Supervisors adopted ADU provisions, which are set forth in Part 8 of Article 2 of the Zoning Ordinance. These provisions provide for certain exemptions to the requirements by recognizing previously zoned properties. In this case, since the property was rezoned prior to July 31, 1990, the effective date of the ADU provisions, and the approved rezoning contained proffered development plan and total maximum density, it may be developed in accordance with the original rezoning without having to comply with the ADU requirements. Mr. Shoup said the ADU provisions also provide that certain limited changes may be made to previously approved rezonings without requiring compliance with the ADU Ordinance, which provision is set forth in Paragraph 3 of Section 2-803 of the Zoning Ordinance.

He said the appellant contended that their PCA meets these provisions because the request involved a reduction in the number of units, a change in the size of the units, and changes to building relocation and ingress/egress. Mr. Shoup said it was staff's position that the PCA is primarily to change the proposed development, and in effect to propose a totally new development with different unit types and this change is not exclusively for the issues or purposes set forth in Paragraph 3 of Section 2-803, with the critical term being "exclusively." He said the changes to the density, building location and layout, are a result of the appellant's decision to have a different development scheme which is not included in the exemption provision of Paragraph 3. Mr. Shoup noted that this paragraph was specifically and intentionally written to be narrow in scope, as it was the Board of Supervisors' intent to effectuate the provision of ADUs to the greatest extent possible.

Mr. Shoup added that the appellant also contended that they were unable to take advantage of the bonus density provisions of the ADU Ordinance which poses an economic hardship; therefore, the ADU provisions should not be applicable. He said Section 2-804 sets forth the ADU adjustor provisions, which established how many ADUs must be provided. Paragraphs 1 through 4 deal with projects that are coming through the special exception or rezoning process. Paragraphs 5 through 8 deal with projects that were previously zoned and not otherwise exempt which are subject to providing ADUs through the site plan or subdivision process. Mr. Shoup said the appellant has correctly noted that Paragraph 6 of Section 2-804 speaks to a ratio of density increase to the number of ADUs that must be provided and suggests that since there is no density increase in the appellant's proposal, ADUs need not be provided. However, the provisions cited by the appellant are not applicable to this provision since the property was previously rezoned and that previously approved development is exempt. He said the current proposal was subject to a PCA approved in February 1995, and

that PCA is a rezoning and does not satisfy criteria to be considered under Paragraphs 5 through 8. Mr. Shoup said as a rezoning the appellant's proposal was subject to the provisions of Paragraphs 1 through 4 of Section 2-804, and those paragraphs provide that the density range set forth in the Comprehensive Plan shall be increased by 10 or 20 percent depending on the type of dwelling unit that is being proposed. He asked the BZA to bear in mind that these provisions apply to the Board of Supervisors' review of rezoning or special exceptions; the increase in density is not automatic. Mr. Shoup said as noted in Paragraphs 1 and 3 of Section 2-804, "The provision for increasing the density range is for the purpose of calculating the potential density, which may be approved by the Board of Supervisors." The percentage of ADUs that must be provided is based on the total number of dwelling units actually approved by the Board of Supervisors, and in this case it was 398 dwelling units.

Finally, Mr. Shoup said the appellant was arguing in their January 27, 1995 memorandum that the imposition of the ADU Ordinance results in a taking, which would be unconstitutional and cites a Supreme Court decision known as the DeGroff case. He noted a distinguishing factor between the current ADU provisions and the Zoning Ordinance at issue in DeGroff is that the General Assembly specifically approved the entire text of the current County ADU Ordinance before it could be implemented. Secondly, the appellant appeared to be raising constitutional issues, and there is no authority which allows the BZA to rule on the constitutionality of a particular Zoning Ordinance provision.

Mr. Shoup noted that Barbara Byron, Director of the Zoning Evaluation Division, Office of Comprehensive Planning, who was involved in the drafting of the ADU Ordinance and currently serves as a member of the ADU Board, was present; as well as Jane Gwinn, Zoning Administrator; and, David Stoner, Assistant County Attorney.

Mr. Kelley asked staff to simultaneously display on the viewgraph the appellant's proposed plan and the approved plan. Mr. Shoup did so.

Lynne Strobel, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, represented the appellant. She said the subject property contains approximately 28.3 acres and is part of a 40 acre development known as Cedar Lakes. The residential community was designed and approved in 1987 and permits the construction of a total of 778 multi-family residential units. Ms. Strobel said two multi-family buildings consisting of 48 units have been constructed adjacent to West Ox Road. The property was zoned subject to a proffer requiring the conveyance of a percentage of units to the Housing Authority at a fixed sales price, which was anticipated to be below the current market value. She said the voluntary commitment was made prior to the adoption of the ADU Ordinance and of the six units that have been offered the Housing Authority exercised its purchase rights only to three. The property, which was the subject of the appeal, was previously approved for the construction of 578 multi-family units. The appellant decided to change the unit type from multi-family dwellings to a mix of unit types including single-family detached, attached, and multi-family development resulting in a total of 398 dwelling units. Ms. Strobel said the Zoning Administrator has taken a position that the ADU Ordinance applied to the approved Development Plan Amendment, which was filed to allow the modification proposed by the appellant. Ms. Strobel said since the appellant proposed a reduction in the number of units, and the development plan deals with the issue of building relocation, ingress/egress, stormwater drainage, and other engineering issues, the Zoning Administrator's interpretation was in error. She said as staff stated there are certain developments which are exempt from the ADU Ordinance as described in Section 2-803. This section establishes certain housing types or modifications to approved developments, which are exempt from the ADU Ordinance. Ms. Strobel said it was the appellant's position that the pending application was exempt from the provisions of the ADU Ordinance as described in Paragraph 3. The staff report suggested that because the appellant was changing the type of unit to be constructed, the Ordinance becomes applicable. She said if this was the intent of the Ordinance, it would refer to a reduction in the number of the same type of units, not the broader reference to units in general. The exemption provision described in Paragraph 3 of Section 2-803 anticipates the dilemma of a previously approved residential community that requires modification to respond to market conditions and economic realities. Ms. Strobel said it was not the intent of the Ordinance to subject all previously approved projects modifying housing types, either keeping the same number of units or reducing the number of units, to the provisions of the ADU Ordinance. She said the proposed development does not allow utilization of the affordable dwelling unit adjustor.

Ms. Strobel said the Virginia Supreme in 1973 held that a Fairfax County Ordinance that required a developer to build at least 15 percent of the dwelling units as low and moderate income community unconstitutional because it required a developer to rent or sell dwelling units at rental or sales prices not fixed by a free market. The requirement was held to be a taking or damaging of property for a public use without just compensation and a violation of the Virginia Constitution. (She cited the case of Fairfax County v. DeGroff.) Ms. Strobel said in order to avoid the taking issue, the Virginia Assembly adopted legislation authorizing Fairfax County to require affordable units be provided when excess density is provided. The State legislation provides in pertinent parts that the purpose of the legislation is "to encourage the construction and continuance of moderately housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing." She said thus the requirement for moderately priced housing was linked to additional density being provided and how the Virginia Assembly approved the legislation. Ms. Strobel said the Virginia Assembly specifically approved the County ADU Ordinance in the context of this legislation and the bonus density adjustor was established, which allows for

a greater density on the property in excess of that required by the Comprehensive Plan. As the residential community at Cedar Lakes was designed and approved in 1987, she said additional land is not available with which to take advantage of bonus density provisions and the total number of residential units has been reduced. The property is planned for development at 16-20 dwelling units per acre. Ms. Strobel said the appellant has gotten the development plan approved for approximately 14 dwelling units per acre, and therefore is less than the low end of the allowable density range. Paragraph 6 of Section 2-804 of the ADU Ordinance describes the adjustor for bonus density states that a density of less than 20 percent is the result in maximum density increase, than the percentage of ADUs required shall be reduced to maintain a 20 to 12 and a half percent ratio between the density increase and the ADUs. This paragraph makes it clear that if density in excess of the density recommended by the Comprehensive Plan is not exceeded, than ADUs need not be provided. Ms. Strobel said due to the reduction of the number of units below the lower end of the permitted density range no adjustor can be applied and the ADU Ordinance is not applicable. She said if the ADU Ordinance did not include Paragraph 6 of Section 2-804, it would violate the Constitution because the developer would not be receiving compensation for the inability to achieve market rental or sales prices.

Ms. Strobel said the developer has been involved in the development of properties in Fairfax County for over 20 years and noted an affidavit listing the appellant's qualifications. She said the Cedar Lakes community was approved seven years ago and in that time only 48 of 778 multi-family residential dwelling units have been constructed, which is approximately 6 percent. Ms. Strobel said the appellant has selected a mix of units that will be successful in today's market and will be affordable to a broader range of Fairfax County residents, which is the goal of the adopted Comprehensive Plan. She said the Zoning Administrator has suggested that the County has an indirect right to control the type of dwelling units that can be constructed through the mechanism of requiring ADUs. The developer has made a very informed judgment that the mix of unit types should be changed. Ms. Strobel said the State has not delegated any authority to the County for the purpose of controlling the mix of dwelling units for the purpose of providing ADUs. She said economics and market conditions cannot be ignored and the appellant anticipates a major financial loss if required to comply with the ADU Ordinance. Ms. Strobel said she agreed that the ADU Ordinance was drafted in order to provide affordable units in Fairfax County; however, she did not believe that the ADU Ordinance was drafted to impose a severe financial hardship on the developer. She concluded by reiterating her comments and requested that the BZA overturn the Zoning Administrator's decision. Ms. Strobel noted an error in the staff report and submitted a letter into the record from the ADU Advisory Board to the appellant setting forth its denial.

A discussion took place between Mr. Hammack and staff with regard to the appellant's change and why it would not be covered under the exclusion set forth in the ADU Ordinance. Mr. Shoup said the type of dwelling unit had changed, which was not covered in the provision. Ms. Byron said the zoning district remained the same under the proffered condition amendment which was recently approved by the Board of Supervisors. She added that if the appellant had requested less, and if it was a "less" multi-family development, it would not be at issue. Ms. Byron said in this case the appellant wanted less and a change in unit type which required a rezoning.

Ms. Strobel agreed that the zoning classification remained the same and although there is a different development plan, she did not believe it constituted a rezoning. She added that there was an overall density reduction on the site.

Ms. Gwinn said Section 18-204 of the Zoning Ordinance provides that once proffered conditions are accepted by the Board of Supervisors they become a part of the zoning regulations applicable to the property, unless they are changed by an amendment to the zoning map. She said in this instance it stayed a PDH zoning district, but there was a change in the zoning regulations because the dwelling unit type changed with a different set of proffers and zoning regulations.

Ms. Strobel said within the zoning category there can be multi-family single-family detached and multi-family single-family attached units.

Mr. Kelley said it appeared the appellant had voluntarily committed to providing ADUs prior to the adoption of the ADU Ordinance in exchange for a higher density. Ms. Strobel said she was not that familiar with the 1987 rezoning and added that typically all the proffers are put together in order to change a certain type of density on the property.

John Coles, representative of Tate Terrace, said the appellant acquired the property from Crestar Bank through a foreclosure approximately two years ago.

Mr. Dively asked if the BZA could address the economic issue and Mr. Kelley said he believed that was appropriate. Ms. Strobel said she believed the BZA can consider any issue. Mr. Shoup said staff did not address the economic hardship, because the Zoning Ordinance does not contain any language with respect to that issue. Ms. Strobel said she believed economics played a big factor in the establishment of the ADU Ordinance and why certain provisions were incorporated such as the density provision.

Mr. Kelley said in viewing the two plans side by side they were totally different and he believed that is beyond the term "modification." Ms. Strobel said the spine road and several utilities remain the same. Mr. Coles said the main access points at Monument Drive to the

west and West Ox Road to the east remain constant, in addition to the stormwater management system.

Mr. Kelley said he believed this case was very similar to the Richmond American Homes Appeal and that he could not understand why the appellant and the ADU Advisory Board could not reach a compromise. Ms. Strobel believed the appeals were different and pointed out that the Richmond American Homes Appeal had involved a cash contribution. This appellant presented a case to the ADU Advisory Board and one of the items offered was to comply with the previously existing proffer or in lieu make a cash contribution and the ADU Advisory Board chose not to accept the offer. Mr. Kelley asked the amount of the cash contribution and Mr. Coles replied approximately $150,000. Ms. Strobel said the $1,000,000 contribution made by Richmond American Homes was based on the entire land bay in McNair Farms.

Mr. Hammack asked if there was anything in the ADU Ordinance that allowed the County or staff to accept such an offer. Ms. Byron said the Board of Supervisors allows the ADU Board to accept modifications to the strict application of the Zoning Ordinance and allows them to accept land or cash in lieu of the units or a combination thereof. She said in this instance the previous proffer was neither of those, nor was it an equivalent program which the ADU Ordinance also allows you to do. Ms. Byron said it was further complicated by the fact that the previous proffer ended up being a problematic proffer for both sides. Mr. Hammack asked why the provisions would not be grandfathered. Ms. Byron said there was a concern in the drafting of the ADU Ordinance that the Board of Supervisors wanted to use the Ordinance to provide the maximum amount of affordable housing that it could and narrowly defined the exemptions; therefore, a broad grandfathered housing clause was not added. Mr. Hammack asked if it was staff's view that had the appellant only reduced the number of units and not changed the mix the appeal would not be before the BZA. Ms. Byron replied that was her view.

Ms. Strobel agreed the ADU Ordinance is narrowly drafted, and noted that it does not refer to the type of units.

Mr. Hammack asked what would happen if the appellant constructed duplex or patio homes with three to four together. Ms. Byron said it would depend on the previous approval, but if the unit type remained the same and they were all classified under the Zoning Ordinance as attached units it would not be before the BZA.

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

Mr. Kelley said he would like to see the County and the appellant sit down and try to reach a compromise and that he believed it would be to the appellant's advantage to do so.

Ms. Strobel agreed that it would probably be in the appellant's best interest to reach a compromise, but she was not sure the "door was left open" with the ADU Advisory Board. Mr. Kelley said it was his understanding the door was open. Ms. Byron said the ADU Advisory Board has been able to reach a resolution with each applicant and that she believed the issue was worth another an effort.

Mr. Hammack asked staff to address the issue raised by Ms. Strobel with regard to the density falling below the minimum requirement. Ms. Byron said the reference was with regard to the Comprehensive Plan and this property is located in the Fairfax Center, which has a different plan range than any other location in the County. She said the Fairfax Center has a three-tiered plan range which are base line, intermediate, and overlay levels. Ms. Byron said in this case, the base line level is 2 dwelling units per acre, the intermediate level is 10, and the overlay level is 20. She explained if all of those are adjusted upward by the ADU bonus provisions presuming that the entire development is townhouses, there would be a 20 percent bonus. The bonus would make the base line 2.2, the intermediate level would be 12, and the overlay level would be anything over the 12. Ms. Byron said since the property is developed at 14+ this application is at the overlay level development in Fairfax Center, but it is not below the Plan range and would have to meet the overlay criteria to achieve anything over the 12. She said the Zoning Ordinance is structured to say that regardless of what the Comprehensive Plan level is, what is achieved as the end result in density through the zoning process approved by the Board of Supervisors is deemed to include the bonus density.

Mr. Kelley made a motion to defer decision on this appeal for a period of thirty days in order to allow the parties involved to work out a settlement. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote.

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Page 348, May 23, 1995, (Tape 1), Scheduled case of:

Approval of May 16, 1995 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Hearing no objection, the motion carried by a vote of 5-0. Mr. Ribble was not present for the vote.

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Page 349, May 23, 1995, (Tape ), Scheduled case of:

Josaphine and Konstentino Pappaminas Appeal

William Shoup, Deputy Zoning Administrator, said there was a timeliness issue raised by staff and the appellants are present to address that issue. He said the appeal was filed in response to an April 11, 1995 notice regarding the appellants maintaining a junk yard/storage yard in addition to two dwelling units on their property. The appellants originally received notice of these violations by letter dated January 31, 1995 and they did not appeal that notice. Mr. Shoup said it was staff's position that the April 11, 1995 notice only indicated that they remained in violation; it was not a new determination. He said staff even stated in the April 11, 1995 letter that the violations and orders set forth in the January 31, 1995 letter were no longer appealable. Mr. Shoup noted that in response to the BZA's concern as to how staff were presenting follow-up notices, staff developed language to address that concern. He suggested that the BZA accept the appeal but limit the scope of the appeal to the determination that the violation continues.

Mr. Hammack questioned how the BZA could hear that portion without getting into the original notice. Mr. Shoup said staff realized it could be difficult, but they believed information could be presented to the BZA showing what was previously on the property remained and that would be the only issue subject to a decision.

Konstentino Pappaminas, 2904 Lawrence Drive, Falls Church, Virginia, and Josephine Pappaminas, his mother, came forward. Mr. Pappaminas said they had not understood the procedure and had retained an attorney who advised them to file the appeal. He said they were trying to bring the property into compliance and are working with the Department of Housing and Community Development with regard to making the second dwelling an accessory dwelling.

Chairman DiGiulian asked the speaker if he agreed with the Zoning Administrator. Mr. Pappaminas said in part.

Mr. Hammack asked the appellant if he had requested an extension of time to file an appeal. Mr. Pappaminas said they had obtained extensions over the telephone.

Mr. Hammack said he believed the letter was very clear and that the appellant was on legal notice that they had thirty days to file an appeal and did not do so. He then made a motion to deny the appeal.

Mr. Dively made a motion based on staff's suggestion that the BZA hear the issue raised in the April 11, 1995 which stated that the violation had not been brought into compliance. He added that he believed staff had made it very clear as to what the appellant needed to do, and that he did not know what else they could have done. The motion died for the lack of a second.

Mr. Hammack's motion not to accept the appeal carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 349, May 23, 1995, (Tape 1), Scheduled case of:

Robert E. and Alma S. McKim Appeal

William Shoup, Deputy Zoning Administrator, said this appeal also involved a timeliness issue. The appellants were originally issued a Notice of Violation on January 22, 1992 for the outside storage violation and the parking of dump trucks on the property. He said in a March 16, 1995 letter the appellants were again advised of the outside storage violation which continued on the property. Mr. Shoup said injunctive relief was sought and obtained with regard to the dump truck issue involved in the 1992 Notice of Violation. He said Jan Brodie, with the County Attorney's office, was present to speak to that issue with regard to Judge Woolridge's ruling.

Ms. Brodie said several Notice of Violations were issued to the appellants in 1992 and only one of the January 22, 1992 Notice of Violation included notices for both the dump trucks and the outside storage. She asked the BZA to look at the appeal as having two parts; specifically, the first part dealing with a dump truck on the property and you may not have 100 square feet outside storage in the rear yard and not screened from view. The other part is the fact that the appellants are in violation of the Code sections as they apply to the property. Ms. Brodie said the "McKim" case went forward only on the dump trucks and referenced in the Bill of Complaint were the three Notice of Violations. The McKims responded in their answer that they had a nonconforming use and claimed that they were entitled to have the dump trucks on the property; there was no denial that the dump trucks continued. Staff went forward on a Motion for Summary Judgment and the Court found that the appellants were precluded from challenging the application of the Zoning Ordinance to their property in this instance because they had failed to appeal the Notices of Violation, one of those being, the January 22, 1992 Notice. Ms. Brodie said this was appealed to the Supreme Court and the appeal was denied finding no reversible error. She said staff was trying to explain that this appeal would be precedent setting because it involves the same Notice of Violation that was the subject of litigation in the McKim case. Ms. Brodie said the case relied on the precedent of Gwinn v. Alward and the Gwinn v. Collier case, which dealt with the failure to exhaust administrative remedies. The Court determined that the failing to appeal the Notice of Violation to the BZA rendered those decision "a thing decided." She said the issue before the BZA was the later Notice of Violation and what part of that is

Page 350, May 23, 1995, (Tape 1), ROBERT E. AND ALMA S. McKIM APPEAL, continued from Page 349 )

still appealable. In looking at the two parts, the first being what the law was that applied to the property and that is "a thing decided." The McKims, as far as the outside storage is considered, may not have more than 100 square feet outside storage on the subject property, not screened from view, and not contained in the rear yard. Ms. Brodie said in the first Notice of Violation it also specifically listed the types of things that were included in that 100 square feet. She pointed out that it is the 100 square feet that is pivotal. In their defenses, the McKims raised constitutional issues such as vagueness, arbitrary and capricious action under the Zoning Ordinance and nonconforming use, but it is unclear as to what use they were referencing. Ms. Brodie said it was not the specific items the McKims were objecting to, it was the fact that it exceeded the 100 square feet, it is not screened from view, and it is not contained in the rear yard. The later Notice of Violation that stated "you have outside storage in violation of Section 10-102, Paragraph 24. It was the issue of whether that was constitutionally allowed and those things could have and should have been appealed under the first Notice of Violation. Ms. Brodie said the only thing in the second Notice of Violation that could not have been appealed, was whether the items that were on the property as of the March 16, 1995 Notice were in violation. She said the McKims could come forth and argue that they do not have more than 100 square feet on the subject and they are not in violation, as that is not "a thing decided."

Mr. Pammel made a motion to accept the Zoning Administrator's recommendation that the BZA limit the scope of the appeal to the March 16, 1995 letter. Mr. Hammack seconded the motion.

Mr. Shoup clarified for the record that the McKims had submitted a statement since they chose not to appear. Mr. Hammack said the BZA did have copies.

The motion carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 350, May 23, 1995, (Tape 1), Scheduled case of:

Out of Turn Hearing Request for
Brian F. Vaughn, SP 95-D-030

Mr. Pammel said in this case the homeowner was not aware that a permit was required and the addition is approximately 80 percent complete. He made a motion to grant the Mr. Vaughn's request for an out of turn hearing.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the case was currently scheduled for July 20, 1995. She suggested July 11, 1995. The motion carried by a vote of 4-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Mr. Pammel made a motion that the BZA commence meeting for the entire calendar year without breaking during August with the first and second Tuesdays being day meetings, with the third meeting being a night meeting, and the fourth and fifth, if applicable being day meetings. Mr. Dively seconded the motion. Following a discussion among the BZA members, the BZA tabled decision until next week.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if staff had an opportunity verify that the Board Auditorium would be available. Mr. Pammel said he did not believe there would be a conflict considering the Board of Supervisors and Planning Commission recess during the month of August. Ms. Kelsey agreed, but noted that adjustments and upgrades are done that month.

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

Minutes by: Betsy S. Hurtt

Approved on: August 1, 1995

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

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 30, 1995. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; and James Pammel. Chairman John DiGiulian and Robert Kelley were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:00 p.m. and Mr. Hammack gave the invocation. Vice Chairman Ribble asked if there were any matters to bring before the Board. Mr. Pammel motioned to defer the discussion pertaining to meeting throughout the year until the Board could meet with staff. Mr. Hammack seconded the motion which carried by a vote of 5-0.

Mr. Pammel motioned to defer Bondy Way, SP 95-D-001 and VC 95-D-001, for thirty days to allow discussions between the applicant and citizens to continue. Mr. Hammack seconded the motion which carried by a vote of 5-0. The hearing was scheduled for July 6, 1995 at 9:30 a.m. Chairman DiGiulian was absent from the meeting.

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Page 351, May 30, 1995, (Tape 1), Scheduled case of:

8:00 P.M. PURE PRESBYTERIAN CHURCH OF WASHINGTON, SP 95-Y-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 12818 Lee Hwy. on approx. 2.95 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((1)) 7A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald D. Smith, 5618 Wharton Lane, Centreville, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that the 2.95 acre site is located on the northwest corner of the intersection of Lee Highway (Rt 29) and Willowmeade Drive in the Sully District. The site is zoned R-1 and WSPOD and is developed with a single family dwelling. To the north, east and west are lots also zoned R-1 and WSPOD and developed with single family dwellings or are vacant. To the south across Lee Highway are two lots, one zoned R-1 and WSPOD and developed with a single family dwelling and the other zoned C-8 and developed with a vehicle service facility.

The applicant, Pure Presbyterian Church of Washington, requested approval of a special permit for a church and related facilities. The existing 2,491 square foot single family dwelling was proposed to be used as a rectory for the pastor of the church. A 2,856 square foot addition to the dwelling was proposed which would serve as a sanctuary containing 80 seats. The existing driveway entrance from Lee Highway will be removed and the entrance relocated to Willowmeade Drive. The proposed driveway will enter the site via a dedicated section of road, called Knight Arch Road. The parking lot was proposed to contain 27 parking spaces. The existing drainfield will be relocated from the rear of the existing dwelling to the front of the dwelling. No additional construction was proposed.

The applicant also requested a modification of transitional screening along the eastern, northern, western and a portion of the southern lot lines and a waiver of the barrier requirement along all lot lines.

Ms. Langdon stated that staff had requested and the applicant had agreed to provide transitional screening on the eastern and western lot lines, foundation plantings around the building addition, and landscaping along the site's Lee Highway frontage in conformance with Proposed Development Condition 5. Staff believed that with the addition of transitional screening along the eastern and western lot lines and landscaping along the southern lot line, the application would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Ms. Langdon stated that staff recommended approval of SP 95-Y-012 subject to the proposed development conditions. Staff also recommended approval of a modification of transitional screening along the northern and southern lot lines only, subject to the proposed development conditions and a waiver of the barrier requirements along all lot lines.

Mr. Smith stated that he met with citizens of the greater Willowspring Civic Association and some of the residents of Willowmeade subdivision. He added that the church agreed with the staff report.

There were no speakers in support of the application.

Bob Tucci, 5103 Willowmeade Drive, spoke in opposition on behalf of Willowmeade Association. Mr. Tucci stated that the community had little time to research the application, to meet and discuss issues, and to review the architectural plans before they were completed. During the meeting with the Civic Association, the speaker said the applicant had indicated that the architectural plan would not change. Mr. Tucci told the BZA if there was more time perhaps the issues relating to safety, screening, lights, loud speakers, bells, and growth could have been resolved.

Mr. Pammel referenced the 1992 denial and asked the speaker what discussion had taken place between the community and the applicant over the past three years. Mr. Tucci replied that the person previously representing the Association had indicated that in her opinion the issue was dead.

Mr. Smith stated in rebuttal that the connector road was dedicated according to the Comprehensive Plan. He stated that the screening will be taken care of as part of the development conditions, and the only lighting in the parking lot would be for security. Mr. Smith explained that the County records had not listed both the Willow Springs and the Willowmeade Homeowners Association; therefore, he did not know that they were separate.

Mr. Ribble asked if staff was recommending approval of the application, and Ms. Langdon replied affirmatively.

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

Mr. Hammack moved to grant SP 95-Y-012 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 23, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-012 by PURE PRESBYTERIAN CHURCH OF WASHINGTON, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 12818 Lee Highway, Tax Map Reference 55-4((1))7A, 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 30, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 2.95 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 3-103 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated October 23, 1994, revised through April 27, 1995, 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 and southern lot lines shall be preserved and maintained as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1. Supplemental landscaping shall be planted along the southern lot line adjacent to Route 29 and foundation plantings shall be installed along the southern and western sides of the proposed addition to soften the visual impact of the church structure in conformance with the Comprehensive Plan language for the Fairfax Center Area. A row of evergreen trees shall be planted along the eastern and western lot lines to supplement existing vegetation to satisfy the requirements of Transitional Screening 1.

   All existing vegetation shall be preserved along the eastern and western lot lines except that the minimum amount of clearing necessary shall be allowed for the driveway entrance and drainfield location. Every effort shall be made to save the

30 inch oak tree on the southern end of the proposed addition. If, as determined by the Urban Forestry Branch, the oak tree cannot be preserved, replacement planting(s) may be required.

Interior and peripheral parking lot landscaping shall also be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be as 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. The existing entrance to the site from Route 29 shall be removed and the driveway scarified and replanted with a grassy seed mixture and/or landscaping as determined by the Urban Forestry Branch.

8. The proposed driveway, as shown on the plat dated through April 27, 1995 from the parking lot around the proposed addition, shall be deleted. Transitional screening shall be provided as outlined in Development Condition #5. Instead of the driveway, a sidewalk shall be installed from the parking lot to the sanctuary and rectory to provide safe pedestrian access to these structures.

9. Right-of-way dedication of 52 feet shall be provided for the east/west collector road as shown on the approved plat 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.

10. The sanctuary and rectory shall be in general conformance with the architectural drawing as submitted by the applicant and included as Attachment 1 to these conditions. No amplification of bells or electronic equipment shall be used for services or related activities on the exterior of the church.

11. The maximum number of seats in the main area of worship shall be 80.

12. Twenty-seven (27) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.

13. 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.

14. In order to achieve a maximum interior noise level of 45 dBA Ldn the proposed addition shall have the following acoustical attributes:

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

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

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

15. A sign permit shall be obtained for any sign proposed for this site.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* 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 4-0 with Chairman DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 354, May 30, 1995, (Tape 1), Scheduled case of:

8:00 P.M. FRANK J. FUREY & ANDREW PEPIN, VC 95-D-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 14-A having lot width of 168.50 ft. Located at 11917 Thomas Ave. on approx. 5.00 ac. of land zoned R-E. Dranesville District. Tax Map 6-1 ((2)) 14.

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. Ken Sanders, Agent, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 5.0 acre parcel is located on the south side of Thomas Avenue. The property is an undeveloped tree covered lot in the R-E District that slopes to the south. The subject property is surrounded on three sides by undeveloped 5 acre lots in the R-E District. On the south, the site adjoins community open space which is zoned R-1 and is part of the Holly Knolls Subdivision developed under the cluster provisions of the Zoning Ordinance.

Mr. Heine said that the applicant was requesting a variance of 31.5 feet from the minimum lot width requirement in order to subdivide existing Lot 14 into 2 lots with proposed Lots 14A and 14B having lot widths of 168.5 feet and 200 feet, respectively. The R-E District requires a minimum lot width of 200 feet. Therefore, a variance was requested for proposed Lot 14A from the minimum lot width requirement.

It was staff's determination that the proposed application did not meet several of the standards for variances as set forth in Sect. 18-404, particularly Standards 2, 4, 6, and 9. There are no physical conditions on the property that preclude development of the property as a 5 acre residential lot. Of the 16 developed lots in the Kentland Farms Subdivision, 12 are developed on 5 acre lots. Denial of the variance would not restrict all reasonable use or suggest a hardship approaching confiscation. In addition, granting the requested subdivision would establish a precedent encouraging more subdivision variances in the neighborhood.

Mr. Heine stated that if it was the intent of the Board of Zoning Appeals to approve this variance application, staff requested that the approval be subject to the proposed development conditions in Appendix 1 of the staff report.

Mr. Sanders pointed out facts which he said were not in the staff report. He stated that there are existing homes on the south side of Thomas Ave that have been recently subdivided into two lots on the same side of the street. He also stated that there are lots in that corridor that are less than five acres. He mentioned that when the property was platted it was not platted with regard to whether or not the property would perk, some of the parcels perk but most do not. Mr. Sanders added that the applicants were proposing to build homes for their families. They and a couple of other neighbors joined together to bring public sewer to the property at their own expense, paid for engineering and it was approved by Fairfax County and Loudoun County. The County master plan says that the intent for the plan for this area is to preserve and provide for residential development on lots of two acres. He stated that the request sought was a minimal variance, and that there are no environmental constraints or technical issues.

There were no speakers in support of the application.

Vice Chairman Ribble asked if there was anyone to speak in opposition.

Thomas Gibson, 744 Kentland Drive, stated he has owned property in the area since early 1960 and it has always been clear that this was to be a one building lot because of the frontage. He added that all the people who have built in the area have built on the center of their lot knowing that they could not subdivide their lots. Mr. Gibson stated that the neighbors are strongly opposed because there will be numerous variance requests to come.

Mr. Sanders stated in his rebuttal that the soils in the area is marginal and that there is no septic on those lots, the houses that were built mostly on the east of Thomas Ave were built on lots that do perk and have septic or there would not have been a house built on it. If the owners build a sewer under the approved plan and the subdivision requirements are met, subdivision could always occur. He stated he was not certain if it is was a negative reaction to any lot smaller than 5 acres, or if the neighbors were saying two and a half acres is a small lot. Mr. Sanders stated that if the County felt it was not appropriate for it to be 2 acres than the County should state that the zoning is not appropriate.

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

Page 355, May 30, 1995, (Tape 1), FRANK J. FUREY & ANDREW PEPIN, VC 95-D-026, continued from page 354 )

Mr. Pammel stated that Mr. Sanders presented some good points as to why the application should be approved; however, he had not been convinced that it will serve the best interest of the County.

Mr. Pammel moved to deny VC 95-D-026 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 95-D-026 by FRANK J. FUREY AND ANDREW PEPIN, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 14-A having a lot width of 168.50 feet, on property located at 11917 Thomas Avenue, Tax Map Reference 6-1((2))14, 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 30, 1995; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.0 acres.
4. The applicant has not presented testimony indicating that he is deprived from reasonable use of the subject land.
5. There is a well defined line that establishes the low density lot sizes.
6. The lot does not have exceptional shape or size.
7. The minimum lot width requirement is 200 feet and the lot width requested for the subject lot is only 168.50 feet.

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

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

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

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

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

Mr. Hammack seconded the motion. The vote was 2-2 with Vice-Chairman Ribble and Mr. Dively voting nay. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 7, 1995.

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The Board recessed at 8:45 p.m. and reconvened at 8:50 p.m.

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Page 356 May 30, 1995, (Tape 1), Scheduled case of:

8:00 P.M. BOBBY STEVE CREEKMORE, APPEAL 95-S-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that lot 14B of the Ten Penny Woods subdivision was not legally created through subdivision and, therefore, is not a buildable lot under the provisions of the Zoning Ordinance. Located at 11507 Four Penny Ln. on approx. 2.65 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((2)) 14B.

William Shoup, Deputy Zoning Administrator, referenced staff's memorandum dated May 22, 1995 outlined the chronology of the property. He stated that at issue was whether the subject parcel is a buildable parcel.

A discussion took place between the BZA and staff as to the process that was involved at the time the lot was created.

The appellant, Mr. Creekmore, stated that prior to purchasing the property in 1988 he contacted the County and was told that the lot was grandfathered and was a buildable lot. He said for financing purposes the lot is treated as two separate lots. Mr. Creekmore stated that seven years later he was informed that the original lot, Lot 15, had floodplain running through it and that part of the property can never be built upon. He asked that the BZA rule in his favor based on his receiving misinformation from the County.

Mr. Hammack asked the appellant if he had ever gone into the County with a plat to discuss the property. Mr. Creekmore replied it was all done by phone.

Mr. Hammack and staff discussed the possibility of the appellant filing for a variance. Mr. Shoup said that staff maintained that the lot is only one lot with a 5 acre minimum lot size requirement and a density requirement of one dwelling unit per 5 acres. He noted that while a variance could be obtained for the lot size requirement, one could not be approved for the density.

Vice Chairman Ribble asked if there was anyone to speak to this appeal and the following came forward.

Barbara Power, 11512 Four Penny Lane, Lot 10, stated that she bought her lot 23 years ago and it had been her understanding that Lots 13 and 14 had been divided and the lot was more than the usual five acres because the back part of the lots did not perk and were in floodplain. She believed that the neighborhood covenants should be binding. She expressed concern about the location of the new Fairfax County Parkway going through and the potential for runoff.

Mr. Shoup noted that the appellant took title to the lot as one lot based on the description in the deed and he reiterated his earlier comments. He further stated that if the appellant received misinformation it was unfortunate, but that was not a basis for overturning the Zoning Administrator's decision.

Mr. Dively said he believed there had been a number of "red flags" in this situation and that the neighborhood has relied on the fact that the area is zoned for five acre lots. He believed that the Zoning Administrator had correctly interpreted the Zoning Ordinance and made a motion that the BZA uphold the Zoning Administrator's decision. Mr. Pammel seconded the motioned which passed by a vote of 4-0. with Chairman DiGiulian and Mr. Kelley absent from the meeting.

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Page 356, May 30, 1995, (Tape 1), Scheduled case of:

8:00 P.M. DAVID BROWN/ROCK STONE AND SAND, INC./FRANCES SHEPARD, APPEAL 95-V-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant's use of property for a lumber, fuel and building materials yard to include rock, sand and gravel in an C-8 District is not permitted and is therefore in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9824 Richmond Hwy. on approx. 5.76 ac. of land zoned C-8. Mt. Vernon District. Tax Map 113-2 ((1)) 19.

William Shoup, Deputy Zoning Administrator, referenced the staff report dated May 24, 1995 and noted that the issue in the appeal involved whether the appellant's use of the property is a lawful nonconforming use. Mr. Shoup stated that it was staff's position that the uses were not lawfully established on the effective date of the Ordinance and that in February of 1984 the Zoning Administrator ruled there were no nonconforming rights to this use since the use was never maintained within the screened enclosure as required by the previous Zoning Ordinance.

With regard to the timeliness issue, Mr. Shoup stated that when this appeal was transmitted it was staff's position that the appeal was not timely, since it had been filed within thirty days of the February 8, 1984 letter. He stated at that time staff did not believe an appeal had been filed; however, in reviewing this appeal staff discovered that an appeal had been filed in response to the 1984 letter. Mr. Shoup said the appeal had not been filed within thirty days of the February 8, 1984 letter; therefore, he still maintained that the appeal was not timely.

Mr. Shoup concluded by stating that based on the history of the property, it was staff's position that the use enjoyed no nonconforming rights and was therefore in violation of the Zoning Ordinance provision.

Mr. Arnold represented both Mr. Brown and Mrs. Frances Shepherd. He said the use is a retail sales of stone, sand, and rocks; the business has operated for at least 18 years; there are approximately 8 employees; and if the appeal was not upheld the business would cease to exist. He discussed the allowed uses under the different zoning categories and the zoning changes that have occurred on the property over the years. He stated that the owners of the business, Mr. Brown and Mr. Campbell, wanted to buy the property from the owners, the Shepards, and that generated the letter to the Zoning Administrator in February 1984. Staff responded that the use was not allowed in the C-8 District and that it was not grandfathered because it was not properly established based on not having a screened enclosure.

Mr. Arnold said it was the appellant's position that the use is grandfathered and is in a screened enclosure. He stated that he could not find a definition of screened enclosure in the 1977 Zoning Ordinance; therefore, he reviewed the 1978 aerial photographs maintained by the County which showed that the use was surrounded by trees and open space. Mr. Arnold said based on the photographs it was their position that the Zoning Administrator was factually incorrect in 1984 in holding that there was no screened enclosure. He stated that current photographs show that the use continues to be screened by open space and trees around the area where the materials are stored.

He stated that the Zoning Ordinance states that the BZA was established to very specific terms of the Ordinance and that the intent of the provisions may be effectuated, but only in a manner that the spirit of the Ordinance is maintained and upheld. Mr. Arnold discussed the surrounding uses and noted that Cardinal Concrete and Mimsco Steel are very intense industrial uses. He added that over an 18 year period there have been only two complaints, both were from the same citizen who is a competitor in the sale of stone. He asked that the BZA uphold the appellant.

A discussion took place between Mr. Hammack and the speaker with regard to the buffering around the site.

The following citizens spoke in support of the appellant: Henry Miller, 7730 Gunston Drive, Lorton, Virginia; Jim Murray, 7800 Tangier Drive, Springfield, Virginia; Dawn Shepherd, 5708 Mallo Trail, Lorton, Virginia; Peter Waylan, 5724 Mallo Trail, Lorton, Virginia. They said the business is an asset to the community and it would be detrimental to the community if it went out of business.

Mr. Hammack discussed with staff what steps would have to be taken to bring the operation into compliance. Mr. Shoup said the type of use would have to change and that staff strongly believed that there are no nonconforming rights.

Mr. Hammack agreed with staff's position and moved to uphold the Zoning Administrator's determination. Mr. Pammel seconded the motion which passed by a vote of 2-2 with Vice Chairman Ribble and Mr. Dively voting nay. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 357, May 30, 1995, (Tape 1), Scheduled case of:

8:00 P.M. JOHN P. AND ANNE M. LEFEVERE, APPEAL 95-H-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a basketball standard less than 12 ft. from a pipestem driveway in violation of Par. 12C of Sect. 10-104 of the Zoning Ordinance. Located at 12457 Wendell Holmes Rd. on approx. 17,562 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 25-4 ((8)) 33.

Page 358, May 30, 1995, (Tape 1), JOHN F. AND ANNE M. LEFEVERE, APPEAL 95-H-016, continued from page 357 )

Mr. Hammack motioned to defer John F. and Anne M. Lefevere Appeal 95-H-016 to September 26, 1995, it was seconded by Mr. Pammel, the motion carried by a vote of 4-0.

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Page 358, May 30, 1995, (Tape 2), Action Item:

Out of Turn Hearing Request
Stan and Bettye Barrett VC 95-V-055

Mr. Dively motioned to deny the request for an Out of Turn Hearing, it was seconded by Mr. Hammack, the motion carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 358, May 30, 1995, (Tape 2), Action Item:

Request for Appeal Acceptance
Country Developers Inc.

Mr. Dively motioned to accept the Country Developers Inc. Appeal request to be scheduled for September 12, 1995, it was seconded by Mr. Hammack, the motion carried by a vote of 4-0. Mr. Dively moved that the scope of the appeal be limited to the one issue, Mr. Pammel seconded the motion, the motion carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 358, May 30, 1995, (Tape 2), Action Item:

Out of Turn Hearing Request
Bethany House Child Care Center SP 95-M-035

Mr. Hammack motioned to grant the Out of Turn Hearing Request for Bethany House Child Care Center, it was seconded by Mr. Dively, the motioned carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 358, May 30, 1995, (Tape 2), Action Item:

Robert E. and Alma S. McKim
Request for Date

Mr. Pammel motioned to accept the Request for Date for Robert E. and Alma S. McKim to be heard on September 12, 1995, Mr. Hammack seconded the motion. The motion carried by a vote of 4-0. Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 p.m.

Minutes by: Regina Thorn

Approved on: September 19, 1995

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

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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 6, 1995. The following Board Members were present: Chairman John DiGiulian, Robert Dively, Paul Hammack, Robert Kelley, and James Pammel. Timothy McPherson and John Ribble were 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 359, June 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MARY F. HARAHAN, SP 95-D-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 accessory structure to remain 6.1 ft. from rear lot line. Located at 1927 Beaver Ln. on approx. 18,596 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((26)) 21.

Chairman DiGiulian asked if the notices were in order. Susan Langdon, Staff Coordinator, replied that they were not. Staff suggested that the case be deferred to the morning of July 25, 1995. Mr. Dively so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was absent from the meeting.

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Page 359, June 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ODALYS CARBONELL, SP 94-Y-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 13316 Braddock Rd. on approx. 1.88 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((3)) 57 and 58. (MOVED FROM 1/10 AT APPL.'S REQ.)

Chairman DiGiulian noted that the Board was in receipt of a letter from the applicant requesting a deferral. Susan Langdon, Staff Coordinator, said that was true and the applicant's husband was present to address the request.

Cole Smith came forward and stated that his wife was ill. He said he was requesting a deferral of a couple of weeks because of a complication in getting revised plats to staff in a timely fashion. He said the revised plats addressed concerns of staff.

Chairman DiGiulian said the date of July 6 had been suggested and Mr. Cole concurred. Mr. Dively so moved. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Ribble was absent from the meeting.

Chairman DiGiulian asked if there was anyone else present who was interested in this case and, hearing no response, stated that the case was deferred to July 6 at 9:30 a.m.

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Page 359, June 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BONDY WAY DEVELOPMENT CORPORATION, SP 95-D-001 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit community club and swimming pool. Located at Seneca Rd. on approx. 1.72 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with VC 95-D-001). (DEF. FROM 4/11 AT APP.'S REQ.

9:00 A.M. BONDY WAY DEVELOPMENT CORPORATION, VC 95-D-001 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 152.48 ft. Located at Seneca Rd. on approx. 3.44 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with SP 95-D-001). (DEF. FROM 4/11 AT APP.'S REQ.)

Chairman DiGiulian stated that a deferral of these two cases had been requested and Susan Langdon, Staff Coordinator, advised that the date of July 6 at 9:30 a.m. had been suggested. Mr. Pammel so moved. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was absent from the meeting.

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Page 359, June 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. HAMLET SWIM CLUB, INC., SPA 74-D-037-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-D-037 for swim and tennis club to permit change in development conditions. Located at 8209 Dunsinane Ct. on approx. 4.57 ac. of land zoned R-2. Dranesville District. Tax Map 29-1 ((3)) A1; 29-2 ((3)) B1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Keith Martin, Esquire, with the law firm of Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the applicant was requesting modification of Development Condition 18, to continue the use as approved but change the way the membership is constituted to limit the total number of memberships to 415, with no restrictions on active family, adult, or inactive memberships, as currently required. There is no new construction proposed.

Mr. Martin said he had the dubious honor of having been elected to the Board of Directors of the Swim Club, which is in his neighborhood, and the Club has the good fortune of having a waiting list of prospective members because of the 330 limitation on family memberships. He said there are 35 inactive memberships; they would like to maintain the 415 total membership limitation, but allow free interchange between family, adult, and inactive memberships. Mr. Martin said the neighborhood is very supportive of the request which will open up memberships for families that are awaiting the opportunity to become members.

Mr. Hammack asked Mr. Martin if he had read the Proposed Development Conditions. Mr. Martin said he had and both he and the applicant concurred with them.

Chairman DiGiulian called for other speakers in support or opposition and, hearing no response, closed the public hearing.

Mr. Hammack moved to grant SPA 74-D-037-2, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 30, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 74-D-037-2 by HAMLET SWIM CLUB, INC., under Section 3-203 of the Zoning Ordinance to amend SP 74-D-037 for swim and tennis club to permit change in development conditions, on property located at 8209 Dunsinane Court, Tax Map Reference 29-1((3))A1; 29-2((3))B1, 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 6, 1995; and

WHEREAS, 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 4.57 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only. This approval is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by prepared by Brewer, Sinclair & Associates, P.C. dated December, 1987 and approved with this application, as qualified by these development conditions. It is noted that the cul-de-sac shown on the plat is a dedicated street.

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

4. There shall be 66 parking spaces provided as shown on the special permit plat. Handicapped parking spaces shall be provided and shown on the submitted plat. The applicant shall stripe the paved parking lot and all parking shall be on site.

5. A maximum of ten (10) employees shall be associated with this use. There shall be no more than six (6) employees on-site at any one time.

6. Transitional Screening 1 (25') shall be maintained along the western lot line. A modification of Transitional Screening 1 is permitted in order to allow the tennis courts within the transitional screening yard along the eastern and southern property lines. Existing vegetation may be used to satisfy this requirement where possible provided it is supplemented where necessary to be equivalent to Transitional Screening 1, as has been determined by the County Urban Forester.

7. The barrier requirement shall be waived.

9. 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.

10. The tennis courts shall not be lighted.

11. The regular hours of operation for the swimming pool and tennis courts shall be limited to 8 A.M. to 9 P.M. The hours of operation for the community center and offices shall be limited to 8 A.M. to 9 P.M.

    Swim team practices and swimming lessons shall be limited to 8:00 a.m. to 11:00 a.m.

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

    Limited to six (6) per season.

    Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.

    Shall not extend beyond 12:00 midnight.

    The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

    Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

13. Signs shall be in conformance with Article 12, Signs.

14. The maximum number of family memberships shall be 415.

These conditions incorporate and supersede all previous conditions.

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. 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 June 14, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MONTE P. ASBURY, JR. T/A THE CUE CLUB, SP 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 7014-7018 Columbia Ln. on approx. 5.30 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B.

The applicant's agent, William C. Thomas, Esquire, with the law firm of Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Alexandria, Virginia, came to the podium to request a deferral to June 22, in order to allow sufficient time for the applicant to meet with the neighborhood Civic Association on June 20. He said the applicant and he believed a great deal of misinformation had spread at a late date. Mr. Thomas apologized for having to request a deferral but he believed that, in order to have a full and fair hearing and in order to provide the citizens in the neighborhood with an opportunity to review the application fully, the deferral was in everyone's best interest.

Chairman DiGiulian asked if there was any one present who would like to address the request for a deferral.

John H. Garrett, Jr., 4020 Justine Drive, came forward in opposition, but supported the deferral and requested a change in the new hearing date of the hearing from June 22 to September 22, to allow the community sufficient time to assess the impact the proposed pool hall facility would have on the community. He said that, with summer vacations around the corner, he believed the additional time was necessary and would be wisely spent.

Pat Goddard, Commissioner on the Fairfax County Redevelopment and Revitalization Authority, representing Mason District, came forward to state that she considered this application to be very significant. She said that Annandale is one of the three major revitalization areas selected by the Board of Supervisors, for a number of reasons. Ms. Goddard said she believed that this particular petition would greatly affect the revitalization process. She did not believe the petitioners understood what affect it would have on the community. Bonds were passed several years ago to put seven million dollars into the revitalization of Annandale's commercial area. The Fairfax Redevelopment Housing Authority was currently in the process of hiring a Revitalization Director. Ms. Goddard said she also would like the hearing to be deferred until September, in order to seek information about what effect this type of commercial venture in Annandale would have upon its revitalization as a major area in Fairfax County.

Loretta Camera, a 40-year resident of Annandale, stated that the community would like to remain small with a diverse population in terms of age. She said the community would not like to see this facility in their midst. Ms. Camera said they did not see the sign advertising the hearing until a little over a week ago and they did not have time to get more working people to come to the meeting. She said they did, however, have signatures in opposition, from people who are vehemently opposed to the proposed facility.

Jane Dougherty, 3703 Larchmont Drive, around the corner from the proposed site, also requested a deferral until at least September.

Mr. Thomas reminded the Board that he had previously represented Fast Eddie's Billiard Cafe, and that there was opposition in the early stages of that application. He stated that, after one public hearing, there was only one couple who was still concerned about the facility being a bowling alley type activity.

Mr. Thomas further stated that the applicant in this case already had invested over $15,000 and had been paying rent on the facility since April. He said that June 22 is the date that the applicant is very reluctant to accept and, if the hearing is deferred beyond that time, it is feared that the applicant will reach a point beyond recovery. Mr. Thomas said that, if the hearing were to be deferred beyond June 22, he personally would rather have it heard that day. He said that the Broyhill Crest Civic Association, with over 1,200 homes, had invited the entire community to their meeting on June 20, to discuss this application. Mr. Thomas said the fears of the citizens might be allayed if they could go out, in the interim, and visit the Fast Eddie's Billiard Cafe, upon which this application is patterned. He said that further deferral would be a hardship beyond the applicant's capacity to recover. Mr. Thomas described the applicant as a individual willing to stake his life's savings on this little location of 3,000 square feet with nine billiard tables, which will be upscale and will hold little concern for the community once they understand the nature of the facility.

Mr. Hammack asked Mr. Thomas how the applicant was using the property until the application is acted upon. Mr. Thomas said the applicant cannot use the property until the application is acted upon; the site remains empty while the applicant continues to pay rent, according to his lease.

Mr. Pammel said he understood the position of the citizens, the community and the County; however, this Board has the responsibility, under the law, to respond to applications within a set timeframe. The Board could only waive the limitation with the concurrence of the applicant and, in this case, the applicant is very steadfast in requesting a date no later than June 22. Mr. Pammel said he did not believe the Board had any further leeway in the matter and, therefore, he moved that the case be deferred to the morning of June 22, 1995.

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Mr. Kelley seconded the motion, further noting that word of this application should have been received in a timely fashion through normal processing and advertising.

Mr. Dively asked, if the petitioner does not agree, what was the farthest date the application can be set for hearing? Ms. Kelsey said ninety days from the date the applicant was accepted, which in this case was March 3, 1995; however, since the applicant would agree to extend the time beyond the ninety days to June 22, that was the farthest date on which they could schedule the hearing.

Mr. Hammack said he was reluctant to support the motion. Though he understood the applicant's position, he wondered if two weeks would be enough time to get the community organized, have meetings, and get a grasp of the situation. He asked Mr. Thomas if he would be willing to defer the hearing an additional week. Mr. Thomas said he did not see how that could be done. The meeting referred to was not a special meeting being called by the Civic Association, but a regularly scheduled meeting. Mr. Thomas said he believed they could mobilize quickly to attend the meeting, for which arrangements had been made to accommodate anyone interested. He said Broyhill Crest was the largest Civic Association and they had already contacted Windwood and two other Civic Associations. Mr. Thomas said he had been authorized the previous day by the President of the Broyhill Crest Civic Association to simply say that members of both of those Associations would be welcome at their meeting. He said he believed that the people who were in opposition would be there. Apparently, a petition had been circulated the previous day on which approximately 100 names were affixed in opposition; at the same time, Mr. Asbury, the applicant, went out and, within a short period of time, between meeting with his architect and attending to other issues, received over fifty supporters on a petition in support from within the very close neighborhood; that kind of mobilization can take effect when people are interested in an application. Mr. Thomas said he would accept the blame for not getting the word out; however, if he allowed this to go further, there could not be more information disseminated because it is a very simple application. He said the other reason for not extending the hearing date further is that the applicant could not deal with the additional financial loss.

Mr. Dively said he agreed with Mr. Hammack that two weeks was not enough time; however, it appeared to him that the Board's hands were tied by the Ordinance and by statute and the best they could do was to continue the hearing until June 22; otherwise, they would have to hear the case that day and that was really unacceptable. It was the consensus of the Board that there was no other choice.

Glen Patterson, 7010 Donna Circle, came forward to state that he was a member of the Broyhill Crest Civic Association. He said he was not personally opposed to the concept of a facility of this type being in his neighborhood; however, having it rammed down his throat in a two-week period, without sufficient information and time for the community to find out exactly what the plans are, he would have to oppose it.

Mr. Dively interrupted Mr. Patterson to state that the Board was stating that it had no choice, according to the Ordinance and the statute; it was not a question of discretion. Mr. Patterson said he understood that, but he was appealing to Mr. Thomas to consider that it might be to his advantage to allow more time.

Chairman DiGiulian called for the vote, which carried by 6-0. The hearing was deferred to June 22 at 9:30 a.m.

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Page 363, June 6, 1995, (Tape 1), Scheduled case of:

9:30 A.M. KEVIN C. RILEY, APPEAL 95-D-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant's occupancy of 1836 MacArthur Drive without a Residential Use Permit is in violation of Sect. 18-701 of the Zoning Ordinance. Located at 1836 MacArthur Dr. on approx. 15,799 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((28)) 4.

Mr. Pammel advised that the Board had a request for withdrawal of this appeal and moved to grant the request. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 363, June 6, 1995, (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, 2/8, 3/22, AND 9/27 AT APP'S. REQUEST. RESCHEDULED ON 2/14 FROM 3/14)

The applicant's agent, Andy Keeney, with the law firm of Baker & Hostetler, came forward to request a deferral of at least eighteen months, which he said had staff's concurrence.

William E. Shoup, Deputy Zoning Administrator, confirmed that staff concurred with a long-term deferral. He said the case had some unique circumstances and, given the fact that a special exception amendment had been approved, staff was recommending an eighteen-month deferral, to the first established meeting date in December 1996.

Mr. Hammack said he had read the staff report and agreed that the circumstances were unusual; he moved to defer the hearing to the first established meeting date in December 1996. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 364, June 6, 1995, (Tape 1), Scheduled case of:

9:30 A.M. HOLLYWOOD ENTERTAINMENT CORP. T/A HOLLYWOOD VIDEO, APPEAL 95-Y-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that two building-mounted signs which exceed the allowable sign area have been installed in violation of Zoning Ordinance provisions. Located at 6317 Multiplex Dr. on approx. 2.26 ac. of land zoned PDC. Sully District. Tax Map 65-1 ((10)) 10B.

9:30 A.M. HOLLYWOOD ENTERTAINMENT CORP. T/A HOLLYWOOD VIDEO, APPEAL 95-S-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has installed two building-mounted signs without the requisite Building and Sign Permits and that such signs include exposed neon tubing, in violation of Zoning Ordinance provisions. Located at 6419 Shiplett Blvd. on approx. 19.45 ac. of land zoned C-6. Springfield District. Tax Map 88-2 ((1)) 4A.

The applicant's agent, William C. Thomas, Esquire, with the law firm of Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Alexandria, Virginia, came to the podium to state that there was a similar pattern in the context of these two cases and asked that they be heard concurrently. Chairman DiGiulian said the Board would grant that request.

William E. Shoup, Deputy Zoning Administrator, referenced the May 30, 1995, staff report, stating that the two properties involved the same issue of signs that identify the Hollywood Video rental stores at the two locations and the question of what constitutes sign area for the building-mounted signs at these sites. He said that allowable building-mounted sign area is based upon building frontage and, at the Shiplett Boulevard site, the allowable sign area is 81 square feet; at the Multiplex Drive site, it is 150 square feet. At issue is the manner in which the sign area is calculated. Mr. Shoup said staff's position was based upon the Zoning Ordinance provision that sign area includes the structure on which a sign is mounted if that structure is part of an integral background for the display; in this case, the depiction of mountain ranges is a background in the signs at both locations. It was staff's position that the mountain ranges constitute an integral background of the signs, they are structures that protrude out from the building, and serve no other purpose; therefore, it was staff's position that the mountains constitute sign area and that puts the square footage over the allowable sign area for the locations. Mr. Shoup said it was, therefore, staff's opinion that the signs were not permitted at those locations.

Mr. Thomas submitted to the Board drawings of the signs at issue, as well as drawings of a sign ruled allowable by the Zoning Administrator at a Hollywood Video store on Little River Turnpike in Annandale. He gave a brief history of Hollywood Video, stating that they were trying to penetrate the Northern Virginia/Maryland/East Coast market, and it was a surprise to them when Fairfax County called the background mountains a sign. Mr. Thomas said the applicant recognizes and admits that the background pieces are fixtures on which the sign is applied; however, he contended that they are no different in many respects from many of the signs with the same kind of structure background. He said they use an architectural treatment which does attract attention and identify the particular store, but it is no more or less than the various building designs of businesses such as Giant, who use an extended mansard on their buildings to accommodate the big "G," Toys R Us, who uses a series of colored tiles across the entire front of their building to offset their logo, and K-Mart who also uses a mansard or false front wall to create a background for mounting their signs. Mr. Thomas said the treatment is not unlike any of the fast food restaurant chains whose distinguishing features are the building designs: The buildings for McDonald's are distinguishable from the buildings for Wendy's, Pizza Hut, etcetera. He said of the three samples the Board had, three were not approved; the one that was approved had a distinguishing feature: they built the wall up and it rolls like the Hollywood Hills. He said it was a tasteful application of a design that is very important to this particular entity. Mr. Thomas said the origination of the appeal began with a competitor who is located in the same shopping center as one of the applicant's stores. The lettering, which was applied for as a sign, was placed over the mountain ranges, which were submitted under a building permit. He said there was some inconsistency in that one of the permits was for interior work only, although the background was included.

Mr. Thomas said there are any number of examples of dynamic coloring or lighting and specific lighting and coloring that are pertinent in this concept. He noted the Boston Chicken franchise whose awnings are all black, white and red and lighted by fixtures above the awnings; Ruby Tuesday's, TGIF, and Fudruckers, he said, do very similar things. Mr. Thomas said that the applicant's location which had its sign approved is not dissimilar from the two which are at issue. He said that he and the applicant had a meeting scheduled for later that day with Mr. Shoup to further review the two applications in an attempt to determine what staff would agree to, based upon the interpretation on the Little River Turnpike/Annandale store sign which, unfortunately, they had just received; consequently, they had no opportunity to work out the differences as yet. He said that the applicant would admit that they do not like the structures they erected at the two location at issue: The Rolling Valley architectural treatment of the hills was done in what is called "erector set" style. Mr. Riley from Hollywood Video was there to say that he does not like it; it will be replaced; however, they could not act until they knew what was approved for replacement. Mr. Thomas hoped that would be worked out with Mr. Shoup that afternoon and, at the very least, the signs would have a more solid look and not the "erector set" look. Chairman DiGiulian asked if the mountain ranges on the Annandale store were lighted at night. Mr. Thomas said the sign is lighted; the mountains did not yet have the lighting tubing on them because they were still having discussions about that issue and he wished to present it as a separate inquiry. He said they first considered the mountain ranges and, as a follow up, they had a concern about the lighting. Mr. Thomas said he had been told in his original conversations that, so long as exposed tubing is enclosed and downlighted, it is not considered signage. He said he would give examples, at some risk because he represents them, naming McDonald's, Boston Chicken, and Wendy's; all of whom light their roofs completely with unexposed tubing. Mr. Thomas said that each of the larger stores about which he spoke: K-Mart, Giant and Toys R Us; the restaurants TGIFriday's, and Ruby Tuesday's; all use lighting against their signs, which in many cases are within a shopping center and use a "sign band" which is not included in the sign calculations. He said that they all project light against their roofs to identify and distinguish them from others. Mr. Thomas said that the mountain ranges differ from mansard styles in that they are not rectangular.

Mr. Hammack said he had read the applicable portion of the Ordinance which staff had cited. He mentioned several businesses which distinguished themselves by their architecture; however, in this case, one of the signs is hanging off the roof and is supported by struts and brackets. He said it appeared to him that, under the definition quoted, the sign was used to "...announce, direct attention to, identify, advertise or otherwise make known the store...." He went on to quote further, under the definition of a sign: "...any writing, letter, numeral, pictorial presentation, illustration, symbol..." and asked how the signs at issue did not fit into this ordinance. Mr. Thomas said that Hollywood Video does not like what they have constructed on the stores under discussion; they want to make the mountain extension an architectural embellishment to the store that is consistent with their own building design and not the neutral models available within shopping centers and other locations. He said that, if the applicant were building from scratch, they would construct the roof to include the mountain design. On the store at Center Ridge, he said they agreed that projecting off the building as it does, the sign is unsightly and not well done; however, he believed that by flush mounting the mountainscape, the architectural treatment created would be equivalent to what is done with a shopping center "sign band" or any other individuality for which an entity might strive. Mr. Thomas said they believe that, in Center Ridge, by mounting the sign flush, they will eliminate the unsightly back structure crossbeam wrapping around the building, making the design consistent with the language in the staff report. He said he had entertained an instinct to defer the hearing because of the forthcoming meeting, the lateness of the interpretation on the Annandale location, and his belief that they have some room to negotiate and bring the issue to a close without the necessity for an appeal. He said they were very happy with the interpretation on Annandale; however, they are still concerned about the lighting issue and they believe that, given the conceptual lighting that is used at other locations, they are not inconsistent with the requirements.

Mr. Thomas said his understanding of the concern about exposed tubing was the potential for vandalism and, if a neon light was broken, there was a likelihood that the gas and fragments could fall and cause injury; he also believed that earlier neon lighting was of much higher intensity.

Mr. Dively asked staff if the only tubing which caused concern was that which outlined the mountains or if they also had a problem with the tubing outlining the words, Hollywood Video. Mr. Shoup said that was true. Mr. Dively wanted an explanation as to why the objectionable tubing was not considered a part of the sign. Mr. Shoup said staff believed that the tubing along the top of the mountain range would further support the position that the entire mountain is a sign because outlining the mountain range is attracting attention to the mountain range as an integral part of the sign. Mr. Dively concurred. Mr. Shoup stated that the provision on prohibited signs cited exposed neon tubing outlining or affixed to any portion of a building or structure. He said the appellant indicated they would enclose the neon tubing; however, it would still be staff's position that, whether or not the neon tubing is enclosed, outlining the mountain range makes it part of the sign. Mr. Dively said it also said in the provision that the prohibition does not apply to exposed tubing or lights which are an integral part of an approved sign or sign structure. Mr. Shoup said, yes, the tubing would be allowed if it fit within the allowable sign area. In an effort to clarify the reality of the situation, Mr. Dively said that, if the applicant was claiming that the mountain range was an integral part of the sign and the tubing for the mountain range

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exceeded the allowable sign area, then the sign was too big. Mr. Thomas responded by again comparing the applicant's signs to those of the other earlier mentioned businesses.

Mr. Hammack asked Mr. Shoup: If the applicant took the words out, Hollywood Video, would the mountain outline be prohibited as a lighting feature. Mr. Shoup said he believed they would still call it a sign if it was on a structure protruding from the building for the purpose of attracting attention. Mr. Hammack asked how that differed from the type of tubing that wrapped around a McDonald's or a similar type of building, also for the purpose of attracting attention and providing lighting. Mr. Shoup said he was not sure that he had ever seen neon on a McDonald's. Mr. Hammack asked if it was the quality of the neon that made the difference. Mr. Shoup said staff had struggled with this aspect because there is a really fine line between an architectural feature and a sign. Mr. Hammack mentioned seeing the Chrysler Building on t.v. and asked if it would be prohibited in Fairfax County. Mr. Shoup said they see lighting being used more and more as an architectural feature in building designs and he believed the Chrysler Building probably fell into that category. Mr. Hammack asked some questions about different treatments using lighting and Mr. Shoup responded. Mr. Hammack asked, if the applicant sculpted the roof of the building to look like mountains and installed lights, would it be acceptable. Mr. Shoup said it might; staff would need to see it.

Mr. Dively said he believed the definition had been sufficiently explored and he did not believe they would come up with the essence of a sign or a building because he believed the definition was somewhere in the middle of the two. He proposed they were not in an area where a black line marked the spot but were dealing with whether or not the structure fell under the sign ordinance, and the manner in which it is attached to the building made it appear to be a sign. Mr. Hammack said he had to agree with that concept.

Mr. Thomas asked, in light of the planned meeting, was it possible that the Board would wait to hear the outcome of that meeting before coming to a final decision. In terms of the lighting, he said he believed they could make the structure fit the concept that was applied in Annandale. He suggested a treatment with a gooseneck light which might eliminate staff's objections and he went into the subject of avoiding glare, etc. He said the applicant was willing to go to great lengths to reach a point where their symbol, the Hollywood Hills, could be modified to the extent of being acceptable.

Mr. Shoup said the issue had been a struggle for staff; they were meeting that afternoon with the applicant, and they might be able to come to some agreement on some of the issues; however, there were structures attached to buildings which staff believed were clearly signs.

Chairman DiGiulian asked for speakers and saw two hands. Jim Hart, President of the Heritage Forest Homeowners Association, came forward and submitted exhibits of the proximity of the community to the site of the signs, directly across Route 28 from the Center Ridge store. He agreed that the structures were signs and said the community was not concerned about these two signs because they were directed away from the community but, rather, in general signs in that shopping center. Mr. Hart complained about notification of proposed activity and said he had written a letter expressing that complaint. He said they eventually did get a letter notifying the Association and, although the letter was mis-sent, it was not through the fault of the County, who had met its obligation by sending the notice to the last reported address of the Management Company. Mr. Hart opposed the appeal because the community did not have enough time to consider it.

John Davis, Vice President of Construction, with Blockbuster Video, came forward and stated that they had an option on the space at Rolling Valley Mall because they had taken over the Erol's location; they declined to take the location for several reason, one of which was the fact that the signage would have been limited. He said they were familiar with dealings in Fairfax County on signage. Mr. Davis said he was there to ensure that everything was being done in a consistent manner because signage is critical to a retail establishment for the very reason that its purpose is to draw attention to a store. He said he was surprised to see the applicant's sign go up at Rolling Valley Mall because, being the one who applies for signage for his stores, he deals with the County staff and, under the provisions as he knew them, could not believe that the sign was allowed. Mr. Davis described the Hollywood Video sign as being a blue mountain range stuck on the front of a building with a green metal roofed mansard, and compared it to Blockbuster's typical "generic" building, wrapped with a backlit awning. He said Fairfax County considers the entire square footage of a backlit awning as signage; so, in effect, the County prohibits a backlit awning; that is why 99% of their stores have channel letters, which conform to the square footage requirements of the County. Mr. Davis said they would love to have backlit awnings on all of their buildings because it would put them in a more favorable light with the corporate offices; however, they were obliged to abide by local zoning ordinances in the County. He referred to the Hollywood Video store in Annandale and said that he could see why it was approved because they remodeled the original building, painted it white, put a blue mansard across the top, and made it look almost like a separate building stuck on at the end of the shopping center. As such, they built the mountain range into the existing structure, which is why he believed it was approved as a building and, once the letters were inserted, the building itself became the sign. Mr. Davis said the building had actually been structurally altered to incorporate the sign into the structure; whereas, in the two instances at issue, they used existing buildings and stuck the mountain ranges on them, which he did not believe made the mountain ranges an integral part of the building. Mr. Davis referenced the Best stores' typical

building, which he said had a tilted front which looked like it had been in an earthquake; the building was approved and became their recognizable feature. He said the Annandale Hollywood Video situation must be considered the same thing if their rebuilding of that structure with the signage incorporated into the structure was approved by Fairfax County; however, for Hollywood Video to stick the blue mountain ranges upon structures (as opposed to being incorporated into the structure), he believed it was a mistake and a very dangerous precedent-setting point.

Chairman DiGiulian told Mr. Thomas he had a couple of minutes for rebuttal. Mr. Thomas referred Mr. Davis to the Zoning Administrator's office on the subject of backlit awnings. He said he was presently working on a Taco Bell which had a backlit awning all the way around it and he was pretty sure that any number of locations in Fairfax County are permitted to have backlit awnings and they are not considered signage. He asked to be corrected if he was wrong about that. Mr. Thomas said he was surprised that a competitor was present to voice that issue. He said he would sum up by saying that he believed all of the applicant's efforts to visually distinguish his stores were every bit as similar to a block-type design and other distinguishing characteristics employed by various other stores and restaurants that he previously named. He said he doubted that anyone present would not recognize a Wendy's, a McDonald's, a K-Mart or a Giant, with or without the lettering, because of the distinctive features of the buildings. Mr. Thomas said he hoped the prevailing issues would be resolved in the meeting that afternoon with the Zoning Administration Office and again suggested that the Board might wish to table the case until after that meeting.

Mr. Hammack said that, absent a joint request for a continuance from both the Zoning Administrator and the applicant, he believed the Board should proceed to make a decision. He said he did not see any reason to defer on the Board's own motion. Chairman DiGiulian said he interpreted Mr. Shoup's comments to indicate that the meeting would not resolve all of the issues.

Chairman DiGiulian declared the public hearing closed.

Mr. Pammel said that, after hearing all of the testimony, he would move that the Board of Zoning Appeals uphold the decision and interpretation of the Zoning Administrator for two basic reasons: He considered the sign (mountains) on Shiplett Boulevard to be a separate and distinct entity from the roof; it is a projection out from the roof, further highlighted by tubing and, therefore, could not be interpreted as anything other than a sign. Regarding the Annandale store, Mr. Pammel said he believed the point had clearly been made that it (the mountain range) is an integral part of the building and is generally symmetrical; therefore, you could conclude that it is part of the building and the roof line. He said, for those reasons, that he would vote to uphold the Zoning Administrator's determination on both appeals.

Mr. Dively seconded the motion, stating that the issue entirely rested on whether or not these were signs and not architectural features. He said he is sure there is some middle ground, but it is difficult to define in terms of black and white. The cases regarding the Burke store and the Center Ridge store consist of structures that look like signs because they are signs; they do protrude from the structure; they are not necessary or intrinsic parts of the architecture of those buildings in any way, shape or form and, if they were, he would be willing to bend on the determination but, since they are not, he did not see how the Board could rule that they are anything other than additions which are signs.

Mr. Hammack said he would support the motion, but he believed that the outline of the mountains is a component part of the sign and he agreed with the explanations made by the other two members of the Board.

The motion carried by a vote of 5-0 and the determination of the Zoning Administrator was upheld. Mr. Kelley was not present for the vote.

Mr. Pammel noted that Mr. Thomas had commented on the corporate structure of Hollywood Video and the issues being somewhat at odds with their philosophy. He said Blockbuster's representative had indicated to the Board that their corporate people were not particularly happy, but they still were complying with the Fairfax County sign laws; he suggested that Mr. Thomas take that message back to Hollywood Video. Mr. Thomas said that corporate representatives of Hollywood Video were present.

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Page 367, June 6, 1995, (Tape 1), Action Item:

Approval of Resolutions from May 30, 1995

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

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Page 368, June 6, 1995, (Tape 1), Action Item:

Approval of Minutes from March 21 and May 2, 1995 Meetings

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

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Page 368, June 6, 1995, (Tape 1), Action Item:

Appeal Application Provisions/Procedures

Jane W. Gwinn, Zoning Administrator, came forward and referenced the memo which had been submitted to the Board on the subject of adopting a procedure to more efficiently handle appeals. The current procedure is for staff to forward every appeal to the Board of Zoning Appeals, which involves preparing a memorandum to the Board, putting the appeals on the After Agenda Items list, and having the Clerk do follow up. Staff was suggesting that the procedure be revised so that, if the appeal is clearly acceptable on its face, staff will accept it and immediately forward a copy to the Board. Only if staff has a concern about the timeliness or the completeness would they continue to forward appeals to the Board for its acceptance. Ms. Gwinn said staff further suggested, if the Board concurred with that procedure, it would become a part of the Board of Zoning Appeals' procedures and not be covered in the Zoning Ordinance. It was staff's belief that the Board of Zoning Appeals' procedures should not be dictated by the Zoning Ordinance.

Mr. Hammack said he was concerned by the statement at the top of the second page of the memorandum, "...Additionally, it has been suggested that the submission requirements be revised to include a statement from the appellant indicating how the appellant is aggrieved...." He said he realized that the Board has not always heard well-articulated reasons given for an appeal and, in some cases, the appellants have admitted that they really did not have a disagreement, but only wanted the Board to grant relief. Mr. Hammack quoted further that, "...It is believed that such revision would aid in determining whether the appeal should be accepted...." He said he was concerned that staff would pre-judge whether the appeal should be accepted because reasons were not stated which, in staff's opinion, were sufficient, thereby causing the appeal not to come to the Board. Ms. Gwinn stated that, if staff has any question about whether an appeal is complete, timely filed, or whether the appellant is aggrieved, the appeal will come before the Board for a decision. She said no appeal will be rejected at the staff level; in the event of any question as to whether an appeal should be accepted, it will come to the Board for a decision; only those appeals which clearly are acceptable will bypass the Board for the acceptance phase of the process. Mr. Hammack said that, if that is the case, he would be in favor of the recommendation. Ms. Gwinn stressed that, if it is clear on its face that an appeal is acceptable, staff will schedule it; if there is any question or issue, the appeal will be forwarded to the Board for a decision and staff will write a memo outlining the issue and provide the appellant with an opportunity to come before the Board for a decision. Mr. Hammack asked if the appeals will be scheduled in the same manner as special permit or variance applications, with the requirement that they be heard within 90 days. Ms. Gwinn said that is the plan. She said that staff was endeavoring to streamline the appeal process, which now requires a great deal of unnecessary time. Staff intends to process appeals in a manner similar to the special permit and variance application process. Chairman DiGiulian asked Ms. Gwinn if a limit will be set on the number of times which an appeal can be deferred. Ms. Gwinn said she really had not thought that completely through; however, if an appellant continually requested deferrals, and if they were in violation, she believed staff would probably bring it to the attention of the Board of Zoning Appeals, suggesting that the appellant was not diligently pursuing. She said that, if any appeal was ever considered for dismissal for lack of a follow through, the decision would not be made by staff, but would be made by the Board of Zoning Appeals. Ms. Gwinn said that, if an appeal was not associated with a violation and a deferral was requested, it would be viewed differently. Chairman DiGiulian asked if there would ever be a case where staff had accepted an appeal and then, at the time the hearing was scheduled, staff would take the position that the appeal could not be heard. He said the Board had encountered a number of those instances. Ms. Gwinn said she was tempted to say no, that should not happen, but asked for an example. Chairman DiGiulian said he remembered an appellant named Dennis Rice who had some outlots he was told he could not develop and someone from Zoning Administration came to the Board to advise that the BZA did not have the authority to make a decision. He said it was not Mr. Shoup. There was speculation that it may have been the Department of Environmental Management (DEM). Chairman DiGiulian said he believed it was Mike Congleton, Deputy Zoning Administrator; however, he said they have had DEM come before them to say they did not have the proper authority to act upon a particular issue. Ms. Gwinn said the County Attorney had approached her on the subject of purview and the possible occasion of the Zoning Administrator accepting an appeal(s) and finding out by the time of the hearing that it really should not be heard by the Board of Zoning Appeals.

Mr. Ribble said that streamlining the process appeared to be a good idea; however, he would like to study the idea for a while for possible conflicts. Mr. Hammack said that recently, occasionally, it appeared staff had taken the position that the appeal acceptance period had expired with respect to the original violation but the appellant had a right to appeal a later follow-up letter; he asked how that would be handled. Ms. Gwinn said that was a valid question and she supposed staff would forward the request to the BZA to decide whether the

Page 369, June 6, 1995, (Tape 1), APPEAL APPLICATION PROVISIONS/PROCEDURES, continued from page 368 )

scope of the appeal should be limited. She said it was not her intent to have staff interject itself into the process. Ms. Gwinn told Mr. Hammack that her reaction to his question was that a situation such as he described should be brought before the Board with a suggestion by staff that the appeal should be limited in scope. She recalled that, many years ago, the appeals did not come to the Board for acceptance and it was her understanding that, in many jurisdictions, they still do not; and, if staff does not believe they are timely filed, staff refuses to accept them. Ms. Gwinn said that also was the practice in Fairfax County many years ago and citizens would appeal those decisions. She said, if there was any doubt at all in staff's mind, they would bring the appeal before the Board. Mr. Ribble observed that, if the practice was such in the past, why was it changed to its present structure. Ms. Gwinn said she was with the County at the time and there was a Salvation Army site on Route 236. An appeal was filed and not accepted, and the citizen and a member of the Board of Supervisors appealed the decision-not-to-accept to the Board of Zoning Appeals; the sentiment of the then-Zoning Administrator was that maybe they should get out of the middle of that type of situation. Ms. Gwinn said she believed that was back in 1983 and it worked very well when there were ten or eleven appeals being filed per year; however, with the increase to approximately 60 appeals being filed per year, a great deal of staff time is being spent on administrative issues, as well as Board of Zoning Appeals time, raising the question of whether it is possible to maintain the intent but become more efficient and reduce the impact of the increase. The Board now has to take the time to accept and schedule an appeal and, a week later if the appellant requests a change in date and time, the Board again must take time to consider the request on the After Agenda list, after which the Clerk must take the time to write a letter; whereas, this routine administrative work could be accomplished without so much time being wasted. Mr. Hammack referenced the General Assembly's action in giving citizens the right to appeal and compared it in similarity to the General District Court, where one may appeal as a matter of right. He said he believed that, so long as nothing was done to limit the appellants' rights that the General Assembly has given them, what the Zoning Administrator proposed probably is acceptable. Mr. Hammack said he had not had sufficient time to ponder all the possible pitfalls of the suggested changes; however, the Board did not have any problem with the process used for handling special permits and variances, so he did not believe they would have a problem with the appeal process being patterned similarly, especially if it would cut down on staff time. He mentioned that appeals are often withdrawn after having taken a great deal of staff time in preparation of thick reports for submission to the Board, or deferrals are requested and the reports are put aside by the Board members until three months later. Mr. Dively said he did not believe that what was being proposed had anything to do with the rights of appeal, even if the appeals are frivolous, and the Board would have more than enough appeals to keep them busy. He said his understanding was that there was nothing wrong with staff's proposal because they would reject nothing without consulting the Board; the Board would always review a decision to reject. Mr. Pammel concurred with Mr. Dively and said he believed staff had come up with a good way of expediting the process through a more efficient method of processing appeals, with less time wasted by staff and the Board. He said he would move for adoption of the procedures proposed by the Zoning Administrator. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

Ms. Gwinn thanked the Board, stating that staff would proceed to forward the matter to the Board of Supervisors for their authorization, copying the BZA; staff would also prepare a procedural memorandum to the BZA for review and discussion because she believed it was important for the BZA to set the procedure down as policy. Mr. Hammack asked Ms. Gwinn for an estimate as to when the new procedures might be implemented. She said she would like to have it adopted as soon as possible and, hopefully, it would be in effect by September. In answer to a question from Mr. Hammack, Ms. Gwinn confirmed that there would be no change in the procedures in the interim.

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Page 369, June 6, 1995, (Tape 1), Action Item:

Request for Change in Permittee for SPA 87-C-091
From Radcliffe (U.S.A.), LTD, to Dulles Hotel Corporation

Mr. Pammel moved that the permittee be changed as set forth in the staff report dated June 6, 1995. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 369, June 6, 1995, (Tape 2), Action Item:

Request for Waiver of Twelve-Month Limitation on Rehearing
Arthur S. Leahy, SP 94-M-071

Mr. Pammel said he remembered the case very well and, since the applicant had discussed the matter with the Association and he has their support, as well as the fact that he has modified the application, he believed it would be appropriate to grant the waiver requested. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 310, June 6, 1995, (Tape 2), Action Item:

Out-of-Turn Hearing Request
Lake Barcroft Shopping Center Joint Venture, VC 95-M-060

Mr. Pammel said he did not see a great deal of difference between the date for which the case was currently scheduled and the next available out-of-turn date that the case could be moved to; therefore, he moved to deny the request. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 310, June 6, 1995, (Tape 2), Action Item:

Out-of-Turn Hearing Request
Aldene G. Clark, VC 95-M-059

Mr. Pammel observed that the application was currently scheduled for September 12, and it could not be squeezed in before the August recess because, considering the usual heavy schedule before the August recess, he did not believe they could accommodate any more cases. He therefore moved to deny the request. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote.

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Page 310, June 6, 1995, (Tape 2), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that the Board had a memo from James P. Zook, Director, Office of Comprehensive Planning, commenting on the discussions among the Board members at the two previous meetings concerning possible August meetings. She asked if the Board would like to discuss that subject further with staff or meet with staff concerning any aspect of that subject. Mr. Ribble said he believed the intent of the Board was that they would not take any action on that subject at this time, but might consider it again next year.

Mr. Pammel said he understood everything he read in Mr. Zook's letter and the need for staff to have some breathing room to organize after a very hectic eleven months but, again, he said he suspected that the caseload, particularly with the increase in appeals, would continue to increase and there will come a time when, unfortunately, the Board will not have the luxury of taking a month off. For those reasons, he said he believed they should be looking at making a permanent change next year. Mr. Ribble said that, if the cases were stretched out during the entire year, perhaps the August pressure could be avoided. Chairman DiGiulian said that might prevent so many cases in June, July and September. Mr. Dively said they had to keep in mind the increase in appeals over the last eleven years, from thirteen to sixty, reflecting the trajectory of the caseload. He said sanctions for frivolous appeals might also reduce the caseload.

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As there was no other business to come before the Board, the meeting was adjourned at 10:45 a.m.

Minutes by: Geri B. Bapko

Approved on: September 19, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 13, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 371, June 13, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. KIRKPATRICK, VC 95-S-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.2 ft.from rear lot line. Located at 8984 Scott St. on approx. 13,263 sq. ft. of land zoned R-2. Springfield District. Tax Map 97-2 ((5)) (1) 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. David L. Kirkpatrick, 8984 Scott Street, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 13,263 square feet in size and is located on the north side of Scott Street west of Hooes Road and south of the Franconia/Springfield Parkway. The property and surrounding lots in the South Run Forest subdivision are zoned R-2 and were developed under the cluster provisions of the Zoning Ordinance.

The request for variance resulted from the applicant's request to construct a covered porch addition 20.2 feet from the rear lot line. The Zoning Ordinance requires a 25.0 foot rear yard on a lot zoned R-2. Therefore, a variance of 4.8 feet was requested.

Mr. Kirkpatrick stated that the justification for the request was twofold; one was the lot is exceptionally shallow, the second is that the covered porch was requested for medical reasons. Mr. Kirkpatrick stated that he has had five surgeries to remove skin cancer, and is under doctor's orders to avoid all direct sunlight. He stated that his wife has a chronic illness, and not granting the variance will produce an undue hardship. He stated that the variance will not be detrimental to the neighborhood. He stated that neighbors have signed a statement that they did not object to the project.

A discussion took place between Mr. Kelley and the speaker pertaining to other lots in the area and who had constructed the porch. Mr. Kirkpatrick stated that he did not know the lot was too short and that an independent contractor was hired.

Mr. Hammack moved to grant VC 95-S-028 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-S-028 by DAVID L. KIRKPATRICK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.2 feet from rear lot line, on property located at 8984 Scott Street, Tax Map Reference 97-2((5))(1)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 13, 1995; and

WHEREAS, 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 13,263 square feet.
4. The subject property is exceptionally shallow.
5. The applicant presented testimony indicating compliance with the nine required standards for the granting of a variance.
6. The house is positioned fairly in the middle of the property.
7. Stairwells and window wells have to be avoided to allow a reasonable sized screened porch to be added.
8. The variance requested is minimal.
9. There is adequate distance between the subject property and the adjacent property for privacy.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Hughes Surveying, Inc. dated September 15, 1994, and revised through March 3, 1995, 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 372, June 13, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LISA LIANNE SCHRA, VC 95-P-029 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. Located at 8401 Hollis Ln. on approx. 5,581 sq. ft. of land zoned PDH-4. Providence District. Tax Map 39-3 ((41)) 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. Lisa Lianne Schra, 8401 Hollis Lane, Vienna, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the subject property is located at the corner of Hollis Lane and Williams Avenue in the Bailiwick Subdivision. It

contains 5,581 square feet and is developed with a single family detached dwelling. The surrounding properties are also developed with single family detached dwellings.

The variance requested was to allow a fence, 6 feet in height to remain in the front yard of a corner lot. In August of 1994, the applicant was issued a Notice of Violation for having the fence in the front yard and filed this variance request to rectify the violation.

Zoning Administration records indicate that a variance was approved in 1988 on lots E through G, 1 through 5, 24, and 28 on Williams Avenue to the north to allow additions 37.4 feet from one front lot line and 32.4 feet from the other front lot line on a corner lot.

Ms. Schra stated she had reviewed the homeowners association bylaws prior to construction and was unaware of the County law until she received the Notice of Violation. When she was told that the association did not approve, she retained an attorney who told her the fence was not in violation of the bylaws. She stated that she proceeded to get ten different fence estimates and had the fence built. Ms. Schra said that the fence does not block the sight distance on Williams Avenue because the property is set back ten feet and that she constructed the fence to keep her dog in the yard and other dogs out of the yard.

Mr. Hammack asked who constructed the fence and Ms. Schra replied Affordable Fence.

Chairman DiGiulian asked if there was anyone to speak in support of the application.

The applicant's attorney, Mr. Garrett, supported the application and said that another client of his was attacked by an uncontrolled dog. He believed that Ms. Schra took appropriate action and the fence does not impede traffic visibility.

There were no other speakers in support and Chairman DiGiulian called for opposition.

Emily Whittaker, 2256 Teel Drive, Vienna, Virginia, opposed the application stating that the fence limited visibility, and that she would prefer another type of fence and that the fence was not included in the neighborhood plan.

Elizabeth Berra, 8428 Hollis Lane, Vienna, Virginia, stated that she opposed the fence due to public safety of pedestrians. She stated that the street is very heavily traveled because it is a cut through for rush hour traffic and it is impossible to see traffic coming up Williams Avenue due to the evergreen trees and the fence. Ms. Berra stated that before the fence was built she was able to see oncoming traffic through the trees and noted that children play around that intersection.

Mr. Ribble stated that from looking at the pictures that the real problem seemed to be the trees, not the fence. Ms. Berra stated that the trees do cause a serious problem because before the fence was put up she could see the cars coming.

Alan Glass, 8134 Hollis Lane, Vienna, Virginia, stated that it is impossible to see oncoming traffic and a vehicle must go past the stop sign in order for the driver to see the oncoming traffic.

Charlie Richie, 8411 Hollis lane, Vienna, Virginia, stated that he had spoken with Long Fence and had been told they refused to build the fence because they said it was against Fairfax County Code and they didn't want to get involved in any litigation.

Ms. Schra stated in her rebuttal that she wasn't sure what Long Fence had to do with why they were there, and she stated that Long Fence was more than happy to build her fence for $5,000 and Affordable Fence offered to build the same fence in a shorter period of time for $2,200. She stated when she met with the homeowners association the visibility and the safety issue were not brought up, just the harmony of the neighborhood was their concern. She stated that the trees were there when she purchased the home a year ago, and the visibility has not changed since the fence was constructed. She stated that she wants to be a responsible pet owner.

Mr. Pammel stated that he was concerned that a permit was not obtained, he stated that testimony was given that one of the companies knew that a permit was needed, and that is not acceptable. He stated that people should be aware of what is in the Zoning Ordinance and when permits are required. He stated that a certain amount of variance is justified in order to have privacy and protection in the rear yard. He stated that he did not feel that the existing fence is in the appropriate location.

Mr. Pammel moved to grant in part a modified variance, VC 95-P-029, with new plats, if the applicant was agreeable, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 6, 1995.

Mr. Hammack seconded the motion which failed by a vote of 2-4, with Chairman DiGiulian, Mr. Dively, Mr. Ribble, and Mr. Kelley voting nay.

Mr. Ribble moved to grant VC 95-P-029, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-P-029 by LISA LIANNE SCHRA, under Section 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard of a corner lot, on property located at 8401 Hollis Lane, Tax Map Reference 39-3((41))1, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 13, 1995; and

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

1. The applicant is the owner of the land.
2. The present zoning is PDH-4.
3. The area of the lot is 5,581 square feet.
4. The subject property has a double front yard.

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

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

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

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

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

1. This variance is approved for the location of the specified fence shown on the plat prepared by William E. Ramsey, P.C., dated September 11, 1985 and revised through March 3, 1995, submitted with this application and is not transferable to other land.

Mr. Dively seconded the motion which carried by a vote of 4-2, with Mr. Pammel and Mr. Hammack voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 375, June 13, 1995, (Tape 1), Scheduled case of:

9:00 A.M. WINCHESTER HOMES, INC., SP 95-Y-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 21.2 ft. from rear lot line. Located at 13921 Whetstone Manor Ct. on approx. 10,346 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((5)) 96A (Formerly 65-4 ((5)) 96).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Agent, Walsh, Colucci, Stackhouse, Emrich and Lubely, replied that is was.

Susan Langdon, Staff Coordinator, presented the staff report stating that the 10,346 square foot property is located on Webstone Manor Court in the Compton Height Subdivision. The subject property and surrounding lots are zoned R-3 Cluster. The area to the south contains a 50 foot wide Virginia Power and Columbia Natural Gas easement; to the east, west, and north the lots are developed with single family detached dwellings. The requested special permit resulted from an error in building location and is to allow an existing dwelling to remain 21.2 feet from the rear lot line. A rear yard of 25 feet is required on an R-3 zoned lot, developed under the cluster provision of the Zoning Ordinance; therefore, the applicant requested approval for reduction to the minimum yard requirement of 3.8 feet.

Mr. Ribble asked Ms. Langdon if staff had a recommendation one way or the other, she replied no.

Mr. Martin stated when Winchester Homes received a subdivision approval, the perspective purchasers selected a house type and they realized that the lot in question would have to have a line adjustment. Mr. Martin said Winchester Homes requested the engineer to submit a resubdivision because the lot had two front yards and they notified the engineer that a 25 foot yard was needed, the resubdivision was approved by Fairfax County. The engineer submitted his grading plan based on his incorrect analysis of which yard was the rear yard. Mr. Martin said Fairfax County rejected the grading plan, at the time the house was well on its way to completion because Winchester Homes had assumed the resubdivision was based on a correct rear yard and it wasn't. He stated they requested a special permit to give a relief of 3.8 feet. He further noted the yard in question backs up to a gas line easement, and the house in question is no closer to any adjacent house that backs up to that lot, so there was no impact on any adjoining residents.

Laura Darby, 6809 Marley Court, spoke in opposition stating she wanted to voice her discontent. She stated she felt deceived because they purchased their property based on the fact that there would be no further building. Mrs. Darby stated that the lot in question was an encroachment on their visibility.

Mr. Martin stated that this is a proffered zoning and is subject to a final development plan. He stated Winchester Homes knew the zoning laws and requested the engineer to make the correct calculations for a 25 foot rear yard, the engineer made the mistake in determining which yard was in question. Mr. Martin also stated that he misspoke in his earlier statement, that the size of the easement and the separation between the lots was several hundred feet not 30 feet.

Mr. Ribble moved to grant SP 95-Y-014, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-014 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 21.2 feet from rear lot line, on property located at 13921 Whetstone Manor Court, Tax Map Reference 65-4((5))96A (Formerly 65-4((5))96), 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 13, 1995; and

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

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 Christopher Consultants Ltd., dated March 9, 1995, 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.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 376, June 13, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BO RIM SA BUDDHIST TEMPLE, SPA 89-S-025 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-025 for church and related facilities to permit building addition and change in development conditions. Located at 5300 Ox Rd. on approx. 1.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-3 ((1)) 6A. (MOVED FROM 5/2 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Russel Sherman, Agent, 10482 Armstrong Street, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating that the 1.04 acre site is located on the northwest corner of the intersection of Ox Road and Zion Road in the Springfield District. The site is zoned R-C and WSPOD. The lot to the northwest and southwest is zoned R-C and WSPOD and developed with the Fairfax Covenant Church. The lot to the north and northeast is also zoned R-C and WSPOD and developed with the Country Club of Fairfax. To the southeast across Route 123, the lots are zoned R-3 and developed with single family detached dwellings.

The applicant, Bo Rim Sa Buddhist Temple, requested approval of a special permit amendment for an existing church and related facilities to permit a building addition and an increase in seating capacity from 15 seats to 83 seats and an increase in parking spaces from 6 spaces to 21 spaces. The existing single family dwelling on site is now used as a residence for three monks and is proposed to continue with this use.

A requested 1,682 square foot addition was proposed to be used as a meeting hall with 83 seats. The existing gravel driveway and parking lot will be enlarged to contain 21 parking spaces and will be paved. The existing meeting hall that is currently contained in a

separate accessory structure will be removed as well as an existing storage shed. The driveway entrance will be from a private ingress/egress easement located to the northwest of the property and owned by Fairfax Covenant Church.

The staff report addendum and a revised plat was distributed to the Board with the revised plat which requested the 83 seats, 21 parking spaces, and provides a Floor Area Ratio of .070.

The applicant addressed the majority of staff concerns. Under the revised plats, the applicant committed to the preservation of a minimum of 72% of the site, in its undisturbed state, over 35 feet of vegetation preserved and supplemented between the church building, parking lot, and the Route 123 frontage. Staff concluded that the application, as amended, met all standards for special permit as required by the Zoning Ordinance, and was in harmony with the applicable recommendations of the Comprehensive Plan. The issues identified with the original application that had not been resolved with the amended application was addressed in the Revised Proposed Development Conditions included in Appendix 1 and dated June 12, 1995. Staff recommended approval of SPA 89-S-025 subject to the Revised Proposed Development Conditions.

Mr. Sherman stated they spent a great deal of time discussing staff concerns. He stated that the new structure would be attached to the existing house, overall the site would be much more attractive, and he did not see any impact.

Mr. Kelley moved to grant SPA 89-S-025, for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions contained in the staff report dated June 12, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT AMENDMENT RESOLUTION OF**

**THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 89-S-025 by BO RIM SA BUDDHIST TEMPLE, under Section 3-C03 of the Zoning Ordinance to amend SP 89-S-025 to permit building addition and change in development conditions, on property located at 5300 Ox Road, Tax Map Reference 68-3((1))6A, 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 13, 1995; 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-C and WS.
3. The area of the lot is 1.04 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 3-C03 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 Harold A Logan, Associates, P.C, dated November 8, 1994, revised through May 26, 1995 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 determined 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 83.

6. A maximum of twenty-one (21) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.

7. 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, as determined 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 provide for the minimum amount to be cleared and shall be reviewed by the Urban Forestry Branch of DEM and tree replacement shall be provided as required by the Urban Forestry Branch.

8. Right-of-way dedication of 68 feet shall be provided from the centerline of Route 123 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.

9. Two rows of evergreen trees a minimum six (6) feet in height at time of planting shall be provided along the site's Route 123 frontage within the twenty-five (25) foot transitional screening area. Barrier H, deciduous and/or evergreen trees a minimum six (6) feet in height at time of planting, shall be provided along the site's northwestern and southwestern lot lines adjacent Parcel 6. Species, number and location of trees shall be determined by the Urban Forestry Branch at the time of site plan review. Existing vegetation may be used to supplement the requirements of Barrier H along the northwestern and southwestern lot lines if deemed feasible by the Urban Forestry Branch.

   Interior and peripheral parking lot landscaping shall also be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review.

10. The limits of clearing and grading shall be as shown on the special permit plat as qualified by Condition 7, and shall be subject to review and approval by the Urban Forestry Branch. If it is not possible to save all the trees shown on the special permit plat to be preserved, replacement planting shall be provided as required by the Urban Forestry Branch.

11. Any signs associated with this use shall conform to Article 12, signs and a sign permit shall be obtained.*

12. Any proposed lighting on the site shall be in accordance with the following:

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

    The lights shall 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.*

13. There shall be no outdoor loudspeakers or other outdoor noise generating devices associated with this use.*

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted with an asterisk.

This approval, contingent on the above-noted conditions, shall not relieve 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.

Mr. Dively seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 379, June 13, 1995, (Tape 1&2), Scheduled case of:

9:00 A.M. THE TRUSTEES OF EMMANUEL LUTHERAN CHURCH, SPA 78-P-072 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 78-P-072 for church and related facilities to permit building additions, site modifications and child care center. Located at 2589 Chain Bridge Rd. on approx. 4.04 ac. of land zoned R-1. Providence District. Tax Map 38-3 ((1)) 38 and 40.

Mr. Pammel abstained from participation of the case due to a financial arrangement with the church and being one of the elders of the first trust notes.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Haynes, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 4.04 acre property is zoned R-1 District and is located on the east side of Chain Bridge Road. The area to the north is developed in townhouses and single family dwellings in the R-20 and R-1 Zones, respectively. On the east, the site adjoins offices and single family detached dwellings in the C-2 and R-3 District, respectively. Single family dwellings in the R-3 and R-5 Districts adjoin the southern lot line. A single family detached dwelling in the R-1 District adjoins the west lot line. The property is developed with the Emmanuel Lutheran Church. In 1960, the Board of Zoning Appeals approved a special permit for a kindergarten for 20 children. Subsequently, the kindergarten has operated as a preschool without approval of the Board of Zoning Appeals.

The applicant requested a special permit amendment to establish a child care center for a maximum daily enrollment of 99 children which will operate Tuesday through Friday, September through May, from 9:00 a.m. to noon. The applicant requested to construct 5,027 square feet of building additions, and to increase the number of parking spaces on site from 142 to 170. The applicant also requested a modification of the transitional screening and waiver of the barrier requirements adjacent to north, west, and south lot lines.

It was the staff's opinion 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 is in harmony with the Comprehensive Plan. Therefore, staff recommended approval of SPA 78-P-072 with the imposition of the proposed development conditions contained in Appendix 1 of the staff report with two revisions.

Since the publication of the staff report, the applicant submitted an amended plat showing a revised location for a fence located southeast on the property on adjoining Lot 12. Staff requested that Proposed Development Condition number 2 be amended to state, "the special permit plat prepared by LeMay Associates, dated January 27, 1995, revised through June 5, 1995" in lieu of revised through May 15, 1995. In addition, the applicant also requested to amend Proposed Development Condition number 7 to change the days of operation from Tuesday through Friday to Monday through Friday. The staff had no objections to the proposed change in days of operation. In addition, the applicant submitted Proposed Development Conditions to the Office of Transportation and they had no problems with Proposed Development Conditions #11 A, B, and C suggested by the applicant; however, the Office of Transportation did take issue with Proposed Development Condition #12, which would delay providing a left turn lane into the site and a deceleration lane to cross in front of the site. The Office of Transportation believed that since the property already contains a child care center which is used by 90 children, the proposed transportation improvements were needed as soon as possible.

Mr. Dively asked Mr. Heine if Proposed Condition #13 and #14 had been reviewed by staff and did they have any problems with them. Mr. Heine replied no, there was no problem with those conditions.

Mr. Haynes stated that he was accompanied by Peggy Keyes, a professional planner, who worked on the case. He stated there was an analysis done by Ms. Keyes to address each and every issue and every requirement in the Zoning Ordinance relating to special use permits, to show exactly how this application fits in with the requirements of the Ordinance, the analysis indicated that they met each and every criteria. He stated several late changes were made in an attempt to alleviate some opposition from some of the neighbors, but they were not able to satisfy all the concerns raised by the neighbors, and only one of the neighbors attended the meeting organized to address the neighbors concerns. Mr. Haynes stated that a letter from Thomas E. Reed, a private real estate appraiser, indicating that the approval of this application would have no detrimental economical effect upon the land values or the economic values of the adjoining properties. He discussed some of the history of the property and the kindergarten operation.

Mr. Haynes stated that the overall change, as far as the church was concerned, was to add 5,000 feet, to be done in two phases. He continued by addressing the phasing, dedication, barrier and transitional screening requirements issues and concluded by addressing the noise and lighting issues.

Chairman DiGiulian asked if there was anyone to speak to the application.

James Lloyd Blouk, 9554 Pine Cluster Circle, spoke in opposition stating that he valued the Emmanuel Lutheran Church as a good contributor to the neighborhood and as a good neighbor; however, he felt the expansion could be done without adverse impact to the surrounding residential community. He stated that to build the parking spaces would take away the existing screening. Mr. Blouk asked the Board to approve the special permit amendment with the condition that the trees remain.

Michael Gartland, Attorney, 360 Maple Avenue West Suite C, Vienna, Virginia, stated he was representing Donna and Frank Crump who are adjoining property owners in Vienna Oaks. Photographs were passed out to the Board taken from the Crumps house showing the existing board fence that the Crumps had built at their expense; they had also planted trees to minimize the negative impact from the church use on their property. Mr. Gartland stated that the Crumps opposed the change because there is insufficient transitional screening and an insufficient barrier to attenuate noise between the church and their property. He stated they requested a 6 foot brick wall to help deaden the noise and also requested that certain lighting on the exterior of the church be eliminated and the air conditioning noise be eliminated through a barrier. Mr. Gartland stated that he submitted proposed development conditions and a petition from the Crumps and their neighbors.

Mr. Dively asked Mr. Gartland if the proposed amendments were submitted to Mr. Haynes. Mr. Gartland replied yes.

Mr. Hammack questioned Mr. Gartland as to the Crumps history in the neighborhood.

Mr. Haynes stated in his rebuttal that there are 7 additional parking spaces in the southwest corner and he addressed the parking in the development conditions. Mr. Haynes stated that #9B states they would provide for supplemental screening and there is supplemental screening all along the property line. He stated they prepared a dense landscaped plan for Mr. Crump because they thought he was the only party that had any problems with respect to the screening and buffering. They provided an attachment that showed the evergreens on the Crumps property. He stated that they were adding nine students, and there were 90 students when the Crumps moved into their house and the school had been there for a long period of time. Mr. Haynes said they could not afford to put up a brick wall 6 feet high all along the southern property line and it would create a "no mans land" between the fence and the wall. He concluded that the application was not unreasonable.

Mr. Hammack asked if it was possible to put additional screening near the proposed parking spaces. Mr. Haynes stated that proposed development condition #9B refers to supplemental screening which was what they planned to do.

Mr. Kelley asked if he could question a previous speaker and asked Mr. Gartland, the attorney representing the Crumps, if the Crumps lived in the immediate vicinity prior to moving. Mr. Gartland replied yes. Mr. Kelley asked if the Crumps were aware of the existence of the school? Mr. Crump replied no.

Mr. Dively moved to grant SPA 78-P-072, for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions contained in the staff report dated June 12, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT AMENDMENT RESOLUTION OF**

**THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 78-P-072 by THE TRUSTEES OF EMMANUEL LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 78-P-072 to permit building additions, site modifications and child care center, on property located at 2589 Chain Bridge Road, Tax Map Reference 38-3((1))38 and 40, 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 13, 1995; 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 4.04 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 3-103 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 LeMay Associates, dated January 27, 1995, revised through June 5, 1995 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 maximum seating capacity for the sanctuary shall be limited to 366.

6. The maximum daily enrollment of the child care center shall not exceed ninety-nine (99) students.

7. The hours and months of operation of the child care center shall be limited to 9:00 a.m to 12:00 noon, Monday through Friday, September through May.

8. There shall be a total maximum of 170 parking spaces provided on site.

9. Transitional screening shall be provided in accordance with the following:

   A. Along the northern lot line, the existing vegetation and the supplemental plantings to be located in the area of the closed driveway entrance and northwest of the building as shown on the special permit plat shall satisfy the Transitional Screening 1 requirement.

   B. Along the southern lot line, the existing vegetation with supplemental evergreen shrubs and/or hedges plantings to be located between the seven (7) parking spaces and the south lot line to screen the headlights from adjacent properties shall satisfy the Transitional Screening 1 requirement. Adjacent to Lot 11, Section 3, Vienna Oaks, applicant shall, in conjunction with Phase I as described in development condition 11, supplement the existing vegetation with primarily evergreen plantings and some deciduous plantings as shown on Exhibit A and as approved by the Urban Forester at the time of the site plan approval.

   C. Along the western lot line, supplemental evergreen plantings shall be placed between the west lot line and the driveway as shown on the special permit shall satisfy the Transitional Screening 1 requirement.

   All of the above plantings and existing vegetation, and the size, type and quantity of all proposed supplemental plantings, shall be shown on a landscaping plan that is approved by the Urban Forestry Branch and DEM at site plan review which provides, to the extent possible, screening to the adjacent residential uses.

10. The barrier requirement shall be waived along the north, south and west lot lines.

11. The following transportation improvements shall be provided:

   A. Right-of-way to 57 feet from the centerline of Chain Bridge Road shall be dedicated for public street purposes to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or on demand by Fairfax County, whichever occurs first. All ancillary easements necessary for any future improvement of Chain Bridge Road shall also be provided. The applicant shall provide a right turn deceleration lane within the right-of-way intended for the third eastbound lane, if required by the Virginia Department of Transportation

at site plan review. When Chain Bridge Road is widened to six lanes, this deceleration lane may be used in the construction of the third eastbound lane.

B. The applicant shall increase the length of the left turn deceleration lane from the westbound lane on Chain Bridge to meet VDOT standards if required by VDOT at site plan review.

C. The applicant shall reconstruct the entrance on the northwest corner of the property to conform to VDOT's commercial entrance standards. The applicant shall widen the entrance to 30' and provide as large a radius as practical without requiring the relocation of the existing utility poles.

12. The applicant may develop the improvements as shown on the special permit plat in phases. Phase I shall include the construction of additions 1 and 2 and the covered entrance adjacent to addition 1, widen the entrance in the northwest portion of the property to 30', restripe the parking lot, add the additional parking spaces adjacent to the west and south property lines, provide the additional landscaping as described in development conditions 9B and C above, and expand, if required, the infiltration trench.

As part of the site plan review process, the Department of Environmental Management (DEM) will review the church's proposed modifications to the existing infiltration trench, verifying that they meet all adopted standards for conveying stormwater runoff from the church's property. If it is determined at the time of site plan review that additional drainage improvements are necessary to ensure that adjacent properties are not adversely affected by stormwater runoff from the church property, the applicant shall provide a drainage ditch or other improvement to ensure adequate outfall to the satisfaction of DEM.

Phase II shall include the construction of additions 3 and 4 and the covered entrance adjacent to addition 4, the closing of the western entrance in the northeast portion of the site, the installation of seven parking spaces in the area of the closed driveway entrance and the associated transitional screening as described in development condition 9A. If required, by the Virginia Department of Transportation, the right turn deceleration lane at the remaining northeast entrance and the left turn deceleration lane will be provided during this phase.

Addition 5 (steeple) may be constructed during Phase II or at a date thereafter. The existing bell tower may be removed during Phase II or at a date thereafter.

13. Existing security lighting mounted more than 10 feet high on building exterior walls on the southern side of the property shall be permanently discontinued from use except for the one security light at the southeast corner of the building which shall be lowered so that light will not project beyond the play area. Shields shall be installed on existing light standards adjacent to Lot 11, Section 3, Vienna Oaks, along the southern boundary to prevent light from projecting beyond the property line. Any newly proposed or replacement lighting shall be in accordance with the following:

The combined height of light standards and fixtures shall not exceed 10 feet.

The lights shall focus directly onto the property and shall not project beyond the property.

Shields shall be installed to prevent light from projecting beyond the property.

14. During the site plan review process, the applicant shall have a manufacturer's representative for the air conditioner, which is located in the existing playground, inspect said air conditioner to determine if there are feasible modifications which can be made to decrease the noise level. Attached is Exhibit A.

This approval, contingent on the above-noted conditions, shall not relieve 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 5-0, with Mr. Pammel not present for the vote.

Page 383, June 13, 1995, (Tape 1&2), THE TRUSTEES OF EMMANUEL LUTHERAN CHURCH, SPA 78-P-072, continued from Page 382 )

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 383, June 13, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JILL R. & LARRY S. NIXON, VC 95-M-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.5 ft. and deck 10.0 ft. from side lot line. Located at 6337 Waterway Dr. on approx. 35,500 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 663. (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. Carl Newberg, Agent, CEN Architects, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 35,500 square foot property is zoned R-2 and is located on the east side of Waterway Drive within the Barcroft Lakeport Subdivision. The property is surrounded by single family detached dwellings in the R-2 district on three sides, and Lake Barcroft on the east. The applicant requested two variances, variance 1 was a request to allow a 31 foot high addition to be located 14.5 from a side lot line, the second variance was to allow a 19 foot high deck to be located 10 feet from the side lot line. The Zoning Ordinance requires a 15 foot minimum side yard for an addition and a deck with any part of it floor area over 4 feet above the finished ground level. A variance was requested for .5 feet for the addition and 5 feet for the deck from the minimum side yard requirements.

Mr. Newberg stated through the survey of the property for the alterations, they found the house was built in violation of the side yard requirements of Fairfax County. He stated that the Nixons were attempting to put an addition on to their master bedroom and an elevated carport roof which is a deck surface. He stated the elevation from the front property line and rear property line is a difference of 60 feet and caused a terrain problem for them. The alteration that they proposed would eliminate an existing storage shed and also a concrete retaining wall. He stated that the adjacent houses would not be affected. Mr. Newberg discussed and presented photographs of the property to the Board.

Mr. Hammack and Mr. Newburg discussed if the proposed addition and deck could be built without a variance. They also discussed the opposition letter received from Mr. and Mrs. Stafford. Mr. Hammack asked where were the cars currently parked and Mr. Newberg replied that the cars are parked further away from the property.

Chairman DiGiulian asked if there was anyone to speak to the application.

Tom Stafford and E. Stafford, 6333 Waterway Drive, spoke in opposition, stating that the proposed deck is actually a roof for a carport. Mr. Stafford stated that in their opinion the deck would make the house look massive and three stories high. He stated that Mr. Nixon invited him over to look at the blue prints of the improvements and the deck was not part of the structure.

Mr. Newberg stated in rebuttal, eight additional neighbors had no problem with the request and there were 9 nearby properties that had been granted variances to their properties.

Mr. Hammack moved to deny VC 95-M-035, 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 95-M-035 by JILL R. AND LARRY S. NIXON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.5 feet and deck 10.0 feet from side lot line, on property located at 6337 Waterway Drive, Tax Map Reference 61-1((11))663, 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 13, 1995; 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 35,500 square feet.

4. The subject property is intensively developed.
5. The variance would have an impact on adjacent property.
6. The variance is a convenience for the applicant.
7. The applicant has room to work within the existing setbacks.

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-2, with Mr. Pammel and Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 21, 1995.

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Page 384, June 13, 1995, (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. DEF. FROM 6/2 TO RESOLVE OUTSTANDING ISSUES. DEF. FROM 9/27/94 and 1/3/95 TO ALLOW BOARD OF SUPERVISORS TO HEAR SPECIAL EXCEPTION.)

Mr. Kelley motioned to defer Bruce L. Hecox Appeal 94-L-002 to December 12, 1995, it was seconded by Mr. Dively and the motion carried by a vote of 6-0.

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Page 384, June 13, 1995, (Tape 2), Scheduled case of:

9:30 A.M. CENTEX REAL ESTATE CORP./CENTEX HOMES, APPEAL 95-Y-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected freestanding off-site real estate advertisement

Page 385, June 13, 1995, (Tape 2), CENTEX REAL ESTATE CORP./CENTEX HOMES, APPEAL 95-Y-011, continued from Page 384)

signs in violation of Zoning Ordinance provisions. Located at 13336 Lee Hwy. on approx. 30.37 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-3 ((1)) 24.

Mr. Pammel motioned to withdraw Centex Real Estate Corp./Centex Homes, Appeal 95-Y-011 at the appellant's request, it was seconded by Mr. Ribble and the motion carried by a vote of 6-0.

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Page 385, June 13, 1995, (Tape 2), Scheduled case of:

9:30 A.M. BYRON C. AND JULIE L. HUGHEY, APPEAL 95-P-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that accessory structure has been constructed without Zoning Administrator approval of a Building Permit and that appellant is maintaining more than one dwelling unit in violation of Zoning Ordinance provisions. Located at 2736 Chain Bridge Rd. on approx. 1.38 ac. of land zoned R-1. Providence District. Tax Map 48-1 ((1)) 11.

William Shoup, Deputy Zoning Administrator, stated that this was an appeal of Notice of Violation that dealt with a storage shed that was built without a building permit and having more than one dwelling unit on a lot. He noted that the storage shed issue had been resolved so that the only issue in the appeal was the dwelling units issue. Mr. Shoup went on to summarize what was noted in the staff report. He stated that it was their position that if there was a nonconforming right to two dwelling units at one point in time, it was lost when the school use replaced the nonconforming use. He stated that the establishment of two dwelling units in the rear structure in 1963 was not legal and while they may have existed for a long time that does not form a basis for nonconforming rights. Therefore, Mr. Shoup stated that it was staff's opinion that the appellants were in violation of the Zoning Ordinance.

Mr. Minchew, Hazel & Thomas, discussed the history of the use and stated that it was his belief, with the history of this use, that it was a legally existing nonconformity.

Chairman DiGiulian asked if there was anyone to speak to the appeal.

Byron Hughey, appellant, stated that they purchased the property in 1986, had an appraisal done, and the appraisal indicated that the property was nonconforming. Mr. Hughey said they had never had any complaints about the property and it would be a tremendous hardship if they couldn't use the property.

Mr. Shoup addressed the issues that were stated by Mr. Minchew pertaining to the history of the property.

Mr. DiGiulian and Mr. Shoup discussed the use of the dwelling units.

Mr. Kelley and Mr. Shoup discussed the history of the former Field Inspector, with regards to finding back up materials.

Mr. Pammel motioned to uphold the decision of the Zoning Administrator, Mr. Dively seconded the motion which carried by a vote of 3-3 with Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voting nay.

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Page 385, June 13, 1995, (Tape 2), Action Item:

Approval of June 6, 1995 Resolutions

The Board voted to approve the Resolutions as submitted by staff. The motion carried by a vote of 5-0. Mr. Dively was not present for the vote.

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Page 385, June 13, 1995, (Tape 2), Action Item:

Renaissance Housing Corporation of Virginia, Inc.
Appeal Request

Mr. Pammel motioned to accept Renaissance Housing Corporation of Virginia, Inc. Appeal request and schedule the appeal for the morning of September 26, 1995. It was seconded by Mr. Hammack and the motion carried by a vote of 5-0 with Mr. Dively not present for the vote.

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Page 386, June 13, 1995, (Tape 2), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

Minutes by: Regina Thorn

Approved on: September 26, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 20, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:07 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 387, June 20, 1995, (Tape 1), Scheduled case of:

8:00 P.M. THOMAS S. FRAIM, VC 95-P-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. from side lot line such that side yards total 32.3 ft. Located at 10395 Adel Rd. on approx. 20,000 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-4 ((14)) 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. The applicant, Mr. Fraim, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the subject property is a pipestem lot located off Adel Road in the Oakleigh Woods subdivision, is zoned R-1, and is developed under the Cluster provisions with a single-family detached dwelling. Ms. Greenlief said the applicant was proposing to construct an addition 19.5 feet from the side lot line, such that the total side yards equal 32.3 feet; thus, the applicant was requesting a variance of 7.7 feet to the total side yard. Ms. Greenlief corrected the staff report, which reflected no variances have been granted in the subdivision. She said a variance was granted on adjacent Lot 29 to the south on May 22, 1994 to allow an addition 11.9 feet from the rear lot line and 9.3 feet from the side lot line, and to allow a deck 10.4 feet from the rear lot line and 8.6 feet from the side lot line.

Thomas Fraim, 10395 Adel Road, Oakton, Virginia, said he would like to add an addition to an existing single car garage. He said they purchased the property ten years ago and noted that the narrowness of the lot in addition to the siting of the house on the lot prevents construction without a variance. Mr. Fraim said out of the ten property owners who were notified of the public hearing, eight of those have a double garage. He said there are no objections to the project, and pointed out that the proposed addition would be 40 feet from the nearest structure on the adjacent lot which is a garage.

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

Mr. Hammack made a motion to grant VC 95-P-037 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-P-037 by THOMAS S. FRAIM, under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.5 feet from side lot line such that side yards total 32.3 feet, on property located at 10395 Adel Road, Tax Map Reference 37-4((14))26, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 20, 1995; and

WHEREAS, 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 20,000 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the narrowness of the lot is a factor and is influenced by the location of the septic field in the center of the rear yard which limits construction to the rear of the house and constrains the use of the property.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Alexandria Surveys, Inc. dated March 29, 1995, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 388, June 20, 1995, (Tape 1), Scheduled case of:

8:00 P.M. PAUL V. & SHIRLEY N. DEAN, VC 95-D-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line, 11.3 ft. from side lot line and accessory structure 3.0 ft. from side lot line. Located at 1940 Massachusetts Ave. on approx. 9,581 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 11 and 12.

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

Lori Greenlief, Staff Coordinator, presented the staff report. She said the subject property is located on the north side of Massachusetts Avenue in the Franklin Park subdivision, is zoned R-2, and is developed and surrounded by lots developed with single-family detached dwellings. Ms. Greenlief said the applicant was proposing to construct a dwelling 20 feet from the front lot line and 11.3 feet from the side lot line. The applicant was also requesting approval which would allow an accessory structure, a one car garage, to be located 3 feet from the side lot line. Ms. Greenlief said the existing dwelling will be removed.

The applicant was requesting a variance of 15 feet to the minimum front yard requirement and a variance of 3.7 feet to the minimum side lot line requirement for the dwelling, and a variance of 12 feet to the minimum side yard requirement for the detached garage. She said staff had received six letters in support of the request after the packages were forwarded to the BZA and those were distributed at the beginning of the public hearing.

Paul Dean, 1940 Massachusetts Avenue, McLean, Virginia, submitted a seventh letter to the BZA and introduced his wife, daughter, and architect, who were present in the audience. Mr. Dean said they have lived on the property for eight years and approximately two years they discussed adding a second story to the house. During that process, they discovered it would be more feasible to demolish the existing structure and rebuild due to the deterioration of the structure. He explained that the lot consists of two 25 foot wide lots and predates the current Zoning Ordinance. Mr. Dean noted that the new structure would set further back from the north side lot line by approximately 5 feet, and on the southwest side by approximately 1 to 2 feet. He cited the exceptional narrowness of the lot and addressed the standards for the granting of a variance. With regard to the accessory structure, Mr. Dean said there are nineteen similar garages in the neighborhood and noted it is only a single car garage.

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

Mr. Ribble made a motion to grant VC 95-D-038 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

Mr. Hammack seconded the motion for purposes of discussion. He said he had no problem with the dwelling, but that he would like to see the accessory structure moved 5 feet off the lot line. Mr. Ribble said if the structure was closer than 3 feet to the lot line, he might also have a problem. Mr. Hammack said he would have to oppose the motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-038 by PAUL V. AND SHIRLEY N. DEAN, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 feet from front lot line, 11.3 feet from side lot line and accessory structure 3.0 feet from side lot line, on property located at 1940 Massachusetts Avenue, Tax Map Reference 41-1((13))(4)11 and 12, 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 20, 1995; 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-2.
3. The area of the lot is 9,581 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the narrowness of the lot.
5. The footprint of the proposed dwelling appears to be smaller than the previous footprint.
6. The proposed design is a good one and fits into the neighborhood.

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific dwelling and detached garage shown on the plat prepared by Rice Associates, P.C. dated December 8, 1994, and revised March 21, 1995, 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. Hammack seconded the motion for which carried by a vote of 4-1-1 with Mr. Pammel abstaining; Mr. Hammack voting nay. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 390, June 20, 1995, (Tape 1), Scheduled case of:

8:00 P.M. ROMA ROBERTS & JAMES GREEN, VC 95-V-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.8 ft. from front lot line. Located at 7610 Southdown Rd. on approx. 18,120 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 13C.

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. Keller, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 18,120 square foot property is located on Southdown Road in the Mount Vernon District. The subject property and surrounding lots are zoned R-2 and the lots to the north and east are vacant. The lot to the south is developed with a single family detached dwelling, and to the east is the George Washington Memorial Parkway and bike path.

Ms. Langdon said this request for variance resulted from the applicant's proposal to construct a second story addition over the existing dwelling to be located 18.8 feet from a front lot line. The addition was proposed to include two bedrooms, a bathroom and laundry room. The minimum required front yard in the R-2 District is 35.0 feet; accordingly, the applicant was requesting a variance of 16.2 feet to the minimum required front yard.

Leeta M. Keller, 1807 Susquehannock Drive, McLean, Virginia, said the applicant purchased the property in 1979 and the structure was built in 1931. She said the house is very small with 520 square feet on the first floor and the applicant would like to expand the living space. Ms. Keller said the applicant could by right build an addition 14 feet by 26 feet, but it would be very architecturally unappealing and would not blend in with the neighborhood. She said the rear yard slopes down severely towards the Potomac River with bad soils, and to build in the rear of the lot would not be economically feasible. Ms. Keller added that the request would not adversely impact the neighborhood, nor would it set a precedent in the neighborhood.

Page 391, June 20, 1995, (Tape 1), ROMA ROBERTS & JAMES GREEN, VC 95-V-036, continued from Page 390 )

Chairman DiGiulian called for speakers in support and hearing no reply called for speakers in opposition. The following citizen came forward.

Nancy Kari, 7614 Southdown Road, Alexandria, Virginia, said she was in support of the applicant's request and that she believed it was reasonable for the applicant to build a second story addition as opposed to building to the side of the house. She expressed concern with the soils and asked that the applicant submit a soils report with the construction plans.

In rebuttal, Ms. Keller said the applicant will submit a soils report if the Department of Environmental Management deems it necessary during its review.

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

Mr. Dively made a motion to grant VC 95-V-036 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-036 by ROMA ROBERTS AND JAMES GREEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.8 feet from front lot line, on property located at 7610 Southdown Road, Tax Map Reference 102-2((1))13C, 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 20, 1995; 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-2.
3. The area of the lot is 18,120 square feet.
4. The house is astonishingly small and an enlargement of the living space is a reasonable request.
5. The lot has an exceptional topographic problem since the rear yard slopes sharply.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat prepared by Alexandria Surveys, Inc., dated November 3, 1994, revised January 20, 1995, 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. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 392, June 20, 1995, (Tape 1), Scheduled case of:

8:00 P.M. CONRAD S. ALLMAN, SP 95-B-019 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 10.5 ft. from side lot line. Located at 7600 Hogarth St. on approx. 10,500 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (40) 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, Mr. Allman, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 10,500 square foot property is located on Hogarth Street in the Braddock District. The subject property and surrounding lots are zoned R-3 and all are developed with single family detached dwellings. Ms. Langdon said this request for a special permit resulted from an error in building location is to allow an existing addition to remain 10.5 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 District; therefore, the applicant was requesting a variance of 1.5 feet to the minimum yard requirement.

Scott Allman, 7600 Hogarth Street, Springfield, Virginia, said the purpose of the application was to allow the structure that is 90 percent completed to remain. He said the entire construction is within the parameter of the existing house and there will be no physical extension into the yard; however, the technical requirements for the setbacks from the side lot line will not be met because the house itself is only 10 feet from the lot line. Mr. Allman said he obtained the necessary permits for enclosing the carport but during an inspection of the structure when the inspector raised the issue of the setbacks the construction was immediately halted. Mr. Allman said his daughter and grandson live on the property and the purpose of the construction is to provide additional living space. He said there are no objections from the neighbors.

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

Mr. Hammack asked staff if the applicant would have been required to show the setbacks when the permits were issued. Ms. Langdon said that was a possibility, but since the permits were not in the street file she did not know.

Mr. Hammack made a motion to grant SP 95-B-019 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

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Page 393, June 20, 1995, (Tape 1), CONRAD S. ALLMAN, SP 95-B-019, continued from Page 392)

**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-B-019 by CONRAD S. ALLMAN, 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 10.5 feet from side lot line, on property located at 7600 Hogarth Street, Tax Map Reference 71-3((4))(40)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 June 20, 1995; and

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

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

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. There is no fault on the part of the applicant since building permits were issued and he acted accordingly.

I. The amount of error is minimal and will have no detrimental impact on 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 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/or use(s) indicated on the special permit plat prepared by Springfield Associates, Inc., dated March 29, 1983, 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. Ribble and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 394, June 20, 1995, (Tape 1), Scheduled case of:

8:00 P.M. MARC V. & DEBORA S. CHABOT, SP 95-Y-020 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 8.5 ft. from side lot line. Located at 4616 Norris Ct. on approx. 11,634 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 515.

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. Chabot, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 11,634 square foot property is located on Norris Court in the Pleasant Valley Subdivision. The subject property and surrounding lots are zoned R-C, AN and WS and are developed with single family detached dwellings. Ms. Langdon said the applicant was requesting approval of a special permit for modification to minimum yard requirements in the R-C District to allow construction of a garage with a second story loft room to be located 8.5 feet from a side lot line. The Zoning Ordinance requires a minimum 20.0 foot side yard in the R-C District; therefore, a modification of 11.5 feet was requested. Ms. Langdon said the property was previously zoned R-2 Cluster with a minimum side yard requirement of 8.0 feet with total side yards of 24.0 feet which this proposed addition meets.

Mark Chabot, 4616 Norris Court, Chantilly, Virginia, said his family has lived on the property for ten years and have long needed to provide additional storage and living space. He said their 15 year old son's bedroom is currently right next door to his and his wife's bedroom and they would really like to relocate their son to the loft room. Mr. Chabot said he had initially planned to apply for a variance in order to construct a single car garage, but when staff advised him of the R-C category which his lot fell under he applied for the special permit. He submitted an architectural drawing to the BZA depicting what the addition would look like upon completion and added that only one corner of the addition would be 8.5 feet from the lot line with the remainder 17 feet off the lot line. Mr. Chabot said there are no objections from the neighbors.

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

Mr. Pammel made a motion to grant SP 95-Y-020 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-020 by MARC V. AND DEBORA S. CHABOT, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit construction of addition 8.5 feet from side lot line, on property located at 4616 Norris Court, Tax Map Reference 33-4((2))515, 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 20, 1995; and

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

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 application complies in all respects to the R-2 (Cluster) District which the property was developed and the applicant, through no fault of his own, finds that he is now in a different zoning category with different side yard requirements and the application is perfectly 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 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 certified by Marc V. Chabot, Owner, dated March 29, 1995, 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. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Approval of June 13, 1995 Resolutions

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

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Page 396, June 20, 1995, (Tape 1), Action Item:

Approval of April 11, 1995 and April 27, 1995 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted with page 15 of the April 27, 1995 Minutes corrected by capitalizing "Montessori school." Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 396, June 20, 1995, (Tape 1), Action Item:

Request for Additional Time for
Janet B. and Arthur R. Koenig, VC 92-B-113

Mr. Ribble made a motion to grant the applicant's request for additional time making the new expiration date June 18, 1997. Mr. Pammel seconded the motion which carried by vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 396, June 20, 1995, (Tape 1), Action Item:

Request for Reconsideration for
Byron C. and Julie L. Hughey Appeal, A 95-P-018

Mr. Hammack said he had told the applicant's agent, Randall Minchew, that he would make a motion to bring the item up for purposes for discussion. He added that Mr. Minchew had based the request on the fact that seven members were not present for the hearing.

Mr. Ribble seconded the motion for purposes of discussion and noted that there could not have been seven members present at the June 13th public hearing since there were only six members on the Board at that time.

Mr. Pammel said the Deputy Zoning Administrator, William Shoup, had addressed the issue raised by Mr. Minchew that the Board had not given the public an opportunity to present testimony either for or against in a memorandum faxed to the Board today. Chairman DiGiulian and Mr. Ribble said the audience had been polled for speakers. The Board believed that to grant a reconsideration merely on the fact that seven members were not present would set a bad precedent. The vote was 1-5 to deny the reconsideration. Mr. Kelley 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 8:53 p.m.

Minutes by: Betsy S. Hurtt

Approved on: September 12, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 22, 1995. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; and, James Pammel. Chairman John DiGiulian; Paul Hammack; Robert Kelley; and Timothy McPherson were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:25 a.m. and informed the audience that the public hearing could not be held due to the lack of four members being present, which constituted a quorum. He suggested hearing dates of July 6, 1995 at 8:00 p.m. or July 11, 1995 at 9:00 a.m. and asked each applicant to state a preference.

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Page 391, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD C. & LINDA L. JARMAN, SP 95-Y-025 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 6.3 ft., deck 4.2 ft., and stoop 2.8 ft. from side lot line. Located at 15471 Meherrin Dr. on approx. 13,094 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 48. (OUT OF TURN HEARING GRANTED)

The applicant's attorney, Lynne J. Strobel, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, asked that SP 95-Y-025 be heard on June 27, 1995, at 9:00 a.m. since she also represented Mr. and Mrs. Crisafulli. The BZA agreed.

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Page 391, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH S. & LUNETTE E. CRISAFULLI, SP 95-Y-024 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 3.7 ft. from side lot line and stairs 4.3 ft. from side lot line. Located at 15565 Eagle Tavern Ln. on approx. 13,302 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 46. (OUT OF TURN HEARING GRANTED)

The applicant, Joseph Crisafulli, 15565 Eagle Tavern Lane, Centreville, Virginia, said his family is in a situation where they needed the earliest possible date since he is employed and they have been trying to sell the house for over nine months. Mr. Crisafulli said during that time they have lost three contracts because the error has not yet been corrected. Vice Chairman Ribble asked staff if the case could be scheduled on June 27, 1995.

Jane Kelsey, Chief, Special Permit and Variance, informed the BZA that there were four regular cases with four appeals. The BZA agreed to schedule the case for 9:00 a.m. on June 27, 1995.

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Page 391, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL D. & JULIE E. COLLIER, VC 95-D-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.4 ft. from rear lot line. Located at 908 Mackall Ave. on approx. 1.71 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 12B.

Michael D. Collier, 908 Mackall Avenue, McLean, Virginia, came forward and agreed to a deferral date of July 6, 1995, at 8:00 p.m.

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Page 391, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), SPA 85-C-003 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 for church and related facilities to permit building addition, site renovations and change in development conditions. Located at 2361 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Concurrent with VC 95-H-052). (MOVED FROM 6/13 AT APP.'S REQUEST)

9:00 A.M. THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), VC 95-H-052 Appl. under Sect(s). 18-401 of the zoning Ordinance to permit construction of addition 43.0 ft. from street line of a corner lot. Located at 2361 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Concurrent with SPA 85-C-003).

The church's agent, Toni L. McMahon, with Compliance Consultants, P.O. Box 2124, Merrifield, Virginia, asked that both SPA 85-C-003 and VC 95-H-052 be deferred to July 11, 1995, at 9:00 a.m.

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Page 398, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MONTE P. ASBURY, JR. T/A THE CUE CLUB, SP 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 7014-7018 Columbia Ln. on approx. 5.30 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B. (DEF. FROM 6/6 AT APPLICANT'S REQUEST TO ALLOW THEM TO WORK WITH THE COMMUNITY)

The applicant's agent, William C. (Tom) Thomas, Jr., Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, agreed to a deferral date of July 6, 1995, at 8:00 p.m.

John Garrett, 4020 Justine Drive, Annandale, Virginia, said an evening meeting would pose a problem for the opposition. Vice Chairman Ribble said he believed an evening meeting would be better. Mr. Garrett said many of the neighbors have young children. Mr. Dively asked if the case could be divided between the day and evening meetings on July 6, 1995. Vice Chairman Ribble said he could not support dividing the meeting. Mr. Garrett agreed to the evening of July 6, 1995.

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Page 398, June 22, 1995, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT L. MOORE, APPEAL 95-D-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles, construction equipment and other items in an R-1 District and the installation of a fence is in violation of Zoning Ordinance provisions. Located in the 9900 Block of Georgetown Pi. on approx. 4.94 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((9)) 3A.

The appellant's attorney, Fred Taylor, 8134 Old Keene Mill Road, Springfield, Virginia, informed the BZA that Mr. Moore's wife had passed away just two weeks and that he believed July 11, 1995, at 9:00 a.m. would be a better date for the appeal.

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Page 398, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN D. & KATHLEEN M. FRENCH, VC 95-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and coverage which exceeds 30% of the minimum rear yard. Located at 6226 Capella Ave. on approx. 9,583 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 226.

The applicant, John D. French, 6226 Capella Avenue, Burke, Virginia, contacted staff following the meeting to ask that his case be deferred to June 27, 1995. Jane Kelsey, Chief, Special Permit and Variance Branch, contacted Vice Chairman Ribble to make the request and he agreed since there had been no one present, other than the applicant, to speak to the application.

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Page 398, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BEVERLY BYER, VC 95-Y-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.5 ft. from rear lot line and deck 3.5 ft. from rear lot line. Located at 5718 Flagler Dr. on approx. 5,040 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6)) (9) 28.

Since notices were not in order for the June 22, 1995 public hearing, staff scheduled the case for September 12, 1995, at 9:00 a.m. to allow the applicant to meet the notice requirement as set forth in the Zoning Ordinance.

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Page 398, June 22, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GROVETON BAPTIST CHURCH, SPA 88-V-079 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 88-V-079 for church and related facilities and child care center to permit change in development conditions and decrease in land area. Located at 6511 Richmond Hwy. on approx. 2.57 ac. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 27; 93-1 ((7)) 1 and 2. (OUT OF TURN HEARING GRANTED)

The applicant approached the BZA following the meeting to request that SPA 88-V-079 be scheduled for June 27, 1995. The Chair so ordered. There had been no one, other than the applicant, present at the meeting to speak to the application.

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Page 399, June 22, 1995, (Tape 1), Scheduled case of:

9:30 A.M. CARVEL PAINTER, APPEAL 95-D-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is maintaining 2 separate dwelling units on one lot and that a second kitchen was installed without Zoning Administrator approval of a Building Permit in violation of Zoning Ordinance provisions. Located at 2001 Edgar Ct. on approx. 10,922 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 116.

The appellant in A 95-D-022 had submitted a letter for withdrawal and the BZA will consider the item as an After Agenda Item at its June 27, 1995 public hearing.

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As there was no other business to come before the Board, the members adjourned at 10:35 a.m.

Minutes by: Betsy S. Hurtt

Approved on: September 12, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

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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 27, 1995. The following Board Members were present: Chairman John DiGiulian, Robert Dively, Paul Hammack, and Robert Kelley. Timothy McPherson, James Pammel and John Ribble were 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 401, June 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD C. & LINDA L. JARMAN, SP 95-Y-025 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 6.3 ft., deck 4.2 ft., and stoop 2.8 ft. from side lot line. Located at 15471 Meherrin Dr. on approx. 13,094 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 48. (OUT OF TURN HEARING GRANTED. DEF. FROM 6/22 FOR LACK OF QUORUM)

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, Lynne J. Strobel, Esquire, with the law firm of Walsh, Colucci, Stackhouse, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Weltman Estates Subdivision are also zoned R-C and WSPOD and was developed under the cluster provisions of the Zoning Ordinance with single family detached dwellings; the property to the south is vacant. He said this request for a special permit resulted from a building permit for the construction of a single family dwelling on the subject property, issued on July 10, 1987, and based on the plat entitled Site Development Plan, Weltman Estate Section I, prepared by Greenhorne & O'Mara. Mr. Hunter said that, according to the applicant's statement, construction of the dwelling actually was based on a revised record plat, making it necessary for the applicant to request a special permit for building in error.

Mr. Hammack said the plat he had before him appeared to show stairs crossing the shared property line. Mr. Hunter said that was correct; however, what appeared on the plat to be stairs, which are considered a structure, were actually railroad ties and gravel steps leading from the stoop to the patio. Mr. Hammack said that the fence appears to be on the other property line. Mr. Hunter said that also was correct.

Receiving no response when he asked if there were any other questions, Chairman DiGiulian called on Ms. Strobel.

Ms. Strobel said that both in this case and the case that would follow, it was clear that the existing conditions resulted from no fault of the property owners. She said the home was located on this lot based upon the wrong subdivision plat and, as a result, was constructed in the wrong location and was too close to the property line. Ms. Strobel and that Mr. Hunter's presentation, her letter, and the staff report, clearly showed that the application met the requirements for a special permit under Sect. 8-914 of the Zoning Ordinance. She said that one of the properties was under contract and requested that the Board waive the eight-day waiting period and modify the last paragraph of the conditions in the staff report, where it was stated that the applicant shall be responsible for obtaining "the" required permits through established procedures and that the special permit shall not be legally established until that was accomplished. She said that the existing improvements required no permits at this point.

Mr. Hammack remarked that the plat showed the applicant's fence to be on the adjoining property and asked Ms. Strobel if that was the current status. She replied that it was; however, the applicant intended to work out an easement agreement with the adjoining property owner or, in the worst case scenario, the applicant would relocate the fence.

Mr. Hammack asked about the timbers that appeared on the plat to extend over the property line. Ms. Strobel said they also would take care of that condition. Mr. Hammack said he was reluctant to approve an error in building location when the plats submitted with the application showed encroachments upon adjoining property. He said he understood the existing problem of the applicant's settlement scheduled for that afternoon; however, he still was unwilling to make a motion to approve the application in its present posture, or to waive the eight-day limitation. The fence is shown to be on the adjacent property and the railroad ties extend across the property line on the official plat; he was unwilling to approve any plat that showed existing encroachments. Ms. Strobel said that the requests, as stated by Mr. Hunter, were only for the items stated in the aforementioned description of the application. Mr. Hammack said it would be necessary for the Board to approve the plats which were a part of the application, thereby granting approval for the purposes, structures or uses indicated on the plat. Mr. Dively asked if the development conditions did not only cite the existing dwelling and the deck; to which Mr. Hunter responded that there was an addendum which addressed the stoop; he said that there were three errors in building location: the dwelling, the stoop and the deck. Ms. Strobel suggested a development condition stating that the applicant would resolve any issues of encroachment on adjacent property issues. Mr. Hammack said that would appear to place the applicants in the tenuous position of seemingly having to pay extortion to the adjoining property owners if they wished to negotiate easements. He said he did not know who the adjoining property owner was, it might be the builder. Ms. Strobel said that the features encroaching upon the adjacent property could be

removed, unlike the actual dwelling unit. She believed the entire issue was complicated by the fact that the property is zoned R-C and WSPOD, and a resubdivision would not be possible; they had some discussions with the Zoning Administration Division about this aspect. Ms. Strobel said they were clearly trying to make the dwelling legal at its existing location and the scope of the application was limited to the items they had requested.

Mr. Dively asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, to show him where the stoop was located on the plat, which she did. He remarked about the railroad ties on the plat and Ms. Strobel said those were the "steps" which were described as an encroachment, which clarified the situation to Mr. Dively's satisfaction. Ms. Strobel said that the Zoning Administration Division had rated the encroachment as minor and one that could be rectified merely by a couple of hours of work.

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

Mr. Hammack stated that he remembered this type of an encroachment coming up years ago, but he could not remember a case of multiple enchroachments (a fence and a patio) upon the adjacent property. He said he knew a problem would be created for the purchaser but, perhaps, the owner could work out a pre-occupancy agreement of some sort; however, he would not compound the situation, nor would he make a motion to approve. He said that, if the applicant was willing, he would move to defer and allow the applicant sufficient time to correct the encroachments and move the fence. The only other motion he would make would be to deny, which would require tearing down the house.

Mr. Dively asked why the Board could not separate and consider the variance request apart from the encroachment problems which the Board could not address or solve that day. Mr. Hammack said that, historically, he had not regarded the issues as separate, and he did not believe that the Board had. Perhaps, if the issue involved only a piece of fence or the like, it could be done; however, when he saw steps and patios encroaching and he knew the kinds of problems that might occur, he approached the issues differently. He said that the plat was what the Board approved and they granted the uses shown on the plat. Mr. Hammack said that they never approved plats that showed encroachment. He did not have any problem with leaving the house in place; however, granting approval basically approved the uses shown on the plat. Mr. Hammack asked, rhetorically, how often the Board had applicants return with revised plats to show a change in a building location, a two-car garage or a variance.

Ms. Strobel addressed the deferral, stating that the other house, on the Crisafulli property, was the one under contract. She said the applicant did not want to have the application denied because they have been living with this issue for years. Ms. Strobel again suggested that a solution be contained in the development conditions, stating that the special permit is approved for the location and the specified dwelling shown on the plat submitted with the application and is not transferrable to other land.

Mr. Hammack interrupted Ms. Strobel to call her attention to the fact that there were four Board members present, four favorable votes were required to carry a motion and none of the four members was in favor of her request. Ms. Strobel said that they would, then, take the deferral.

Mr. Dively raised the following questions for the Board's discussion: What if the Board added a condition specifically stating that any encroachments on the plat are excepted from the proposed development conditions? Would that help to deal with the fact that the dwelling was under contract? Ms. Strobel again explained that the Crisafulli property was under contract. The Jarman's did not have their property under contract.

Mr. Hammack said that Ms. Strobel would need to bring revised plats back to the Board, showing the changes. He assured her that the surveyor would not put his seal on the plat without first having made the changes. Mr. Kelley asked Ms. Strobel if she knew whether an easement had been negotiated that day. She said no, that the adjacent property owners were in California. Mr. Hammack asked why the easement had not been obtained previously. Ms. Strobel said that the adjacent property owner initially had been unwilling to negotiate with them so their planned strategy was to go ahead and obtain approval for the special permit so that they had a legal location for the dwelling unit. She said that the steps could be modified so that they would not encroach and, in the event that they were unable to obtain the easement, the encroachments could be physically eliminated. Mr. Hammack asked why the problem had not been resolved by the builder. Ms. Strobel said the problem was created a long time ago and had been in error since that time; she doubted that the builder still was in business.

Mr. Hunter invited Mr. Hammack's attention to the plat in the appendix of the staff report, showing a 20' side yard, which was what the builder used when constructing the dwelling, the fence and the patio. Mr. Hammack said that he still would not approve anything that encroached on adjacent property. Mr. Dively said he believed it would be appropriate to consider a deferral date. Chairman DiGiulian asked Ms. Strobel how much time she believed was required to resolve the issue of encroachments. Ms. Strobel said it was her understanding that, if an easement could not be obtained, the improvements would have to be removed; she asked if that was correct. Her understanding was corroborated by the Board: her efforts to have the application approved with a contingency were denied and she requested a deferral. Ms. Strobel said she did not know how much time would be required to correct the situation and asked that the property owner be allowed to speak. The consensus of the Board

was that no purpose would be served by having the property owner speak and Chairman DiGiulian closed the public hearing.

Ms. Kelsey said that the next hearing date could be the morning or evening of July 6; morning of July 11; evening of July 18; or morning of July 20. Ms. Strobel said that July 20, 1995, would be appropriate.

Mr. Dively moved to defer the hearing to July 20 at 9:00 a.m. Mr. Hammack asked Ms. Strobel why the principals were going to settlement that afternoon. She reiterated that it was the next case for which the settlement was scheduled for that afternoon. Ms. Strobel said there were no concerns about that case.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Hammack noted that the patio was shown to be over the property line on the plat, as well. Ms. Strobel said the plat required revision because, when someone went to the property and physically examined the improvements, they did not believe that the patio encroached.

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Page 403, June 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH S. & LUNETTE E. CRISAFULLI, SP 95-Y-024 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 3.7 ft. from side lot line and stairs 4.3 ft. from side lot line. Located at 15565 Eagle Tavern Ln. on approx. 13,302 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 46. (OUT OF TURN HEARING GRANTED. DEF. FROM 6/22 FOR LACK OF QUORUM)

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, Lynne J. Strobel, Esquire, with the law firm of Walsh, Colucci, Stackhouse, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Weltman Estates Subdivision are also zoned R-C and WSPOD, and were developed under the Cluster provisions of the Zoning Ordinance with single family detached dwellings; property to the south is vacant. He said that construction of a single family dwelling on the property was based upon a building permit issued August 7, 1987, which was based upon a site plan entitled Site Development Plan Weltman Estates Section I, prepared by Greenhorne & O'Mara in November 1986; however, according to the applicant, construction of the dwelling was based upon the revised record plat. This application is to allow the error in building location to remain.

Ms. Strobel presented the statement of justification, previously submitted in writing and incorporated into the record. She said the issue was the same as in the previous case, the house was built based upon the wrong subdivision plat and, therefore, was not located properly on the lot and did not meet the Zoning Ordinance requirements. Ms. Strobel said that this application meets the requirements of Section 8-914 and the property is under contract; therefore, she requested a waiver of the eight-day waiting period, as well as modifying the development conditions by revising the last paragraph to state that the applicant shall be responsible for obtaining any required permits through established procedures as the dwelling is already constructed. She said it was her understanding that, for the existing improvements, no additional permits would be required.

Mr. Hammack asked Ms. Strobel if she contended that all the applicable permits had been obtained and she said, yes, for the existing improvements.

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

Mr. Kelley moved to grant SP 95-Y-024 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 13, 1995, as amended per Ms. Strobel's above-stated request.

Mr. Dively seconded the motion. Mr. Dively said he did not believe the Board should change their standard development condition. If everything had already been approved, there is nothing to do and the condition is inoperative. Mr. Kelley said he would staff to comment. Mr. Hunter suggested that the last paragraph, second sentence, under the Development Conditions be changed as follows: "...responsible for obtaining ~~any~~ <u>any</u> required permits....." Mr. Kelley asked if any were required and Mr. Hunter said none that staff knew of. Mr. Hammack said that was acceptable to him. The motion carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-024 by JOSEPH S. & LUNETTE E. CRISAFULLI, 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 3.7 feet from side lot line and stairs 4.3 feet from side lot line, on property located at 15565 Eagle Tavern Lane, Tax Map Reference 53-3((4))(1)46, 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 27, 1995; and

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 Greenhorne & O'Mara, Inc., dated January 16, 1995 submitted with this application, as qualified by these development conditions.

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

Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JOHN D. & KATHLEEN M. FRENCH, VC 95-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and coverage which exceeds 30% of the minimum rear yard. Located at 6226 Capella Ave. on approx. 9,583 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 226. (DEF. FROM 6/22 FOR LACK OF QUORUM)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John D. French, 6226 Capella Avenue, replied that it was.

Chairman DiGiulian called for the staff report. David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Bent Tree Subdivision are also zoned R-3 and are developed with single family detached dwellings under the Cluster provisions of the Zoning Ordinance. He said that a variance of 7.0 feet to the minimum rear yard requirement of 25 feet was being requested. The applicant was also requesting a variance to allow an inground pool to cover 36% of the rear yard where only 30% coverage is permitted by the Ordinance.

There were no questions of staff and Mr. French presented the statement of justification, previously submitted in writing and incorporated into the file. He said that, when they purchased the property in 1980, they hired Arthur Hoffman, Jr., to construct a deck; he obtained the proper permits and inspections. In 1993, they contracted with MBC Pools, who obtained the appropriate permits, and all inspections were conducted to install the pool shown on the plat. Mr. French said he was requesting permission to cover and screen the porch to improve the quality of life for the two handicapped members of his family; his wife has systemic Lupas arithmatosis and has been hospitalized three times since he began the permit process in January and she cannot take extended exposure to the sun. He said he had the fourth volume of her medical records with him. Mr. French said that his son is a spastic quadroplegic, attending the Fairfax County Schools since the age of 3 years, having graduated the previous year; he had numerous records on his condition. The son is now attending NOVA Community College. Mr. French submitted photos for the Board members' review. He said that exceeding the 30% allowable coverage was covered by the permits obtained in 1980 and 1993 and he was unaware of any violation; as soon as the violation was pointed out, they added the remedial request to the application, which originally was submitted in February and amended and resubmitted it in March in its present form.

There were no questions asked of Mr. French and no speakers. Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-S-032, for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-S-032 by JOHN D. AND KATHLEEN M. FRENCH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.0 feet from rear lot line and coverage which exceeds 30% of the minimum rear yard, on property located at 6226 Capella Avenue, Tax Map Reference 78-3((5))226, 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 27, 1995; 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 9,583 square feet.
4. The back yard appears to be shallow and the variance requested is minimal.

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

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

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

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

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

6. That:

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

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by John D. French, P.E. dated February 11, 1995, signed on March 14, 1995, 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 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Dively moved to waive the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 406, June 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GROVETON BAPTIST CHURCH, SPA 88-V-079 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 88-V-079 for church and related facilities and child care center to permit change in development conditions and decrease in land area. Located at 6511 Richmond Hwy. on approx. 2.57 ac. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 93-1 ((1)) 27; 93-1 ((7)) 1 and 2. (OUT OF TURN HEARING GRANTED. DEF. FROM 6/22 FOR LACK OF QUORUM)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Minister of Recreation and Education at Groveton Baptist Church, Rick Mitchell, 5980 Richmond Highway, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is comprised of two parcels developed with the Groveton Baptist Church and a single family dwelling is zoned R-4 and is located on Richmond Highway at its intersection with Dawn Drive. He said that the site is surrounded with a variety of uses, ranging from multi-family residential to the north, single family detached residential to the south and southeast,

commercial retail to the west, and a motel to the south. The application was submitted to change the nature of the operation of the previously approved child care center to a summer camp.

Mr. Mitchell presented the statement of justification, previously submitted in writing and incorporated into the file. He requested changing Development Condition 9: adding "...and other staff members...." He presented two letters for the Board's review, both signed by John Resnick, President of Condominium Services, which manage Huntington Walk, next door to the church; one was a waiver of the right to notice of public hearing and the other was a letter of support for the Church to extend its hours of operation to have an all-day day camp.

There were no questions and no speakers. Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 88-V-079 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 13, 1995, as amended to change Development Conditions to reduce the enrollment of the child care center from 99 children to 60 children, to change the hours of operation and the nature of the use from a child care center to a summer camp which would operate from 7:00 a.m. to 6:00 p.m., Monday through Friday, and for a reduction in land area from 2.79 acres to 2.5 acres as a result of right-of-way dedication along Richmond Highway. Mr. Hammack further stated that Condition 9 should be modified to read: "The existing dwelling on the special permit property shall not be used as residence by anyone other than the pastor <u>or another staff member</u>."

The Board moved to waive the eight-day waiting period, 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 88-V-079 by GROVETON BAPTIST CHURCH, under Section 3-403 of the Zoning Ordinance to amend SP 88-V-079 for church and related facilities and child care center to permit change in development conditions and decrease in land area, on property located at 6511 Richmond Highway, Tax Map Reference 93-1((1))27; 93-1((7))1 and 2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 1995; and

WHEREAS, 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 2.57 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 LBC & W, Virginia, Architects, Engineers and Planners dated October 31, 1984 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 seating capacity of the church sanctuary shall be limited to 620.

5. The maximum daily enrollment for the summer camp shall be limited to 60 children. There shall be no child care center located on site.

6. The hours of operation for the summer camp shall be limited to 7 a.m. to 6 p.m., and the camp shall operate June through Labor Day.

7. There shall be no more that 33 children in the play area at any one time.

8. A planted screen shall be maintained between the playground and the neighbors lot on Hillside Lane to the satisfaction of the County Urban Forester as to size, type and location of the plants. Transitional Screening requirements shall be waived along the northern and the portion of the southern lot line where it is required. The barrier requirement shall be waived.

9. The existing dwelling on the special permit property shall not be used as residence by anyone other than the pastor or another staff member.

10. This summer camp shall cease operation on Labor Day, 1999.

These conditions incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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 Non-Residential Permit for the use has been issued. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Hammack moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 408, June 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT K. & SUSAN W. KOSTER, VC 95-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard on a lot containing less than 36,000 sq. ft. and permit 6.0 ft. high fence to remain in front yard. Located at 9851 Hidden Estates Cove on approx. 11,020 sq. ft. of land zoned R-4. Providence District. Tax Map 48-1 ((34)) 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. Bob Koster, 9851 Hidden Estates Cove, replied that it was.

Mr. Koster requested a waiver of the eight-day waiting period, should the application be approved.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is a corner lot fronting on Courthouse Road, Hidden Road and Hidden Estates Cove. The property is zoned R-4, adjoins single family detached dwellings also zoned R-4 on the north and west, a single family detached dwelling zoned R-1 on the east and vacant lots zoned PDH-4 on the south. The applicant was requesting permission to construct an accessory swimming pool containing 720 square feet, with an 875-foot adjoining patio, in the front yard of a corner lot containing 11,020 square feet; the Zoning Ordinance does not allow accessory structures, such as swimming pool, in a front yard of a lot smaller than 30,000 square feet; therefore, a variance was being requested from the minimum lot size, which would permit accessory structures in the front yard. A second variance was being requested to allow a six-foot-high wood board fence to enclose parts of the western, the entire southern and part of the eastern front yards. Mr. Heine noted that the fence adjacent to the southern lot line was already in place; the proposed six-foot-high wooden fence was already in place; the proposed six-foot-high wood board fence was intended to enclose the swimming pool. He said the Zoning Ordinance does not allow fences over 4-feet high in front yards; therefore, a 2-foot variance was being requested.

Mr. Koster presented the statement of justification, previously submitted in writing and incorporated into the file. He said that, when he purchased the property in May 1993, the fence already had been constructed in the back by the builder. He said the extraordinary situation which existed was that the property was bordered by three roads which, according to the strict interpretation, meant that he had three front yards. Mr. Koster said the problem was specific to his yard and created the undue hardship of having three front yards, prohibiting him from having full normal use of the property. He believed full normal use of the property included the installation of a swimming pool. Mr. Koster said neighbors were aware of his proposed plan and had expressed no objections.

There were no questions and no speakers; Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-P-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 20, 1995.

The Board waived the eight-day waiting period, 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 95-P-034 by ROBERT K. & SUSAN W. KOSTER, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard on a lot containing less than 36,000 square feet and permit 6.0 foot high fence to remain in front yard, on property located at 9851 Hidden Estates Cove, Tax Map Reference 48-1((34))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 June 27, 1995; 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 11,020 square feet.
4. An unfortunate situation exists in that the lot has three front yards.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

Page 410, June 27, 1995, (Tape 1), ROBERT K. & SUSAN W. KOSTER, VC 95-P-034, continued from Page 409 )

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 accessory swimming pool and 6.0 foot high fence shown on the plat certified by Samuel W. Koster, Professional Engineer, undated, received on March 28, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the accessory 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 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 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 410, June 27, 1995, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE J. & CHERYL L.P. RICCIARDI, SP 95-Y-017 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 9 ft. 5 in. from side lot line. Located at 15218 Philip Lee Rd. on approx. 12,575 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 290.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence J. Ricciardi, 15218 Philip Lee Road, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located in the Pleasant Valley Subdivision; surrounding lots in the Pleasant Valley Subdivision are also zoned R-C and developed with single family detached dwellings. He said the applicant was requesting a modification of 10.6 feet to the minimum side yard requirement to construct the deck.

Mr. Ricciardi said he had not been aware that he would be asked to make a presentation and was not prepared to do so, but would gladly answer any questions which the Board might have. Chairman DiGiulian said he believed the applicant should give the Board some justification for his request. Mr. Ricciardi said that, as shown on the drawing, he was not requesting that the addition encroach any closer to the property line than the house presently was located. He said there is a wooded area adjoining the rear of his property making it difficult to view the rear of his dwelling from any of the neighboring properties. Mr. Ricciardi submitted photos of the rear of the property for the Board's review. He said the builder had installed french doors in the living room with the intent that an addition would be constructed in the rear.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant SP 95-Y-017 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 20, 1995.

The Board moved to waive the eight-day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-017 by LAWRENCE J. & CHERYL L.P. RICCIARDI, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 9 feet 5 inches from side lot line, on property located at 15218 Philip Lee Road, Tax Map Reference 33-4((2))290, 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 27, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-C, AN and WS.
3. The area of the lot is approximately 12,575 square feet.
4. It is obvious that the builder located this dwelling fairly close to the side lot lines, creating narrow side yards; however, the addition is proposed to be located flush with the existing dwelling and no closer to the lot line than the existing dwelling.
5. The requested variance is not unreasonable.
6. This appears to be one of those R-C lots which would have allowed the property owners to make the addition by right at the time of construction; however, later changes in zoning resulted in changing the requirements.

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 additions shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Rice Associates, dated April 12, 1991, revised by Lawrence J. Ricciardi, through June 9, 1995, submitted with this application and not transferable to other land.

3. A building permit shall be obtained for the deck and screened porch prior to any construction and final inspections shall be obtained.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Dively moved to waive the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. DORIS J. WARD, TRUSTEE, SP 95-M-035 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 3904 Braddock Rd. on approx. 12,218 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-3 ((7)) (E) 1. (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. Harry P. Hart, with the law firm of Walsh, Colucci, Stackhouse, et al., 2200 Clarendon Boulevard, Arlington, Virginia, Attorney for Doris Ward, who is the Director of Bethany House, said he and several others were there to speak in favor of the application, as well as some who would not speak but were there to show support for the application.

David Hunter, Staff Coordinator, presented the staff report, stating that the property was located at the intersection of Braddock Road and Columbia Pike; surrounding properties in the Parklawn Subdivision are also zoned R-3 and are developed with single family detached dwellings. The applicant was requesting permission to establish a child care center with a maximum daily enrollment of 15 children, with three employees, operating Monday through Friday from 7:00 a.m. through 6:00 p.m. Three parking spaces were proposed along the southern property line and the applicant had committed to limiting the number of children outside at any one time to eight; the play area in the rear yard would be expanded as shown on the diagram submitted by the applicant. Mr. Hunter concluded that, if the applicant limited the number of children outside at any one time, to a total of eight, and encourages the use of carpools and public transportation for the dropoff and pickup of children, the proposed child care center for 15 children will be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. He also noted that the proposed center met the guidelines for child care centers as specified in the Comprehensive Plan; therefore, staff recommended approval of the application, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report.

Mr. Hart said that, inasmuch as the staff report was in favor of the application, he would be very brief. He said there were some people present who were in opposition and he would like to reserve the right to rebut when they are finished speaking. He said he would like Doris Ward to make a brief statement in support of the application.

Ms. Ward described Bethany House as an ecumenical ministry, established to provide temporary shelter, primarily for battered and abused spouses and their children. She said they were a non-profit corporation sponsored by individuals, churches, church groups, community organizations, and businesses. They also provide shelter for a longer period, usually up four months, to allow the women time to find jobs, find child care, and acquire means of transportation. Ms. Ward said that, for the past 12 years, the women and children have lived in their shelter feeling secure, close to transportation and shopping. Ms. Ward went on in her description, encouraging the community not to be fearful of the occupants of the shelter; she said the community had no reason to fear a decrease in property values.

Mr. Hammack asked Ms. Ward if there were any battered spouses living in the center. Ms. Ward said there were none; while they had been living there during the past twelve years, they no longer were living there.

Chairman DiGiulian noted that the Board had seven letter of opposition and a petition in opposition with 75 signatures. Mr. Hart said that was why Ms. Ward thought it was appropriate to inform those present of the care that would be taken. He said Ms. Ward had no knowledge of the petition until just the other day and she did scour the neighborhood the previous day, finding 44 people on the petition who lived nearby. He said some who signed the petition in opposition also have signed letters either in favor of or not in opposition to, which he wished to submit to the Board, along with a rendering of the new parking area.

Mr. Kelley said he did not remember seeing an approval for this many children on this size lot to be cared for at one time and asked staff if he was correct in that assumption. Mr. Hunter said that, in staff's analysis, the previous denials by the Board had been on smaller lots. This lot is 12,000 square feet in size and he said staff felt comfortable with the size of the lot, given the number of requests for more children on smaller lots which were generally denied by the Board. Mr. Kelley asked Mr. Hunter if he knew of any such requests which had been approved by the Board for the number of children on a lot of this size. Mr. Hunter referred to one particular request off Gary Road with 20 children on a lot size of 8,000 square feet. He said the applicant came back with a request for 10 children and the Board again denied that request. Mr. Hart noted the condition that there be no more than eight children outdoors at any one time. He said there were several people present in support who would not be speaking and he asked the Board to recognize them: Daniella Neehooch who would be the Director of the Center if the application is granted; Marietta Julianne and Denise Cattrell, members of the Board; Rosemary Damewood, additional support staff; and two other unnamed ladies. He said Mr. James Delaney was there, of Habitat for Humanity, who had committed to maintenance of the center to ensure its continued good appearance.

Mr. Delaney, co-founder of Men Against Domestic Violence, in Hawaii, and associate of Virginians Against Domestic Violence, operating out of Norfolk, Virginia, said it had become obvious to him in recent years how important these kinds of programs are, such as Bethany House, has in support of child rehabilitation and child learning. He commended the work the center does with children from abusive families.

Speaking in opposition were the following: Robert Zipp, 3910 Braddock Road, Alexandria, Virginia, two houses away from the proposed center, who did not question the good done by the proposed center. He said he had 75 signatures, however, of elderly people, residents of 25 to 40 years, all immediately in this vicinity. All were concerned that the lot was mostly front yard on a full corner, bordering on one of the busiest intersections in the entire area, which he went on to described in detail. He said the information was late in coming to the community and suggested a postponement so that research could be conducted. David Daniel, Chako Road, around the corner from the site, also expressed admiration for the work of the center; however, he and his neighbors opposed the proposed location. He concurred with much of what Mr. Zipp had said. Mr. Daniel said he would like to know what number of the 44 people whom Mr. Hart spoke about had changed their minds. He mentioned other neighbors who had sent letters of opposition to the Board and questioned the reality of limiting the number of children outside at any one time to eight.

Mr. Hart directed the Board to the packet which he had submitted, stating there were six people who originally signed in opposition and then signed off "not in opposition" or "in favor," in answer to Mr. Daniel's question. He said there were several people who had signed in favor who live very close to the proposed center. He said that Bethany House had a reputation for keeping the appearance of the property in a favorable condition and, if the Board so wished, they would be willing to defer and work with those in opposition. He rested on the staff report which he considered accurate.

Mr. Hammack said he believed Ms. Ward testified that the children who would be counseled would be aged 2 - 5 years. Ms. Ward said that they planned to have someone come to assist the teachers, not to actually counsel the kids necessarily; they will also be assisting the siblings and the parents. Their plan is to have the parents and the older siblings come together for a counseling session at their office center, not at this location. Ms. Ward said the counselor would observe the children. In answer to a question from Mr. Hammack, Ms. Ward said the children at the center would be from the battered women who had been at Bethany House. She said they were not opposed to accepting one or two children from the neighborhood; however, the center basically will be for the children of battered women, aged 2 to 5. They have a two-year follow up period during which they endeavor to keep the women on their feet and support them in becoming productive members of society. Mr. Hammack expressed skepticism about how the women would be able to use public transportation if they do not live within the immediate corridor; Ms. Ward said they do live within the immediate corridor.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack said he still had some questions about this use, although the purpose of the use was certainly desirable and it appeared to be within the Ordinance provisions and it is on the edge of the community. He harbored reservations about transportation, without any definitive testimony in that regard; the neighbors in the community believed that traffic and parking are serious problems. He said the applicant appeared to believe that public transportation would be used; however, he had reservations about all the mothers bringing their children to the center by bus, getting off to drop them off, and then getting back on a bus to go to work. Mr. Hammack said he believed this was a modest application and moved to grant SP 95-M-035 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 20, 1995, with two modifications: Development Condition 5 was changed to read, "The maximum number of children per day shall be fifteen (15). The maximum number of children on site at any one time shall not exceed fifteen (15) children. A maximum of eight (8) children shall utilize the outdoor play area at any one time." Development Condition 6 shall be changed to read, "The maximum number of employees shall be limited to three (3) on-site at any one time.

Mr. Dively seconded the motion with the caveat that he believed the transportation issue had been glossed over and he did not believe they would get an answer that day as to what the actual transportation situation would be. He said he agreed it was a very laudatory public policy that was being served; however, he had doubts about the public transportation being sufficient. He wondered whether it would be appropriate to have the applicant report back to the Board in a year to see if proposed objectives had come to pass and, if what the applicant said was true, there would be no negative results to report and to find out if, during that time, public transportation is overwhelmingly used and implemented. Mr. Hart directed Mr. Dively's attention to the transportation section of the staff report which he said assumed that there would be no one using public transportation; it said that, if every single child came with one car, one car per child per day and three employees resulted in 18 cars from 7:30 to 8:30 a.m., assuming that as the condition. Mr. Dively said that was a lot of traffic in the neighborhood. Chairman DiGiulian noted that the one year reference was a review and not a term. Mr. Hammack said he had no objection to adding a Condition 13. Mr. Dively said he believed that Condition 13 should require that the special permit be reviewed in twelve month's time. Mr. Hammack said he would accept that as an amendment to the Development Conditions. He said that the level of traffic in the area was so intense already, he did not believe the Board could deny an otherwise permissible use which could make a minimal impact, not really adding to the already intense traffic situation. Mr. Hammack said that, even if the use was residential, there would still be some number of vehicle trips per day, which was one reason why he wished to clarify Condition 5 to say that the maximum number of children on site on any one day would be 15. Otherwise, there could be shifts of morning and afternoon day care, creating a heavier impact.

The motion carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-M-035 by DORIS J. WARD, TRUSTEE, under Section 3-303 of the Zoning Ordinance to permit, a child care center, on property located at 3904 Braddock Road, Tax Map Reference 61-3((7))(E)1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 27, 1995; 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-3 and HC.
3. The area of the lot is approximately 12,208 square feet.
4. It was considered appropriate to modify Proposed Development Conditions 5 and 6.
5. The level of traffic is intense to begin with and an otherwise permissible use of minimal impact should not be denied.
6. Even if the use were residential, it would still generate some traffic by the occupants.

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 Urban Engineering & Associates, Inc. dated June 29, 1983, revised April 14, 1995, and sketch entitled Proposed Addition to Play Area 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 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 children per day shall be fifteen (15). The maximum number of children on site at any one time shall not exceed fifteen (15) children. A maximum of eight (8) children shall utilize the outdoor play area at any one time.

6. The maximum number of employees shall be limited to three (3) on-site at any one time.

7. Hours of operation shall be limited to 7:00 a.m. until 6:00 p.m., Monday through Friday.

8. Three (3) parking spaces shall be provided on site as shown on the special permit plat.

9. Existing Barrier F (a six foot high solid wood fence) shall be maintained along the western and southern lot lines as currently provided and shall be waived along the remainder of those lot lines and along the entire northern and eastern lot lines.

10. All trash shall be stored on-site in appropriate containers and shall be screened from view.

11. No free-standing signs shall be located on the subject property.

12. The applicant shall encourage the use of car pools and mass transit as a means of access to the facility.

13. This special permit shall be reviewed in twelve (12) months time.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been 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 4-0. Mr. McPherson, Mr. Pammel 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 July 3, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 415, June 27, 1995, (Tape 1&2), Scheduled case of:

9:00 A.M. TEMPLE BAPTIST CHURCH, SPA 85-D-009-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-D-009 for church and related facilities, child care center and school of general education to permit site renovations, building addition, increase in enrollment, decrease in land area and change in development conditions. Located at 1545 Dranesville Rd. on approx. 6.05 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 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. David Pittman said he represented Temple Baptist Church and replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that a school of music and dance, zoned R-1, is located north of the subject property; Herndon High School adjoins the property on the east and south and is zoned R-3; single family detached dwellings, zoned R-1 and R-3, are located west of the property. The subject church originally was constructed under S-63-78, approved in 1978; on May 14, 1985, the BZA approved a special permit for a school of general education and child care center with a maximum daily enrollment of 95 children. The special permit was subsequently amended on two occasions to allow various site improvements, changes in development conditions and to permit a school of general education and a child care center, with a maximum daily enrollment of 95 children. Mr. Heine said the applicant was now requesting a special permit amendment for a church and related facilities, a child care center, and a school of general education, with a combined maximum daily enrollment of 160 children; tearing down the old parsonage and constructing a new personage; decreasing acreage to provide the land needed for the improvement of Dranesville Road. In addition, the applicant was requesting the modification of Transitional Screening 1 and barrier requirement adjacent to the northern and western lot lines. Mr. Heine said it was staff's opinion that the proposed application, with the imposition of the Proposed Development Conditions, met all the standards for the special permit uses and is in harmony with the Comprehensive Plan; staff recommended approval.

Mr. Heine said that, since the publication of the staff report, staff had received a letter of opposition from adjoining property owners, focussing upon drainage concerns. He said staff had submitted a copy of the letter to the Department of Environmental Management (DEM) for review. He said there has been a simultaneous processing of the site plan with the special permit plat.

Mr. Kelley asked what the status was of the improvements to Dranesville Road. Mr. Heine said construction was scheduled to begin in July of 1996; he did not know the estimated completion date.

Mr. Hammack asked staff what their reaction was to Mrs. Coomber, with respect to the drainage. Mr. Heine said staff believed the issue should be addressed by DEM at Site Plan Review; it was not an issue ever raised at prestaffing or staffing. He said staff had spoken with a representative of Mrs. Coomber and referred them to the Site Plan Review Branch. Mr. Hammack asked who the Mr. White was that Mrs. Coomber referenced in her letter. Mr. Heine said he had spoken with Mr. White the previous day and he appeared to be representing Mrs. Coomber. In answer to a question from Mr. Hammack, Mr. Heine said he did not know who on

County staff had previously met with Mrs. Coomber. Mr. Hammack noted that Mrs. Coomber had said in her letter that she had been advised by someone that the drainage would be handled differently. He said that if anyone knew any more about that, he would like to hear from them.

Mr. Pittman stated that most of the items addressed in the special permit amendment were the result of the proposed widening of Dranesville Road which would go through the church home; the parsonage would have to be moved back and the parking lot would have to be moved. Mr. Pittman said they had dedicated land three times for the widening of Dranesville Road; as far as he knew, they had done their site plan, which conformed to the Comprehensive Plan; they met and exceeded all of the County codes and requirements; they had satisfied the requirements of the Virginia Department of Transportation (VDOT); they were willing to comply with all of the health and fire regulations and were currently in compliance; the plans showed that the FAR was still less than allowable. Mr. Pittman said Mrs. Coomber was one of their good neighbors and the first time he had heard about the drainage problem was the previous day. He said that, many years ago, Mrs. Coomber garage was flooded; she sold 25 acres for Dranesville High School, eight, ten or fifteen years ago and they did not resolve all the drainage problems; there is a huge 18" pipe draining onto the applicant's property, which went into Mrs. Coomber property and flooded her garage, nearly floating away her car. Mr. Pittman said the applicant persuaded Fairfax County to pay for the work, and they dedicated land, to allow a pipe to come through the applicant's property to take care of Mrs. Coomber's drainage. He said the building under discussion that day had been in existence for two years, was a 4" drainline, to his knowledge, draining onto the applicant's property from their roof drains, which were approved by Fairfax County many years ago, running for 200 feet in a grassy area on the applicant's property. Mr. Pittman could not imagine it being a problem; however, he promised they would be sure to take care of it. He said Mrs. Coomber was a good neighbor and Mr. White had been in his office about a month ago, when Mr. Pittman informed him about the Dranesville Road status, at which time Mr. White made no reference to this problem, nor has he heard anything about it since that visit. Mr. Pittman said they had one objection to Condition 10 which again requested dedication of right-of-way to widen the road; they had already had a verbally agreement for VDOT to purchase the right-of-way, which was scheduled to be completed the following month.

Mr. Hammack asked if the detention pond shown on the plat was in place; Mr. Pittman said it had been in place for two years. Mr. Hammack and Mr. Pittman agreed that the pond was approximately 300 feet from Mrs. Coomber's property line.

Mr. Kelley referenced Condition 11 which addressed the number of students and asked Mr. Pittman if he agreed with it. Mr. Pittman said he did agree to the 160. Mr. Kelley said it would not be 160 until the road was finished and no one knew when that would be. Mr. Pittman said he still was in agreement. Mr. Kelley said he would be willing to approve to 160 that day. Mr. Pittman said he agreed with the Condition and that was what they were requesting, 160. Mr. Kelley that giving up property three times and the low level of intensity to be generated prompted him to request staff's comments. Mr. Heine said the intent of that condition was to attempt to maintain the same level of traffic generated by the site because of the problems of the left turn lane into the property. He said staff had worked with the Office of Transportation on this and the Condition was the result of their compromise to maintain the level until completion of the road, considering that the school presently had an enrollment of 95 students and not many carpooling arrangements. Mr. Pittman said they had been adding a grade each year, ending at grade 6; they would add grades 4 and 5 next year, anticipating approximately 108 or 110 students. He said they would not approach the 160 figure for quite a long time; even if they included grade 6 next year, the figure would probably be only 125; they have a self-imposed limit of 15 students per class. Mr. Pittman said that, without exerting any effort, they had gone from 20% carpooling to about 55 to 60%. Mr. Kelley asked if they had any problem attaining the 50% carpooling and Mr. Pittman said they did not, as illustrated by a recent brief check.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SPA 85-D-009-3 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 20, 1995, with the following modifications. Development Condition 11 should be deleted and replaced with the following language: "The combined maximum daily enrollment of the child care center and school of general education shall not exceed 160 and 50% of the children enrolled shall arrive and depart in vehicles carrying two or more students, which shall cease when the improvements to Dranesville Road are completed.

> The maximum daily enrollment for the child care center shall not exceed 64 students
>
> The maximum daily enrollment for the school of general education shall not exceed 96 students."

Mr. Pittman asked to have Condition 10 deleted in view of the verbal agreement with VDOT.

Mr. Kelley moved to also delete Condition 10 and change the numbering accordingly.

Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 85-D-009-3 by TEMPLE BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 85-D-009 for church and related facilities, child care center and school of general education to permit church, child care center and school of general education which has an enrollment of more than 100 and site renovations, building addition, increase in enrollment, decrease in land area and change in development conditions, on property located at 1545 Dranesville Road, Tax Map Reference 10-2((1))7 and 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 June 27, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is approximately 6.05 acres.
4. It was deemed appropriate to delete Proposed Development Condition 11 and replace it with the language reflected in the Resolution.

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, 9-309 AND 9-310 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 Alexandria Surveys, dated January 30, 1995, revised March 16, 1995 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 maximum seating capacity for the sanctuary shall be limited to 300.

6. The hours of operation of the child care center shall be limited to 6:30 a.m. to 6:00 p.m, Monday through Friday and the hours of operation of the school of general education shall be limited to 8:30 a.m to 3:15 p.m., Monday through Friday.

7. There shall be a total of 126 parking spaces provided as shown on the special permit plat. All parking for the uses shall be on-site.

8. Transitional screening shall be provided in accordance with the following:

   Along the northern lot line, the existing vegetation shall satisfy the Transitional Screening 1 requirement.

   Along the western lot line, replacement three (3) inch caliper oak or other shade trees shall be planted adjacent to the portion of the western (front) property line, as generally shown on the special permit plat and shall be underplanted with evergreen shrubs to soften the visual impact of the parking lot and church building. .

9. The barrier requirement shall be waived along the north and west lot lines.

Page 418, June 27, 1995, (Tape 1&2), TEMPLE BAPTIST CHURCH, SPA 85-D-009-3, continued from Page 417 )

10. The combined maximum daily enrollment of the child care center and school of general education shall not exceed 160 and 50% of the children enrolled shall arrive and depart in vehicles carrying two or more students, which shall cease when the improvements to Dranesville Road are completed.

    The maximum daily enrollment for the child care center shall not exceed 64 students

    The maximum daily enrollment for the school of general education shall not exceed 96 students.

11. Parking lot lighting, if provided, shall be on poles not to exceed twelve (12) feet in height and shall be shielded in such manner so as to direct light only onto the parking lot.

12. The previously approved Phase II addition, as shown on the special permit plat, shall be constructed within ten (10) years or the special permit for the Phase II addition shall become null and void.

13. All signs shall be in accordance with Article 12 of the Zoning Ordinance.

These development conditions incorporate and supercede the previously imposed conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

This approval, contingent on the above-noted conditions, shall not relieve 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 4-0. Mr. McPherson, Mr. Pammel 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 July 7, 1995. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:50 a.m. and reconvened at 11:00 A.M.

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Page 418, June 27, 1995, (Tape 2), Scheduled case of:

Chairman DiGiulian advised that the Board would hear this case next. It had previously been scheduled as the third next case.

9:30 A.M. AMERICAN PCS, L.P. AND CHRISTIAN AND D. H. SCARBOROUGH, APPEAL 95-H-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Director of Zoning Evaluation Division decision that the approval of a special exception application to install a telecommunication base station on property located in an R-E district which is developed with a single family detached dwelling would be in violation of Sect. 2-501 of the Zoning Ordinance. Located at 2301 Hunter Mill Rd. on approx. 4.19 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 19.

The appellant's agent, Jim Campbell of Jackson & Campbell, came forward.

Mr. Dively said he had no problem with rendering an unbiased decision in this case; however, he wished to point out that he was in a little bit of a quandary because he currently had a case before the Circuit Court in which Adversary Counsel is Jackson Campbell, leading him to believe that he should recuse himself from this case. That would normally not present a problem; however, if he recused himself in this instance, they would not have a quorum and the case would have to be deferred until the following week. Chairman DiGiulian asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, to recommend a time. She suggested next Thursday, July 6, at 9:30 a.m.

Page 419, June 27, 1995, (Tape 2), AMERICAN PCS, L.P. AND CHRISTIAN AND D. H. SCARBOROUGH, APPEAL 95-H-025, continued from Page 418 )

Mr. Hammack asked about another telecommunications case on the After Agenda list and William E. Shoup, Deputy Zoning Administrator, advised it was another case with different circumstances.

Mr. Campbell said that was acceptable to the appellant.

Ms. Kelsey requested changing the time on July 6 to 9:00 a.m. for logistical reasons. Mr. Hammack so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

Mr. Hammack requested that Chairman DiGiulian ask if anyone else in the room was interested in the appeal and there were speakers from the audience, one of whom asked if there was a guarantee that the appeal would be heard at the scheduled time, to which Chairman DiGiulian replied that there was no guarantee and, if only the same four Board members were again present, it could not be heard because of the same reason. Ms. Kelsey suggested July 11 at 9:30 and all concurred. Mr. Hammack moved to change the scheduled hearing date. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 419, June 27, 1995, (Tape 2), Scheduled case of:

9:30 A.M. BROWNS OF ALEXANDRIA AND DOUGLAS D. JEMAL, APPEAL 95-L-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles in a C-8, R-2 and Highway Corridor Overlay District constitutes a storage yard and is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 6910 Richmond Hwy. on approx. 4.05 ac. of land zoned C-8, R-2 and HC. Lee District. Tax Map 92-2 ((18)) (7) 1-8; 92-2 ((19)) (6) 1.

Chairman DiGiulian advised that the Board had a request for a deferral of this appeal to August 1, 1995 at 9:30 a.m. Chairman DiGiulian asked if there was anyone in the room interested in this appeal. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that there was someone present previously; however, staff told him about the request for a deferral and he left. Chairman DiGiulian asked if the appellant was present. Lynne Strobel, with the law firm of Walsh Colucci et al., 2200 Clarendon Boulevard, Arlington, Virginia, said that her law firm represented the appellant and they concurred with the deferral.

William E. Shoup, Deputy Zoning Administrator, said that Keith Martin with the law firm of Walsh Colucci et al. represented the appellant and had participated with staff in discussions about clearing the violation. Mr. Martin had requested the deferral to August 1, assuring staff that the violation would be cleared before that time.

Mr. Hammack so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 419, June 27, 1995, (Tape 2), Scheduled case of:

9:30 A.M. TATE TERRACE REALTY INVESTMENT, INC., APPEAL 94-Y-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that CDPA/FDPA 87-P-016 is not exempt from the Affordable Dwelling Unit Ordinance under Par. 3 of Sect. 2-803 of the Zoning Ordinance and therefore 12.5% of the total number of single family detached and attached units and 6.25% of the multiple family dwelling units must be affordable. Located at the existing terminus of Cedar Lakes Dr. on approx. 28.3 ac. of land zoned PDH-20 and WS. Sully District. Tax Map 45-4 ((1)) 25F; 46-3 ((1)) 74A. (BZA DEF. FROM 1/10 TO ALLOW OTHER MEMBERS TO BE PRESENT. DEF. FROM 2/9 TO ALLOW THE BZA TO HEAR AT THE SAME TIME AS RICHMOND AMERICAN APPEAL. DEF. FROM 2/28. DEF. FROM 4/27 IN ORDER TO HEAR CONCURRENTLY WITH A 94-H-041, A RELATED CASE. DEFERRED FROM 5/23 FOR DECISION ONLY)

Chairman DiGiulian called for the next case.

Lynne Strobel, with the law firm of Walsh Colucci et al., 2200 Clarendon Boulevard, Arlington, Virginia, came forward to state that she represented the appellant, which previously had been deferred for approximately 30 days in order to give the appellant a chance to meet with the Affordable Dwelling Unit Advisory Board (ADUAB). She said the Advisory Board had scheduled a hearing for the appellant to come before them again on August 8 at approximately 3:30 p.m. Ms. Strobel said her discussions with the Chairman of the ADUAB indicated a possibility that a negotiated settlement might be reached. As a result, she proposed that a decision be deferred until the first meeting in September.

Mr. Kelley moved to schedule the appeal for September 12, 1995 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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9:30 A.M. ANTIQUES AND THINGS, APPEAL 95-Y-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the outside storage of furniture, antiques, scrap materials and other items related to appellant's antique business is in violation of Zoning Ordinance provisions. Located at 13617 Lee Hwy. on approx. 4.74 ac. of land zoned C-8, R-1, HC & WS. Sully District. Tax Map 54-4 ((1)) 113.

Chairman DiGiulian called for the next schedule case. Jerry Day came forward to announce his presence for the appellant.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that the appellant's business is located solely within the C-8 portion of the property. He said at issue was the outside display and storage of furniture, antiques, scrap materials and other items associated with the appellant's business, which is a retail sales establishment under Zoning Ordinance provisions, which is permitted in the C-8 District. He said, however, that the C-8 District use limitations require that outdoor storage and display of items be limited to goods that are customarily used outside, such as fertilizers, peat moss, shrubbery and mulch. Mr. Shoup said the use limitations also required that items that are permitted to be stored or displayed outside cannot occupy more than 250 square feet unless site plan approval is obtained for a larger display/storage area. Mr. Shoup said it was staff's position that the type of items being stored and displayed outside (photos were submitted for the Board's review) were not of the type which would be permitted to be stored outside under the use limitations. He said, therefore, the appellant's operation was in conflict with the use limitations of the C-8 District and, therefore, was in violation of Par. 1, Sect. 2-305 of the Zoning Ordinance. Mr. Shoup further stated that, even if some items could be displayed or stored outside, the display area exceeds an estimated 1,000 square feet and no site plan approval has been obtained for any outside storage or display related to this use. He said, based upon the foregoing facts, he was requesting that the Board uphold the Notice of Violation that was dated February 9, 1995.

Mr. Day said they realized they had a little too much furniture outside but driving through Centreville would show that most businesses have their items outside for display. He said he realized they had too much outside because they were only in business for a year; the display had helped and everyone had fun coming into their shop. Mr. Day said they had write-ups, reasonable prices for young couples, and the business was doing very well. He said he had sent a drawing in to the County showing a certain amount of display they would like to have remain in front of the business. He named several businesses in Centreville which he believed had displays in excess of what was permitted. Mr. Day said the man across the street from his business had just spent over two million dollars on his property and told Mr. Day that he had no problem with the display/storage. Mr. Day further described what he would like to remain on display and said that on weekends there was a line of cars blocking the display of most of the furniture from the view of the road traffic. He said he would like to have outdoor iron furniture in a portion of the display; the material described by the Zoning Inspector as scrap metal was actually antique fencing which was in demand and they sold as much as they could get. Mr. Day said they were only asking to be allowed to operate and make some money. He said they would like to have an unloading zone in back of the building for Thursdays when they go to the auctions, for their huge truck to be unloaded and for space to store new stock until space could be made to fit it inside. He said the unloading area would be fenced and the stock would not be visible.

There was no one else to address the appeal and Chairman DiGiulian asked Mr. Shoup if he had anything to add.

Mr. Shoup said that some items possibly could be stored outside; however, the appellant would require site plan approval, unless it was confined to 250 square feet or less. Also, they would have to be items that are normally used outside as previously described. Mr. Shoup said staff would be willing to review a list submitted by the appellant and to let him know if they qualified. In the meantime, what is currently being stored outside did not fall into the category of items that could be stored outside under the use limitations.

Mr. Kelley asked Mr. Shoup if staff had made Mr. Day aware of the steps necessary for him come into compliance and to receive approval from the County. Mr. Day said he would do that, but one of his problems was that he would have a hard time describing what he would be keeping outside because the material sells so quickly; the list would change from minute to minute. He went on to describe what some of the items might be. Mr. Kelley advised that the Board did not decide what could be displayed; staff was prepared to assist him with that. Mr. Day said that the items he was storing right now would be carried outside in the morning and returned inside when they closed. He said he was talking about approximately 25 pieces of furniture that would be kept on display on the sidewalk.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to uphold the determination of the Zoning Administrator in the case of Antiques and Things on the simple basis of the interpretation of the Ordinance; the Board had not seen a countervailing argument and he believed that Mr. Shoup had argued persuasively that the County was just enforcing the Ordinance. He said, at the same time, he did not believe it was the intention of the Board to hinder people doing business, and it sounded like Mr. Day had a really good business, which was another thing he could have gotten into, but did not. He urged Mr. Day to go to staff and get whatever advice was available to obtain a proper site plan, so that he could properly conduct his business. Mr. Dively said that none of the Board members was against his having a very successful business, but it would

Page 421, June 27, 1995, (Tape 2), ANTIQUES AND THINGS, APPEAL 95-Y-021, continued from Page 420 )

have to done within the confines of the Ordinance as enacted by the Board of Supervisors; the BZA could not change that.

Mr. Dively said, on the very narrow issue regarding the Zoning Administrator's determination, he moved to uphold the Zoning Administrator. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 421, June 27, 1995, (Tape 2), Scheduled case of:

9:00 A.M. JOHN D. & KATHLEEN M. FRENCH, VC 95-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and coverage which exceeds 30% of the minimum rear yard. Located at 6226 Capella Ave. on approx. 9,583 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 226. (DEF. FROM 6/22 FOR LACK OF QUORUM)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, was not sure if the Board had waived the eight-day waiting period in this case.

Mr. Dively again moved to waive the eight-days and the Board concurred.

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Page 421, June 27, 1995, (Tape 2), Action Item:

Approval of Resolutions from June 20, 1995 Hearing

Mr. Hammack so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 421, June 27, 1995, (Tape 2), Action Item:

Approval of Minutes from April 25, 1995

Mr. Hammack so moved. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 421, June 27, 1995, (Tape 2), Action Item:

Robert A. Alden Appeal Request
Suggested Hearing Date: Morning of September 14, 1995

Mr. Dively said everything seemed to be in order and moved to accept and schedule it go the date suggested by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 421, June 27, 1995, (Tape 2), Action Item:

Southwestern Bell Mobile Systems, Inc.
d/b/a Cellular One Washington/Baltimore Appeal Request
Suggested Hearing Date: Morning of September 26, 1995

Mr. Dively said everything appeared to be in order and moved to accept and schedule it go the date suggested by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 421, June 27, 1995, (Tape 2), Action Item:

Stephen C. & Reba I. Elmore Appeal Request
Suggested Hearing Date: Evening of September 19, 1995

Mr. Hammack so moved. Mr. Dively acknowledged that the suggested hearing date was an evening meeting and seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 422, June 27, 1995, (Tape 2), Action Item:

Withdrawal Request from Party City of Bailey's Crossroads
Appeal 95-M-026

Mr. Hammack moved to accept the request for withdrawal. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 422, June 27, 1995, (Tape 2), Action Item:

Withdrawal Request from Robert E. Grady
Appeal 95-V-015

Mr. Hammack moved to accept the request for withdrawal. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 422, June 27, 1995, (Tape 2), Action Item:

Withdrawal Request from Carvel Painter
Appeal 95-D-022

Mr. Hammack moved to accept the request for withdrawal. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 422, June 27, 1995, (Tape 2), Action Item:

Out-of-Turn Hearing Request
Lee Graham Corporation, SP 95-P-041
Hearing originally scheduled for September 14, 1995

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that staff believed this was the earliest possible date available. Mr. Dively moved to deny the request on that basis, and the fact that the heavy schedule left no room for fitting in any additional cases. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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Page 422, June 27, 1995, (Tape 2), Action Item:

American Personal Communications, L.P., Request
Suggested Hearing Date: Morning of September 14, 1995

Mr. Dively said he believed this appeal was timely filed and moved to schedule it for the morning of September 14, 1995. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. McPherson, Mr. Pammel and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Minutes by: Geri B. Bepko

Approved on: October 17, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

423

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 6, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 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.

Marilyn Anderson, Senior Staff Coordinator, was present in the absence of the Branch Chief, Special Permit and Variance Branch, Jane Kelsey.

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Page 423, July 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PEDRO, JR. & CARMEN TOSCANO, VC 95-H-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 25.8 ft. from front lot line of a corner lot. Located at 9954 Vale Rd. on approx. 15,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 37-4 ((1)) 55.

Chairman DiGiulian called for the first case and the applicant did not come forward. Mr. Pammel made a motion to move this case to the end of the agenda since the applicant was not present in the Board Auditorium. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 423, July 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. AMERICAN LEGION POST 1976, VC 95-M-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.9 ft. from street line of a corner lot and 19.8 ft. from other street line of a corner lot. Located at 4206 Daniels Ave. and 7250 Maple Pl. on approx. 27,043 sq. ft. of land zoned C-3. Mason District. Tax Map 71-1 ((4)) X and H1.

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. Sherwood, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is a corner lot comprised of two parcels totalling 27,043 square feet in size located at the intersection of Daniels Avenue and Maple Place in Annandale. The site is zoned C-3 and is located within the Highway Corridor Overlay District which parallels Columbia Pike and Little River Turnpike. Surrounding properties are commercially zoned and are developed with a variety of retail and other uses. The applicant was requesting approval of two variances to allow the construction of two additions, one to be located 15.9 feet from Daniels Avenue and another 19.8 feet from Poplar Street at the rear of the site. A front yard of 40 feet is required on a lot zoned C-3; therefore, a variance of 24.1 feet was required along Daniels Avenue and a variance of 20.2 feet was required along Poplar Street.

Mr. Hunter noted that this application was associated with Special Exception Application SE 94-M-067 which requested approval of a Private Club and Public Benefit Association. On April 6, 1995, the Planning Commission recommended that the Board of Supervisors approve SE 94-M-067. The Board of Supervisors public hearing is not yet scheduled.

E. Ritchie Sherwood, Architect, 10680 Main Street, Suite 180, Fairfax, Virginia, said the applicant began the project two and a half years ago and has obtained approval of the project from the Annandale Planning Committee and the Mason District Land Use Committee, as well as the Fairfax County Planning Commission. Mr. Sherwood said the applicant would like to expand their facility to better serve their members.

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 95-M-041 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 27, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-M-041 by AMERICAN LEGION POST 1976, under Section 18-401 of the Zoning Ordinance to permit construction of additions 15.9 feet from street line of a corner lot and 19.8 feet from other street line of a corner lot, on property located at 4206 Daniels Avenue and 7250 Maple Place, Tax Map Reference 71-1((4))X and H1, 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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1995; and

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-3, HC.
3. The area of the lot is 27,043 square feet.
4. The applicant has presented testimony indicating compliance with the nine standards for the granting of a variance; in particular, the property is in a commercial district.
5. The property suffers from double front yards.
6. Even with the granting of the variances, there will be ample front yards and will not change the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific additions shown on the plat prepared by J. Monaco & Associates, P.C., dated November, 1994, and revised through March 8, 1995, 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 structure.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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 and Mr. Ribble seconded the motion which carried by a vote of 7-0.

Page 425, July 6, 1995, (Tape 1), AMERICAN LEGION POST 1976, VC 95-M-041, continued from Page 424 )

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 425, July 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT D. & DONNA D. MILBURN, VC 95-Y-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 11.5 ft. from side lot line and 12.4 ft. from rear lot line. Located at 15163 Wetherburn Dr. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 293.

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. Milburn, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 13,000 square foot property is located on Wetherburn Drive in the Sully District. The subject property and surrounding lots are zoned R-C and WSPOD and developed with single family detached dwellings and community open space to the east. This request for variance resulted from the applicant's proposal to construct an 8 foot high deck 11.5 feet from a side lot line and 12.4 feet from the rear lot line. The minimum required side yard in the R-C District is 20.0 feet and the minimum required rear yard for this 8 foot high deck is 13 feet. Accordingly, the applicant was requesting a variance of 8.5 feet to the minimum required side yard and a variance of .6 feet to the minimum required rear yard.

Robert Milburn, 15163 Wetherburn Drive, Centreville, Virginia, said the Architectural Review Board of the Virginia Run Community Association has approved the project. He pointed out that the proposed addition will extend no further into the side yard than the existing dwelling. Mr. Milburn said the builder developed the property under a zoning which has subsequently changed; therefore, he was required to comply with the current zoning.

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 95-Y-042 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 27, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-Y-042 by ROBERT D. AND DONNA D. MILBURN, under Section 18-401 of the Zoning Ordinance to permit construction of deck 11.5 feet from side lot line and 12.4 feet from rear lot line, on property located at 15163 Wetherburn Drive, Tax Map Reference 53-4((8))293, 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 6, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 13,000 square feet.
4. The house is in an unusual location on the lot.
5. It is located 55 feet from the front lot line towards the rear of the lot making it rather difficult to locate a deck within the provisions of the Ordinance.
6. The only variance to the rear yard is minor.
7. The proposed structure would probably have complied with the side yard requirements under the provisions of the R-2 (Cluster) under which the lot was originally developed.
8. The deck will only go over approximately 18 inches further into the side yard than the existing dwelling.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;

C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific deck shown on the plat prepared by Coldwell, Sikes & Associates, dated March 2, 1995, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 426, July 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE F. CUMMING, VC 95-L-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line. Located at 8500 Rosemont Ci. on approx. 39,465 sq. ft. of land zoned R-2. Lee District. Tax Map 101-3 ((17)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Mr. Franca, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the 39,465 square foot subject property is zoned R-2. It is located on the west side of Rosemont Circle. The subject property is surrounded on three sides by single family detached dwellings in the R-2 District and on the west by a vacant lot in the R-2 Zoning District. The applicant was requesting a variance to allow a detached garage to be located 3.0 feet from a side lot line. The Zoning Ordinance requires a 15.0 foot minimum side yard; therefore, a variance of 12.0 feet was requested.

Robert Franca, 1402 Old Town Road, Alexandria, Virginia, said the applicant would like to line the garage up with the existing gravel drive, and noted there is no other feasible place

to construct the garage. Mr. Franca said the house was built approximately 40 years ago, there are similar structures in the neighborhood, the neighbors have no objections, and the applicant agreed to all the development conditions.

Mr. Ribble said the statement of justification noted that the applicant would prefer not to remove the mature trees on the lot in order to construct the garage. Mr. Franca said that was correct.

In response to a question from Mr. Hammack as to how far away the house on Lot 31 sits from the proposed garage, Mr. Franca replied approximately 30 to 35 feet.

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 95-L-039 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 95-L-039 by BRUCE F. CUMMING, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 feet from side lot line, on property located at 8500 Rosemont Circle, Tax Map Reference 101-3((17))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 July 6, 1995; and

WHEREAS, 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 39,465 square feet.
4. The applicant has met the nine required standards for the granting of a variance, in particular lining up the proposed structure with the existing driveway will alleviate the removal of large mature trees.
5. It is an older neighborhood and many of the garages and sheds were built prior to the existing Ordinance, and probably none of the structures would meet the criteria of today's 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 detached garage shown on the plat prepared by Franca Surveys, Inc., dated March 29, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the detached garage prior to any construction and final inspections shall be approved.

3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 14, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 428, July 6, 1995, (Tape 1), Scheduled case of:

9:00 A.M. KATHERINE L. FRAZIER, SP 95-L-022 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 4212 Shannon Hill Rd. on approx. 10,765 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((25)) 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. The applicant, Ms. Frazier, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is 10,765 square feet in size and is located on the northeast side of Shannon Court north of Old Telegraph Road. Surrounding properties in the Wilton Woods subdivision are also zoned R-3 and are developed with single family detached dwellings. The applicant has requested approval of a special permit to allow a modification to the limitations on the keeping of animals to permit four (4) dogs to remain on a property of less than 12,500 square feet. The four dogs are small to medium sized with the exception of one, an Akita which is a large dog, named Ki. The applicant also owns two Cocker Spaniels, Storm and Cerci, one male and one female; and a Yorkshire Terrier named Willow who weighs about three pounds.

Mr. Hunter said the applicant has indicated that someone is home with the dogs during the day and that the dogs remain in the house except when they are walked outside on a leash or in the backyard, which is enclosed by a six foot high wood fence. The applicant has submitted several letters of support which were included in Appendix 3. Several letters of opposition have been received as well. On January 4, 1995, the applicant was issued a Notice of Violation as a result of a complaint about the number of dogs kept on the subject property.

Katherine L. Frazier, 4212 Shannon Hill Road, Alexandria, Virginia, distributed to the BZA a petition signed by the neighbors and a proposal noting what she has done to address the neighbors' concerns. She acknowledged that her lot is approximately 2,000 square feet smaller than that allowed by the Zoning Ordinance for the keeping of four dogs. Ms. Frazier discussed the steps she has taken to show good faith as outlined in the proposal presented to the BZA. She said the dogs are very gentle, the debris is cleaned daily from the back yard, and they erected a six foot high fence around the perimeter of the back yard. In closing, Ms. Frazier agreed with all the development conditions and said she will continue to work with the neighbors. She added that she has leased additional land area from a neighbor in order to meet the land area requirement.

Mr. Hammack and the applicant discussed other adults who reside in the house and the ages of the dogs. Ms. Frazier said there is one roommate living in the basement, and the dogs range in age from 1 to 4 years.

Mr. Kelley questioned the legality of the lease agreement between the applicant and the neighbor. Mr. Hunter said staff could not comment on that issue as it had not entered into staff's analysis of the application since it was not a part of the subject property.

Chairman DiGiulian called for speakers in support of the application.

The applicant's husband, Steve Frazier, said the community is 25 years old and his wife has been a member of the community practically since she was born. He said they would like to continue to work towards addressing the neighbor's concerns.

The applicant's roommate, Sara Fraill, said because of the different schedules of those residing in the house, there is always someone home to supervise the dogs. She said the dogs are well loved, they are in no way a threat to adults or children, and that it would be a travesty if the applicant had to separate the dogs.

Angela Hall, 4213 Shannon Hill Road, Alexandria, said she has lived in the neighborhood for 23 years and has lived with the applicant. She said since Ms. Frazier bought the house from her mother, the next door neighbor has been determined to run them out of the neighborhood and has been belligerent to the applicant. Ms. Hall said the neighbor's children have provoked the dogs by banging on the fence, throwing debris in the back yard, and unlocking the gate so the dogs could get out of the yard.

There were no additional speakers in support and Chairman DiGiulian called for opposition.

Robert Dzuiban, 4210 Shannon Hill Road, Alexandria, Virginia, requested that the BZA uphold the Zoning Ordinance and said he was the culprit who had initiated the complaint. He said in reviewing the Zoning Ordinance section applicable to the keeping of the animals it appeared that his concerns were the same, such as the dog waste, noise, and the impact on the surrounding properties. Mr. Dzuiban submitted photographs of the fence to the BZA showing the disrepair of the fence.

Mr. Hammack asked the speaker the ages of his children and if he would like to respond to the earlier testimony that his children have provoked the applicant's dogs. Mr. Dzuiban said his children are 9, 6, and 4 years of age. He said on one occasion his youngest child tossed a milk carton over the fence and that his boys have run along the fence line dragging a stick across the fence once or twice.

In response to questions from Mr. McPherson, Mr. Dzuiban said that he has lived on the property for 11 years. He said the neighbor on the other side of the applicant, Mr. Morrison, had indicated that he would be present at the public hearing to oppose the request.

During rebuttal, Ms. Frazier said Mr. Morrison had told her just yesterday that he believed it was a "neighborhood squabble" and that he did not want to be involved. She said for every complaint raised there is an alternate supporting statement and that she did not envy the BZA's position. Ms. Frazier said she has tried to do everything possible to keep her dogs and keep peace in the neighborhood.

The BZA discussed the development conditions with the applicant. Ms. Frazier said she would comply with all conditions.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 95-L-022 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 27, 1995.

Mr. Hammack said the lot almost meets the minimum lot size requirement for the four dogs, and three of the dogs are small. He added that the applicant will be operating under stringent restrictions, and that he would support the motion.

Mr. McPherson said he believed that both sides in the neighborhood conflict appear to be acting in good faith, but that he was concerned with the application as presented. He said he was not influenced by the lease as he was not sure that it was sound planning to make a long range decision based on a short term arrangement and that he was concerned that it might set a bad precedent. Mr. McPherson added that he believed the request would have an adverse impact on the neighbors and he believed the children should take priority over the dogs. He opposed the motion.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-L-022 by KATHERINE L. FRAZIER, under Section 8-917 of the Zoning Ordinance to permit modification 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 4212 Shannon Hill Road, Tax Map Reference 82-3((25))33, 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 6, 1995; and

WHEREAS, 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 10,765 square feet.
4. The applicant submitted a "precautions statement" to the BZA which mirrored the development conditions.
5. The applicant testified that she agreed to and will adhere to all the development conditions.
6. The applicant's neighbor has leased a portion of her property to the applicant in order to provide additional room for the four dogs.
7. The applicant has "bent over backwards" to make the situation acceptable to the community and to comply with the Zoning Ordinance.
8. The lot almost meets the lot size requirement for the four dogs and three of the dogs are small.
9. The dogs do not appear to be dangerous and the applicant will be restricted as to how the dogs are supervised, which will mitigate the problems.

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 2-512 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 property shown on the plat submitted with this application prepared by James L. Smith and Associates dated April 26, 1972, revised by Katherine L. Frazier dated April 4, 1995, and is not transferable to other land.

2. This special permit shall be made available to all departments of the County during working hours.

3. This approval shall be for the applicant's existing four dogs. If any of these specific animals, including the Akita, the two Cocker Spaniels and the Yorkshire Terrier, die or are sold or given away, the number of dogs kept on the property shall not be increased.

4. The dogs shall not remain in the yard unsupervised.

5. The dog house in the rear yard shall be removed.

6. The yard used to exercise the dogs shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Pammel seconded the motion which carried by a vote of 6-1 with Mr. McPherson voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. ODALYS CARBONELL, SP 94-Y-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 13316 Braddock Rd. on approx. 1.88 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((3)) 57 and 58. (MOVED FROM 1/10 AT APPL.'S REQ. DEF. FROM 6/6 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. The applicant's husband, Mr. Smith, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 1.88 acre site is located on the north side of Braddock Road between Union Mill and Clifton Roads in the Sully District. The subject property and the lots to the north, south, and east are zoned R-1 and WSPOD. The lots to the north and east are developed with single family detached dwelling. The lot to the west is vacant. To the south is Fairfax County Park Authority property zoned R-C and WSPOD and developed with Braddock Park.

Ms. Langdon said the applicant, Odalys Carbonell, was requesting a special permit to allow a child care center with a maximum daily enrollment of thirty (30) children that will operate Monday through Friday between 6:00 a.m. and 6:30 p.m. The child care center is proposed on the 1.88 acre site within an existing 1,556 square foot structure. The applicant operated a home child care facility under the approval of SP 91-Y-047, which expired on November 19, 1994. The site also contains a 5,400 square foot play area to the rear of the structure, fenced with a six (6) foot high wood fence. Nine (9) parking spaces exist on site with an entrance from Braddock Road. A six (6) foot high wood fence is located between the parking area and the western lot line. The site is wooded and the applicant has requested a modification of transitional screening and barrier requirements to allow the existing vegetation and fences to meet screening requirements.

She noted that a Staff Report Addendum and a revised plat was distributed to the Board just prior to the public hearing. With the revised plat, the applicant had addressed the majority of staff's concerns. Under the revised plat, the applicant had committed to providing 25 feet of transitional screening along the western lot line and two rows of evergreen trees and a six foot high board on board fence. The applicant will also be providing two additional parking spaces and an entrance in conformance with Virginia Department of Transportation (VDOT) requirements. Additionally, the revised plat depicted all existing structures, their sizes and accurate distance between structures and lot lines.

Staff concluded, that based on the revised plat dated May 30, 1995, the application met all standards for a Special Permit of the Zoning Ordinance and would be in harmony with the applicable recommendations of the Comprehensive Plan. Staff, therefore, recommended approval of SP 95-Y-055 subject to the Revised Proposed Development Conditions dated June 27, 1995.

Mr. McPherson asked staff the timeframe for the development of Braddock Road in the area of the subject property. Ms. Langdon said VDOT had indicated that construction would commence in August 1995.

Cole Smith, 13316 Braddock Road, Centreville, Virginia, said the day care center has grown on an average of 1 to 1 1/2 children per month over the past two years. He did not believe that the expansion of Braddock Road would have any impact on the ingress/egress to the subject property. With respect to the development conditions, Mr. Smith asked that Condition 9 be revised to reflect one row of plantings as opposed to two. He objected to the request for dedication referenced in Condition 11 for the widening of Braddock Road. Mr. Smith addressed the issues raised in the neighbor's opposition letter by stating that the children would not be allowed outside without supervision and there would be no farm animals on site.

A discussion took place between Mr. Dively and the speaker as to what changes he would like made to the development conditions. Mr. Smith requested changes to Conditions 9 and 11 as outlined in his presentation. Mr. Hammack asked if staff would object to the applicant planting only one row of plantings. Ms. Langdon said staff believed there is room to locate two rows of evergreens in the designated area.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant SP 94-Y-055 for the reasons noted in the Resolution and subject to the Revised Development Conditions with Condition 9 revised and the deletion of Condition 11.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 94-Y-055 by ODALYS CARBONELL, under Section 3-103 of the Zoning Ordinance to permit a child care center, on property located at 13316 Braddock Road, Tax Map Reference 66-1((3))57 and 58, 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 6, 1995; and

WHEREAS, the Board has made the following findings of fact:

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1. The applicant is the owner of the land.
2. The present zoning is R-1 and WS.
3. The area of the lot is 1.88 acres.
4. This is a good size lot and many times when this type of application comes before the BZA the lots are not large enough to accommodate the use.

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 8-304 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 Paul Conklin Quigg, Architect, dated March 1, 1994, revised through May 30, 1995, 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 determined 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 total maximum daily enrollment shall be limited to thirty (30) children.

6. The hours of operation shall be limited to 6:00 a.m. to 6:30 p.m., Monday through Friday.

7. The maximum number of employees shall be five (5), including the applicant.

8. Eleven (11) parking spaces shall be provided. All parking for this use shall be on site as shown on the special permit plat.

9. Existing vegetation along the eastern and northern lot lines, and along the western lot line, except in the Colonial Pipeline Easement, shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1. Size, species and number of the plantings shall be determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review.

10. The barrier requirement shall be waived along the eastern and northern lot lines. The existing six (6) high wood fence along the western side of the parking lot and play area shall be extended along the western lot line except within the Colonial Pipeline Easement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless a construction has commenced and/or the use has been established. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. L.P. FURP, SP 95-V-023 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit marina, dock and boating facility. Located at 11193 and 11195 Gunston Rd. on approx. 71.02 ac. of land zoned R-E. Mt. Vernon District. Tax Map 119-1 ((3)) 1A, 2A, 3A, 4, 5A, 6A, 7A, 8A, 9-13. (Formerly 119-1 ((3)) 1 through 13).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Ms. Baker, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is zoned R-E and is located between Gunston Hall Road and Gunston Cove. The special permit request is for a community marina. The application was filed on the entire 71.0 acre subdivision but the proposed marina use is located on an ingress/egress easement between Lots 10 and 11. It will contain 14 slips and will serve only the residents of the 13 lot subdivision which surrounds it. The marina will contain a boat ramp and pier and two privies which are shown on the special permit plat. The applicant has received the required approvals from the Marine Resources Commission, the Army Corps of Engineers, the Health Department and the Wetlands Board. Staff had no concerns with the application provided usage is limited to the residents and guests of the surrounding subdivision and the proposed lights conform with the recommended condition in Appendix 1. Ms. Greenlief said with the implementation of the proposed development conditions, staff recommended approval of SP 95-V-023.

Lizabeth Lee Walther, Henry & Henry, P.C., 4103 Chain Bridge Road, Suite 100, Fairfax, Virginia, agreed with staff's presentation. She said the community was planned to have thirteen homes on five acre lots, is served by a private road, and is surrounded by park land. Ms. Walther said the marina will only serve the residents and will have no employees. She agreed to all the development conditions and asked that the BZA waive the eight day waiting period, if the application was granted.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 95-V-023 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report. The BZA also waived the eight day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-V-023 by L. P. FURP, under Section 3-E03 of the Zoning Ordinance to permit marina, dock and boating facility, on property located at 11193 and 11195 Gunston Road, Tax Map Reference 119-1((3))1A, 2A, 3A, 4, 5A, 6A, 7A, 8A, 9-13 (formerly 119-1((3))1 through 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 6, 1995; and

WHEREAS, 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 71.02 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only. However, upon conveyance of the property to the Homeowners' Association, this approval will transfer to the association. This approval is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Cook & Miller, Ltd., dated March 1995 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 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 height of the light poles on the subject property shall be no greater than fourteen (14) feet and the fixtures shall be directed downward and outward toward the water so as to prevent glare from projecting onto Lots 10 and 11.

6. Parking for this marina shall be provided on the lots within the subdivision. Parking for the loading and unloading of the boats in the marina shall be located within the gravel area shown on the plat and shall be limited to thirty (30) minutes and there shall be no parking on the driveway leading to the marina.

7. The approval of this special permit shall not preclude uses on any lot within the subdivision that are allowed by right, special permit, special exception or variance within the R-E Zoning District.

8. Boat launching privileges and use of the pier shall be limited to only the residents and guests of the 13 lot subdivision.

9. The applicant shall comply with all conditions imposed by the Fairfax County Wetlands Board in conjunction with the approval of WL 93-W-022.

This approval, contingent on the above-noted conditions, shall not relieve 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 of the boat ramp and pier 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 434, July 6, 1995, (Tape 1), Scheduled case of:

9:30 A.M. BARRY B. & KIMBERLY S. MAREK, SP 95-H-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 4.09 ft. from side lot line. Located at 2408 Dakota Lakes Dr. on approx. 10,591 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((16)) 51. (MOVED FROM 6/22 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's agent, Donald Smith, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is a pipestem lot located off of Dakota Lakes Drive. It contains 10,591 square feet and is zoned R-3. The request before the BZA was for a special permit for an error in building location to allow a deck to remain 4.09 feet from the southern side lot line. According to the applicant, the error occurred because of a difference in the siting of the dwelling on the grading plan and the house location plat.

Donald Smith, 5618 Wharton Lane, Centreville, Virginia, said when the contractor applied for a building permit for the deck he was given a copy of the house location survey which showed the house as being sited 8 feet off the northern side lot line. The contractor built the deck in line with the house, but when the final house location was completed it showed the house was 10.3 feet from the northern side lot line, rather than 8 feet. This meant that the house ended up being closer to the southern side lot line than that shown on the grading plan. (Mr. Smith called the BZA's attention to the handout depicting the error.)

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Chairman DiGiulian said it appeared if the house had been sited in the location originally planned, the deck would be in compliance. Mr. Smith 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 SP 95-H-016 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 19, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-H-016 by BARRY B. AND KIMBERLY S. MAREK, 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 4.09 feet from side lot line, on property located at 2408 Dakota Lakes Drive, Tax Map Reference 25-2((16))51, 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 6, 1995; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED**, with the following development conditions:

1. This special permit is approved for the location and the specified deck shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Paciulli, Simmons & Associates, Inc., dated May 19, 1994, revised through December 29, 1994, 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.

Page 436, July 6, 1995, (Tape 1), BARRY B. & KIMBERLY S. MAREK, SP 95-H-016, continued from Page 435 )

Mr. Hammack 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 14, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 436, July 6, 1995, (Tape 1-2), Scheduled case of:

9:30 A.M. BONDY WAY DEVELOPMENT CORPORATION, SP 95-D-001 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit community club and swimming pool. Located at Seneca Rd. on approx. 1.72 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with VC 95-D-001). (DEF. FROM 4/11 AND 6/6 AT APP.'S REQ.

9:30 A.M. BONDY WAY DEVELOPMENT CORPORATION, VC 95-D-001 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 152.48 ft. Located at Seneca Rd. on approx. 3.44 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((1)) pt. 12. (Concurrent with SP 95-D-001). (DEF. FROM 4/11 AND 6/6 AT APP.'S REQ.)

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 representative, Mr. Keefe, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The application property consists of 3.44 acres and is located southwest of the intersection of Seneca Road and Stonehouse Road. The property is currently vacant. The lots to the north and south are zoned R-E and are vacant. The lots to the west are located in Loudoun County and zoned PD-H24 and are also vacant. All of these lots are part of a planned subdivision called The Estates at Lowes Island. To the east is land zoned R-E and developed with Northern Virginia Regional Park and a residential lot developed with a single family detached dwelling.

Ms. Langdon said the applicant was requesting approval of a variance to permit subdivision of one lot into two lots, with proposed Lot 2 having a lot width of 152.48 feet. A minimum lot width of 225 feet is required. Each lot will consist of 1.72 acres. Proposed Lot 3 will be developed with a single family detached dwelling.

She said the applicant was also requesting approval of a special permit for a community club to be located on proposed Lot 2. The community club is proposed to contain a bath house, swimming pool and two tennis courts. Thirty-one parking spaces are proposed north of the bath house. Transitional Screening 1 was proposed along all lot lines except in the northwest corner adjacent to the driveway entrance, where the applicant was requesting a modification of the transitional screening requirement. A six foot high chain link fence will surround the swimming pool and a ten foot high chain link fence will surround the tennis courts. No lighting was proposed in the parking lot or around the tennis courts.

Staff believed that the application to subdivide one lot into two lots had not met all the Variance Standards as outlined in the staff report but said that if the BZA should grant the application, staff recommended that the approval be subject to the Proposed Development Conditions contained in Appendix 1 of the staff report dated April 4, 1995.

Ms. Langdon said if the Board of Zoning Appeals approves the variance, staff believed that the special permit for the use of Lot 2 for a community club with swimming pool and tennis courts would be in harmony with the Comprehensive Plan recommendation.

She said the applicant had been working with citizens in the area of the proposed development to address their concerns and as a result had submitted proposed development conditions to the Board this morning dated June 27, 1995. Staff had no objections to the applicant's proposed conditions. Ms. Langdon called the BZA's attention to a letter received just prior to the public hearing in support of the applicant's revised development conditions.

Mr. Hammack questioned the reference to golf cars in Condition 9. Ms. Langdon said that condition was added at the request of the citizens.

William (Bill) Keefe, 11441 Tan Bark Drive, Reston, Virginia, planner with Hazel & Thomas, represented the applicant. He said the planned community known as Cascades is located in Fairfax County, with a smaller portion in Loudoun County. Mr. Keefe said the applicant has worked extensively with the Great Falls Citizens Association, the Office of Comprehensive Planning, the Department of Environmental Management, the Loudoun County Fire and Rescue Services, the Fairfax County and Loudoun County Attorney's Offices, and the Virginia Department of Transportation (VDOT).

Mr. Keefe said this recreational use consisting of a swimming pool and two tennis courts will serve the residents of the Estates of Lowes Island. He believed the community will be a good neighbor and will be a good land use on Seneca Road. There will be very few parties, no music, no swim meets, and limited hours of operation. Mr. Keefe said this will also

eliminate cut through traffic from Loudoun County onto Seneca Road into Great Falls as outlined in Condition 9.

With regard to the variance, Mr. Keefe said staff and VDOT requested that access to the two lots be off of Stonehouse Place since Seneca Road is designated as a collector road. He said the applicant wanted to avoid extending the lot line on Lot 3 into Loudoun County in order to eliminate jurisdictional problems. Mr. Keefe asked that Condition 9 be amended to reflect the original "five feet" as opposed to changing it to four feet in order to accommodate the shuttle golf carts. He said Jeff Emling and Page Lansdell, with Chevy Chase, and the designer, Mike Horner, were also present should the BZA have any questions.

Mr. Pammel said the unusual circumstances involved in the variance is one created by Fairfax County and VDOT and there is no other alternative for access to the site.

The BZA questioned the feasibility of enforcing conditions placed on land located in Loudoun County. Mr. Keefe said the language in the conditions was added at the citizens' request, and agreed that it would be difficult for Fairfax County to enforce.

A discussion took place between the BZA and the applicant's representative as to whom would have access to the facility and the potential for overcrowding.

Page Lansdell, 5017 Scarsdale Road, Bethesda, Maryland, came forward and said he was a Vice President of Chevy Chase Bank, who is responsible for the development of Cascades. He explained that the Estates of Lowes Island is approximately 112 units which is within the 6,000 unit community of Cascades, and throughout the community there will be five recreation centers. Mr. Lansdell said the residents and the homeowners in the estate lots will pay the same homeowners dues as everyone in Cascades.

There were no speakers in support of the application and Chairman DiGiulian called for speakers in opposition.

Wilbur Garrett, 209 Seneca Road, McLean, Virginia, said he was not really opposed to the application as it had changed dramatically from the original application, but that he did have some concerns. He said his main concern was the potential for problems that are exacerbated by the fact that the facility will be accessible to all 6,000 residents of Cascades. Mr. Garrott congratulated the applicant on the way they had worked to address the citizens' concerns.

Mr. Keefe waived rebuttal.

Mr. Hammack said he was uncomfortable with the development conditions. Ms. Langdon explained that the conditions before the BZA were developed by the applicant following meetings with the citizens. She said many of the conditions were more restrictive than those recommended by staff. A discussion took place between Mr. Hammack and staff with regard to the potential for overcrowding at the facility when a community party is held.

Mr. Lansdell said it was the applicant's intent to provide a place during the day on weekends where families could have children's parties. Mr. Hammack said he was concerned with the parking not being sufficient for the activities being held at the facility, and that he was very skeptical. Mr. Lansdell said he did not believe the entire community would be utilizing this facility with four other large facilities in the neighborhood.

Following further discussion among the BZA members with regard to the impact from the parties, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 95-D-001 for the reasons noted in the Resolution and subject to the Revised Development Conditions dated June 27, 1995 and amend Condition 9 to reflect the "five feet."

Mr. Pammel said he was uncomfortable with the conditions developed by the applicant and that he believed the BZA should impose the standard conditions as set forth in the staff report. Mr. Hammack agreed.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-D-001 by BONDY WAY DEVELOPMENT CORPORATION, under Section 3-E03 of the Zoning Ordinance to permit community club, swimming pool, and tennis courts, on property located at Seneca Road, Tax Map Reference 2-2((1))pt. 12, 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 6, 1995; and

WHEREAS, 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 1.72 acres.
4. This is an unusual case since two jurisdictions are involved.
5. It is a good plan.
6. The applicant has worked extremely hard to meet the citizens' needs.
7. It is not anticipated that flyers will be going out to 6,000 homeowners for birthday parties to draw a large attendance to any one particular recreational facility in the community.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only. However, upon conveyance of the property to the Cascades Homeowners Association, this approval will transfer to the association. This approval is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bowers & Associates, P.C., dated November 1994, revised through March 23, 1995 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 uses.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as determined 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. All the parking for the use shall be provided on site. The number of parking spaces provided will be determined by the Department of Environmental Management and shall be the minimum required by the Zoning Ordinance. The parking lot shall be gated and signed for parking by residents of Cascades only.

6. The hours of operation of the tennis courts, pool, and bathhouse building shall be limited to the following:

   - 8:00 a.m. to 8:00 p.m. daily

7. Parties will be limited to Saturdays and Sundays only from 12:00 p.m. to 6:00 p.m. on these two days.

8. The design and operational features for the facility will include the following requirements:

   - No tennis court lighting;
   - No swimming pool lighting on the pool deck;
   - No building or parking lot exterior lighting will be provided unless required by Code;
   - No consumption of alcohol shall be permitted on the premises;
   - No exterior loud speakers shall be permitted on the premises;
   - No swim meets or flea markets shall be permitted; and
   - No after hours parties or gatherings will be permitted.

9. The golf cart access path located on Parcel A, Section 12-C of the Estates at Lowes Island in Loudoun County, shall be used exclusively for pedestrian, bicycle, and golf cart access. The golf carts shall include open air or curtained cart-type vehicles for up to twelve (12) persons, seated not more than two (2) abreast, as a "shuttle golf cart." The access path shall be constructed and maintained in such a manner as to physically prevent passage by vehicles wider than five feet. No access will be allowed for any motor vehicle whatsoever other than golf carts.

10. Transitional screening shall be provided as shown on the special permit plat along all lot lines. Transitional screening shall be modified along the northwestern lot line as shown on the approved plat. As agreed to by the applicant, additional landscaping shall also be provided on proposed Lot 3 to mitigate the impact of car headlights and provide additional buffering to the residential lot. The species,

size and location of landscaping shall be as determined by the Urban Forestry Branch at the time of site plan review.

11. The barrier requirement shall be satisfied along all lot lines, with the provision of a ten (10) feet high chain link fence surrounding the tennis courts and a six (6) foot high chain link fence around the pool.

12. Accessible parking spaces shall be provided in accordance with the PFM standards, per review and approval of the Department of Environmental Management (DEM) at the time of site plan review.

13. Stormwater management Best Management Practices (BMPs) shall be provided as determined by DEM at the time of site plan review.

14. The applicant shall provide frontage improvements on Stonehouse Place and Seneca Road as determined by DEM at the time of site plan review.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 July 14, 1995. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble made a motion to grant VC 95-D-001 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 4, 1995.

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The BZA recessed at 11:00 a.m. and reconvened at 11:15 a.m.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-001 by BONDY WAY DEVELOPMENT CORPORATION, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having lot width of 152.48 feet, on property located at Seneca Road, Tax Map Reference 2-2((1))pt. 12, 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 6, 1995; and

WHEREAS, 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 3.44 acres.
4. The applicant has met the nine required standards for the granting of a variance.
5. The Virginia Department of Transportation and Fairfax County Office of Transportation has recommended access to the site from Stone Place.
6. The lot is exceptionally narrow.

This application 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 satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 part of Lot 12 as shown on the plat prepared by Bowers & Associates, P.C., dated November, 1994, revised through March 23, 1994. All development shall be in conformance with this plat.

2. The entrances and driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

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.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 440, July 6, 1995, (Tape 1), Scheduled case of:

9:30 A.M. BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a freestanding sign advertising an individual enterprise within a shopping center, in violation of Zoning Ordinance provisions. Located at 6461 Edsall Rd. #305 on approx. 5.25 ac. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7A. (DEF. FROM 5/23 FOR NOTICES)

Mr. Kelley said he had been prepared to make a motion to dismiss the appeal, but after talking to William Shoup, Deputy Zoning Administrator, and the appellant he had decided against that action. He said the Notice of Violation had been issued to the prior owner and the prior owner was the one who had not met the notice requirement in the first instance.

Page 441, July 6, 1995, (Tape 1), BARGAIN BUGGIES RENT-A-CAR, APPEAL 95-M-010, continued from Page 440 )

This owner, while he was aware of the requirement, had a personal problem with a child being extremely ill, which required him to travel extensively back and forth to Philadelphia. Mr. Kelley said based on the unusual circumstances in this appeal, he would make a motion to defer the appeal to the morning of September 26, 1995.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

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Page 441, July 6 1995, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT E. GRADY, APPEAL 95-V-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of two construction trailers on appellant's property constitutes a storage yard and that such use in an R-2 District is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8830 Badger Dr. on approx. 21,851 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((8)) 7. (RESCHEDULED FROM 5/23)

William Shoup, Deputy Zoning Administrator, informed the BZA that no action was required on this item since it had been withdrawn at the June 27th public hearing based on a request from the appellant.

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Page 441, July 6, 1995, (Tape 2), Scheduled case of:

PEDRO, JR. & CARMEN TOSCANO, VC 95-H-040

Marilyn Anderson, Senior Staff Coordinator, said the Staff Coordinator, David Hunter, had talked with the applicant's office and been told that Mr. Toscano was on leave this week. She suggested deferring the application to the evening meeting at 8:00 p.m. to allow staff time to again try to reach the applicant.

Mr. Kelley made a motion to defer accept staff's suggestion. Hearing no objection, the Chair so ordered.

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Page 441, July 6, 1995, (Tape 2), After Agenda Item:

Approval of June 27, 1995 Resolutions

Mr. McPherson so moved to approve the resolutions as submitted by staff. Hearing no objection, the Chair so ordered. Mr. Pammel abstained as he had not been present at the June 27th public hearing.

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Page 441, July 6, 1995, (Tape 2), After Agenda Item:

Acceptance of Bradford Shea and Norman F. Bradford Jr. Appeal

Mr. Pammel made a motion to accept the appeal and scheduled it for the morning of October 10, 1995. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 441, July 6, 1995, (Tape 2), After Agenda Item:

Request for Scheduling of the Board Auditorium for Video Conference

Chairman DiGiulian suggested deferring action on this item until the July 6th evening meeting. There were no objections.

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Page 441, July 6, 1995, (Tape 2), After Agenda Item:

John and Kathryn Clark Appeal, 94-V-015

Mr. Hammack made a motion to defer the appeal to the morning of September 14, 1995. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Out of Turn Hearing Request for
Calvary Road Baptist Church, SPA 84-L-071-4

The applicant's attorney, Arlene L. Pripeton, 10195 Main Street, Suite B, Fairfax, Virginia, said she had been ill during the spring and it was partly her fault that the application had not gotten filed earlier, but the application was submitted to the Application Acceptance Branch in May 1995. She said after the application was filed, they discovered that additional information was needed from the Health Department in addition to the certification the church already has on file. Ms. Pripeton said because of the heavy workload in the health department due to the requests associated with summer activities, she did not receive a response until June 21st. She immediately faxed it to staff, who informed her that the application was accepted on June 30th. She explained that the church was requesting to increase the enrollment from 240 to 350 students and be allowed to use the three existing trailers for the school. Ms. Pripeton asked that the portion of the application for the teen center be deferred and go forward with the school.

Mr. Ribble asked staff if the trailers had been addressed under the existing special permit. Ms. Anderson said she believed the trailers were granted for a five year term and was allowed only for the church, not the school. She added that the staff report for the cases scheduled for the August 1st public hearing was due to be completed today and this case had not yet been assigned to a staff coordinator. Ms. Pripeton said a staff report was done in 1992 when the case came before the BZA.

Mr. Ribble said he would have to support staff in this instance as he did not see how the application could be given a fair review in such a short time. Mr. Kelley seconded the motion which failed by a vote of 3-4.

Mr. Hammack asked staff if there was any way possible that staff could complete the staff report for August 1st. Ms. Anderson said the only way to meet the August 1st deadline would be for staff to prepare a one page staff report, without the scrutiny that an application such as this would normally receive.

Mr. Dively made a motion to grant the request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

(NOTE: The BZA reconsidered this item at its evening meeting on July 6th and granted the out of hearing for September 12, 1995, as opposed to August 1, 1995.)

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As there was no other business to come before the Board, the meeting was adjourned at 12:30 p.m.

Minutes by: Betsy S. Hurtt

Approved on: September 12, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

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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 6, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:08 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Marilyn Anderson, Senior Staff Coordinator, was present in the absence of the Branch Chief, Special Permit and Variance Branch, Jane Kelsey.

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Page 443, July 6, 1995, (Tape 1), Action Item:

Out of Turn Hearing Request for
Calvary Road Baptist Church, SPA 84-L-071-4

Marilyn Anderson, Acting Branch Chief, Special Permit and Variance Branch, addressed the out of turn hearing that the BZA had granted to the Calvary Road Baptist Church at the meeting held earlier in the day. Ms. Anderson said after further review, staff was having a very difficult time trying to find a way to give the application a thorough review in order for the BZA to have all the pertinent information available to them in order to accommodate the out of turn hearing. She asked the BZA to reconsider its decision and grant the out of turn hearing for September 12, 1995, at 9:30 a.m.

The church's attorney, Arlene L. Pripeton, said obviously the church appreciated the application being moved up to September 12th; however, that will not allow the church to enroll the children for the school year beginning September 6th.

In response to a question from Mr. Hammack, Ms. Anderson said the earliest date a staff report would be available to the BZA and the applicant would be August 1st. She said staff sees this as a potentially controversial case and staff would be doing the BZA, applicant, and the community a disservice if they do not do a thorough review.

Mr. Hammack said for purposes of discussion he would make a motion that the BZA reconsider its action earlier in the day. Mr. Ribble seconded the motion.

Mr. Hammack said he was sympathetic to the church's situation, but at the same time he shared staff's view that the case might be controversial. He agreed that it would be a disservice to the applicant and community. Mr. Ribble supported the motion. The motion to reconsider carried by a vote of 7-0.

Mr. Hammack then made a motion to grant the out of turn hearing for September 12, 1995, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

Mr. McPherson thanked Ms. Pripeton for coming back on such short notice. He said he also believed that it would be more prudent to review the whole application at one time.

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Page 443, July 6, 1995, (Tape 1), Scheduled case of:

8:00 P.M. PEDRO, JR. & CARMEN TOSCANO, VC 95-H-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 25.8 ft. from front lot line of a corner lot. Located at 9954 Vale Rd. on approx. 15,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 37-4 ((1)) 55.

David Hunter, Staff Coordinator, said the applicant was aware of the scheduled hearing date; however, they were out of town and will not return until July 7th. Mr. Hunter said he would inform the applicants that they had missed their hearing and suggested that the case be deferred to July 11, 1995.

Mr. Hammack made a motion to schedule the case for the date suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 7-0. Chairman DiGiulian asked staff to convey to the applicants that if the July 11th hearing date is missed the BZA will dismiss the case for lack of interest. Mr. Hammack agreed.

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Page 443, July 6, 1995, (Tape 1), Scheduled case of:

8:00 P.M. MICHAEL D. & JULIE E. COLLIER, VC 95-D-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.4 ft. from rear lot line. Located at 908 Mackall Ave. on approx. 1.71 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 12B. (DEF. FROM 6/22 FOR LACK OF A QUORUM.)

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. Collier, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is 1.71 acres in size and is located on the west side of Mackall Avenue north of Georgetown Pike. The subject property and surrounding lots in the Langley Forest subdivision are zoned R-1. This request for variance resulted from the applicant's proposal to construct a bedroom and kitchen addition to be located 16.4 feet from the rear lot line. The Zoning Ordinance requires a rear yard of 25.0 feet on a lot zoned R-1; therefore, a variance of 8.6 feet was requested.

Michael Collier, 908 Mackall Avenue, McLean, Virginia, said the existing house was built about 24 feet from the rear lot line and the proposed location is the most economically feasible. Mr. Collier said the present kitchen is a "galley type" and they would like to extend the room to accommodate their growing family. He added there are no objections from the neighbors, and the three abutting houses are built to the front of their lots and will be buffered from the addition by a large grove of trees and a creek.

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 95-D-033 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-033 by MICHAEL D. AND JULIE E. COLLIER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.4 feet from rear lot line, on property located at 908 Mackall Avenue, Tax Map Reference 21-4((6))12B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1995; and

WHEREAS, 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 1.71 acres.
4. The applicant has satisfied the nine required standards for the granting of a variance.
5. Although this is a large lot, the applicant has testified that the house was constructed in the 1950's and was placed well to the rear of the lot.
6. The lot is constrained by the drainage septic field to the front and some topographical conditions, as well as a stream.
7. In view of the fact that the residents on the adjoining properties are located far away, the proposed addition will not any impact on the neighborhood or 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.

Page 445, July 6, 1995, (Tape 1), MICHAEL D. & JULIE E. COLLIER, VC 95-D-033, continued from Page 444 )

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc. dated February 22, 1995, and revised March 16, 1995, 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 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 14, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 445, July 6, 1995, (Tape 1-2), Scheduled case of:

8:00 P.M. MONTE P. ASBURY, JR. T/A THE CUE CLUB, SP 95-M-011 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 7014-7018 Columbia Ln. on approx. 5.30 ac. of land zoned C-6, HC and SC. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B. (DEF. FROM 6/6 AT APPLICANT'S REQUEST TO ALLOW THEM TO WORK WITH THE COMMUNITY. (DEF. FROM 6/22 FOR LACK OF A QUORUM.)

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. Fagelson [substituting for William (Tom) Thomas], replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the proposed use is on a 3,200 square foot unit within the eastern part of the Annandale Shopping Center which is occupied by retail commercial uses on a 5.3 acre lot. The subject lot is in the C-6, SC, and HC Districts and is located on the northwestern corner of the intersection of Columbia Pike and Gallows Road. The subject property adjoins retail uses and single family detached dwellings on the north in the C-6 and R-3 Zones, respectively, single family detached dwellings in the R-3 District on the east, retail commercial and service station uses in the C-5, C-6, and C-2 Districts on the south and a fast food restaurant in the C-6 District on the west.

Mr. Heine said the applicant was requesting a special permit to allow a billiard hall with nine billiard tables, and an accessory eating establishment. The proposed billiard hall is to operate between 10:00 a.m. and 2:00 a.m. with a separate club membership for billiards operating between 2:00 a.m. and 7:00 a.m., seven days a week.

It was staff's position that by imposing the proposed development conditions which includes limiting the hours of operation to between 10:00 a.m. and 2:00 a.m., seven days a week, the requested use will be in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and Standards for Group 5 Uses. Therefore, staff recommended approval of SP 95-M-011 subject to the imposition of the Proposed Development Conditions contained in Appendix 1 of the staff report. Mr. Heine said since the publication of the staff report, staff had received numerous letters in opposition to the request in addition to two letters of inquiry from Congressman Davis and a letter from Supervisor Trapnell.

Bernard (Bernie) Fagelson, Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, said due to the number of speakers who wished to address the application he would make his opening remarks brief and save additional comments for rebuttal. He noted that the applicant had agreed to two additional restrictions, one being a dress code and the possibility of hiring private security.

Chairman DiGiulian called for speakers in support of the request.

Glen Patterson, 7010 Donna Circle, Annandale, Virginia, said since November 1994 until May 1995 he was the coordinator of a group called the Annandale Community Coalition, which is a coalition of parents, school officials, and businesses with its primary goal being the prevention of teen alcohol and drug abuse. Mr. Patterson said many of the speakers are opposed to the use because alcohol will be served. Based on those concerns, the applicant has verbally agreed to limit the hours that alcohol will be served and agreed that he would be willing to form youth leagues in the afternoon. Mr. Patterson believed that many of the problems associated with teens has to be with them being unsupervised and he believed that the use could have a positive impact, rather than a negative one.

Kevin Connolly, 7611 Little River Turnpike, Suite 402, Annandale, Virginia, believed the neighbors were over reacting to problems in today's society that were not directly related to the application.

Jim McWhorter, 4127 Meadow Court, Annandale, Virginia, manager of Annandale Shopping Center, believed that the applicant was the victim of stereo type misconceptions, but added that initially he also had apprehensions. Mr. McWhorter said they had taken precautions in the lease agreement to ensure that what the applicant had proposed does materialize. He read a letter to a neighborhood minister into the record and certain portions of the lease agreement.

Carla Johnson, employed by Annandale Shopping Center, said two years ago she managed an apartment complex adjacent to a billiard parlor which she initially opposed, but discovered her fears were unfounded.

There were no further speakers in support, and Chairman DiGiulian called for opposition.

John Garrott, Jr., 4020 Justine Drive, Annandale, Virginia, said his family lives only one block from the proposed bar/pool hall and he is a licensed real estate broker in the State of Virginia and Washington, D.C. Mr. Garrott outlined his qualifications over the past 17 years and noted that Broyhill Crest, Sleepy Hollow Woods, Winfield, Alpine, Forest Grove, Columbia Pines, The Webmont, The Evergreen House, the Westminister School, and the F&M Barcroft Shopping Center were opposed to the request. He said they had collected over 1,000 signatures on the petitions and those were entered into the record. Mr. Garrott said he also had statements from citizens who could not be present and asked that the BZA allow those to be read into the record. He outlined the reasons that the use would not fit into the community, such as insufficient parking and the safety of neighbors walking to the center.

Chairman DiGiulian said the BZA would accept any written statements into the record, but that he would not allow them to be read into the record.

A discussion took place between Mr. Pammel and the speaker with regard to how the use would adversely impact the property values of the surrounding neighbors. Following the speaker's comments, Mr. Kelley commented that it appeared that the speaker had no statistics to substantiate his belief. Mr. Garrott said no one had statistics.

William (Bill) Bailey, President of the Broyhill Crest Citizens Association, 3802 Kendale Road, Annandale, Virginia, said the case was deferred in order for the applicant to meet with the neighborhood and a meeting was held on June 20th. Mr. Bailey said over 100 people attended and most of the concerns centered on the hours of operation, the serving of alcohol, and the affect of the facility on the neighborhood. He said following the discussion, a vote was taken and the vote was 32 to 28 against the approval of the application, which was followed by a vote of 32 to 24 against the application.

Lisa Goodard, 3701 Larchmont Drive, Annandale, Virginia, appeared on behalf of her mother, Patricia Goodard, who serves on the Fairfax County Housing Authority as the Commissioner of Mason District. She said she works at Fritzbee's and noted that the facility closes at 11:00 p.m. on week nights, but stays open until 12:30 p.m. on Friday and Saturday. She read a prepared statement into the record opposing the request as they believed it would not fit in with the revitalization planned for the area.

Mr. Hammack said alcohol was served at Fritzbee's and there are lines to get in on the weekends. Ms. Goodard said there was a drink limit and agreed that it was a busy place.

Marilyn Terrell, 7011 Marguerite Court, Annandale, Virginia, opposed the application based on the lack of adequate parking, the potential for crime, and outlined the incidents that have occurred at Fast Eddie's, a similar facility, in Fairfax City.

Alice Snitzer, 4037 Justine Drive, Annandale, Virginia, objected to the use based on the adverse impact that it will have on the property values.

Holy Downen, 4009 Terrace Drive, Annandale, Virginia, said the use would be incompatible with the shopping center and the surrounding neighborhood, and the parking is inadequate. She said the serving of alcohol will generate activities that will not be acceptable such as the potential for gaming and fighting.

Mr. Pammel asked the speaker if she saw any relationship to a bowling alley, which has similar activities, and the proposed use. Ms. Downen said the bowling alley is not in close proximity to residential neighborhoods and noted there is frequent police activity. She said she did not want the police in the neighborhood.

Loretta Camera, 4103 Gallows Road, Annandale, Virginia, said she was not against change but that she did believe billiard parlors that serve alcohol are not conducive to family living. She said the people who spoke in support of the billiard parlor are economically tied to the facility; therefore, they are in favor of the request. Ms. Camera was concerned that the senior citizens and children will be intimated by people congregating in front of the facility, the gambling that will take place, and the trucks that will be delivering goods to the facility.

Susan Garrott, 4020 Justine Drive, Annandale, Virginia, believed the use would be located to close to the residential houses, and used a diagram to discuss what surrounds the proposed use. Ms. Garrott said the applicant simply chose the wrong location for this type of business.

Eileen Kugler, President of the Annandale Parent Teacher Student Association (PTSA), said the PTSA believed it was important to take a stand on a decision that would affect the neighborhood and clearly would affect the students. Ms. Kugler said the neighborhood did not need a recreational facility that would be attractive to teens and would basically be a bar.

Mr. McPherson asked the speaker if her position was that of the PTSA Board or if a vote had been taken. The speaker said it was the Board's position.

Lynn Gray, with Quantum Management, spoke on behalf of Evergreen House, a senior citizens apartment community located behind the Annandale United Methodist Church at 6925 Columbia Pike, Annandale, Virginia. She said most of the citizens do not drive; therefore, they walk to the Annandale Shopping Center where the proposed use will be located and that she believed the billiard parlor will change the residents' lifestyle. Ms. Gray cited a fatal shooting that occurred just recently and that she felt the potential for the same type of incident was associated with the proposed use.

Mr. Hammack asked the speaker where the incident occurred that she referenced. Ms. Gray said it was a graduation party held at the Masonic Temple.

Irene Davidson, 4011 Terrace Drive, Annandale, Virginia, said she also was in the real estate business and that she was very concerned with the adverse impact that the use will have on the neighborhood.

Tom McLaughlin, 7218 Wayne Drive, Annandale, Virginia, asked the BZA to deny the request and agreed with the previous speakers' comments.

John Smith, 6816 Crossman Street, Annandale, Virginia, said he did not believe this use would be in the best interest of the community.

The following speakers were on the list submitted to the BZA by Mr. Garrott but were not present to speak: Thomas "Bo" White, Jr.; Scott Terrell; Robert Downen; George Kim Payne; Dale Good; Mike Robinette; Kevin Norris; Judy Tart; William Kynes; Tenn Connolly; Melinda Patterson; Debbie Stone; Elizabeth Barrow; and, William Badgley. The BZA accepted written statements on behalf of these citizens if they were available.

Jean Kalbert, 4036 Justine Drive, Annandale, Virginia, said she did not like pool halls because of the connotation that is associated with them, and said Annandale does not need another bar. She objected to the hours of operation because there is already a lot of activity in the shopping center during the night.

Lucy Terrell, 7011 Marguerite Court, Annandale, Virginia, said she did not believe there was any such thing as a "good pool hall." She read what a typical day might be like for her and her siblings if the pool hall was approved.

In rebuttal, Mr. Fagelson said he did not question the sincerity or zealousness of the citizens, but that he believed that their concerns was based on misconceptions that were rooted in a long and distant past and that his first reaction to the applicant's request was that the use is not River City and it is no longer 1890. He believed that many of the citizens wished the world had not changed and so did he, but unfortunately it has. Mr. Fagelson said the citizens' concerns are based on four things: alcohol, gambling, crime, and traffic. He said this is a reasonable use for the property, the applicant has agreed to have private security on site, and there are no objections from the adjacent commercial neighbors. Mr. Fagelson said it appears that the people who are the most concerned could be termed as NIMBY's (Not In My Back Yard), and this is not in their back yard. Mr. Fagelson said the applicant agreed with the staff report and the development conditions, but asked that the BZA remove the limitation of 40 people during league play.

There were no questions from the BZA, and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he has been a resident of Fairfax County for 39 years, is a senior citizen, and loves the game of pool. He said to single out one particular activity and say that it will generate problems in a community is not true; it is many activities throughout the community. Mr. Pammel made a motion to approve the request with changes to Condition 5 dealing with the hours of operation and add Condition 10 stipulating that the applicant must comply with all the regulations of the Virginia State Alcohol Beverage Control Board. He moved to grant the special permit for a period of two years, at which time the BZA will consider extending the special permit for some period of time. Mr. Hammack seconded the motion.

Mr. Kelley said he was leery of approving the special permit for only two years, since the BZA had not restricted other billiard parlors to a time limitation. Chairman DiGiulian agreed and said it might be difficult for the applicant to obtain financing. Mr. Pammel said he believed it might give the community a greater sense of security. Mr. Kelley pointed out that if the applicant does not comply with the development conditions, the BZA can hold a public hearing and revoke the special permit.

Mr. Hammack said he believed that a lot of the citizens' concerns was based on fear, and that he had not heard a lot of specific facts to show that the use is inappropriate when there are other facilities in the area that serve alcohol and stay open all night.

Mr. Dively opposed the motion as he did not believe the applicant's argument has been greatly understated. He said he had grown up in the neighborhood and there has been an enormous investment of resources to revitalize the area and that he did not believe the use would be harmonious with that effort. Mr. Dively did not believe the transportation issue nor the crime issue had been adequately addressed, but failing that, there was unrebutted testimony that crime does follow this type of use.

Mr. Hammack said he had to base his vote on the applicant's good faith, and noted there has been no proof to show that he will not comply with the laws. Mr. Dively reiterated his earlier comments with regard to the crime issue.

Mr. Kelley offered a substitute motion to allow the applicant a five year term subject to a review by the Zoning Administrator, as he believed two years would be restrictive. The motion failed by a vote of 3-4.

Mr. Pammel's original motion as stated earlier carried by a vote of 6-1 with Mr. Dively voting nay.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-M-011 by MONTE P. ASBURY, JR., T/A THE CUE CLUB, under Section 4-603 of the Zoning Ordinance to permit a billiard hall, on property located at 7014-7018 Columbia Pike, Tax Map Reference 60-3((1))21, 21A and 21B, 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 6, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is C-6, HC, and SC.
3. The area of the lot is 5.30 acres.
4. A particular use is sometimes singled out as generating problems in a community and that is simply not true. There are a number of activities throughout a community that cause problems.

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:

continued from Page 448 )

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for 7014-7018 Colombia Pike consisting of 3,200 square feet of gross floor area and associated parking and is not transferable to other land. Other by-right, Special Exception and Special Permit uses on the commercial site may be permitted without an amendment to this special permit.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc. dated February 14, 1995, drawing illustrating "Tenant Space" also prepared by Alexandria Surveys, Inc. received on April 7, 1995, and The Cue Club Plan (floor plan), prepared by Donald Chandler, Architect, received on May 9, 1995, 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 the Director of the Department of Environmental Management (DEM). The applicant shall demonstrate to the satisfaction of the Department of Environmental Management (DEM) that there is sufficient on-site parking for the recreational facility billiard hall use and for the other uses on the 5.3 acre subject property. If the Department of Environmental Management determines that the required on-site parking cannot be provided on the subject property, this special permit shall be null and void.

5. The daily hours of operation will be from 10:00 a.m. until 12:00 Midnight daily, with the exception of Friday and Saturday nights when the closing hour will be 2:00 a.m. Sunday opening will be 12:00 Noon with closing at 10:00 p.m.

6. After 10:00 p.m., the rear door on the north side of the building shall remain closed.

7. The maximum number of employees on-site at any one time for this use shall be four, the maximum number of patrons on-site at any one time shall be at thirty-six be (36), the maximum occupancy shall be posted at forty (40) persons.

8. If required by the Department of Environmental Management, the floor plan shall be revised to provide a minimum thirty-six (36) inch wide corridor between the counter and the rear exit doors.

9. The maximum number of billiard tables in the 3,200 square foot unit within the subject property shall be nine (9) and the eating establishment is permitted as an accessory use with eleven (11) tables containing twenty-six (26) seats and a counter with (10) seats within the billiard hall.

10. The applicant shall be required to comply with all alcoholic beverage control laws of the State of Virginia.

11. This special permit shall be valid for a period of two (2) years at which time the Board of Zoning Appeals will consider an extension of the special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-1 with Mr. Dively voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 19895. This date shall be deemed to be the final approval date of this special permit.

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Page 450, July 6, 1995, (Tape 2), Action Item:

Request for Scheduling of the Board Auditorium for Video Conference

Chairman DiGiulian said the BZA was being asked to vacate the Board Auditorium at 12:30 p.m. on the following dates: September 12th and 26th; October 3rd, 10th, and 31st; November 14th; and December 5th. He said the BZA had agreed to this in the past and indicated that they had no desire to continue the meeting in another room. Mr. Pammel reaffirmed that position. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 450, July 6, 1995, (Tape 2), Information Item:

ROBERT L. MOORE, APPEAL 95-D-020

Marilyn Anderson, Acting Branch Chief, Special Permit and Variance Branch, called the BZA's attention to the letter involving the Robert Moore appeal scheduled before the BZA on July 11, 1995.

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As there was no other business to come before the Board, the meeting was adjourned at 10:10 p.m.

Minutes by: Betsy S. Hurtt

Approved on: September 12, 1995

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 11, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson; James Pammel; and John Ribble

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 451, July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PEDRO, JR. & CARMEN TOSCANO, VC 95-H-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 25.8 ft. from front lot line of a corner lot. Located at 9954 Vale Rd. on approx. 15,734 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 37-4 ((1)) 55.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pedro Toscano Jr., 9954 Vale Road, Vienna, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 15,734 square feet in size and is located on the north side of Vale Road at its intersection with Corsica Street. The property and surrounding lots in the Big Old Smith subdivision are zoned R-2 and are developed with single family detached dwellings. The variance request resulted from the applicant's request to construct a carport/shed 25.8 feet from the front lot line. The Zoning Ordinance requires a 35 foot front yard on a lot zoned R-2; therefore, a variance of 9.2 feet was requested. It was noted that the BZA previously granted VC 87-C-154 which was a three lot subdivision including the subject property.

Mr. Toscano stated that at one point the property is located about 17 feet from the road and that his request was not beyond that.

Mr. Pammel moved to grant VC 95-H-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 27, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-H-040 by PEDRO JR. AND CARMEN TOSCANO, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 25.8 feet from front lot line of a corner lot, on property located at 9954 Vale Road, Tax Map Reference 37-4((1))55, 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 11, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,734 square feet.
4. There is no additional encroachment into the front yard.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or

unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific accessory structure (carport/shed) shown on the plat prepared by Alexandria Surveys, Inc. dated February 27, 1995, 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 accessory structure shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 452, August 1, 1995, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), SPA 85-C-003 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 85-C-003 for church and related facilities to permit building addition, site renovations and change in development conditions. Located at 2361 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Concurrent with VC 95-H-052). (MOVED FROM 6/13 AT APP.'S REQUEST. DEF. FROM 6/22 FOR LACK OF A QUORUM)

9:00 A.M. THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), VC 95-H-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 43.0 ft. from street line of a corner lot. Located at 2361 Hunter Mill Rd. on approx. 7.16 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26A. (Concurrent with SPA 85-C-003). (DEF. FROM 6/22 FOR LACK OF A QUORUM.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Toni McMahon, Agent, 9719 Kings Crown Court, replied that it was

Lori Greenlief, Staff Coordinator, presented the staff report stating the property is located on the east side of Hunter Mill Road south of its intersection with Lawyers Road. It contains 7.16 acres and is zoned R-E.

The request was for an amendment to an existing special permit to allow building and parking lot additions and an increase in seating for an existing church and related facilities. A concurrent variance was also filed to allow the proposed building addition to be located 43.0 feet from the front lot line abutting Trott Avenue. The minimum front yard requirement in the R-E District is 50.0 feet. Therefore, the applicant requested a variance of 7.0 feet to the minimum requirement.

The existing church building was outlined in red on the plat. The proposed 16,032 square foot sanctuary and education wing were shown with red slashes on the plat and are located to

the south and east of the existing building. The seating capacity of the new sanctuary would be 400 which would be an increase of 100 over the existing seating capacity. Existing parking was shown outlined in yellow on the plat; proposed parking was slashed with yellow. Parking would increase from 92 to 140 spaces, which would be 40 spaces over the minimum requirement.

Staff's main concern in this application was the location of the proposed sanctuary expansion. The proposed sanctuary is located in the minimum front yard abutting Trott Avenue. Variance standard 6B requires a finding that there is a clearly demonstrable hardship approaching confiscation of the property as distinguished from a special privilege or convenience. Staff could not conclude that this hardship existed. Therefore while staff supported the intensity proposed, staff could not support the location of the proposed addition and if the BZA intended to approve the special permit, Proposed Development Condition 13 required that the sanctuary be located 50 feet from the front lot line abutting Trott Avenue.

Ms. Greenlief stated that several letters in support of the application were received and that the applicant brought more from the surrounding property owners.

Ms. Greenlief stated that with the implementation of the development conditions contained in Attachment 2 to Addendum I dated June 22, 1995, staff recommended approval of SPA 85-C-003. It was noted that if it was the intent of the BZA to approve VC 95-H-052, staff recommended the imposition of the proposed development conditions in Appendix 2 of the original staff report, dated June 13, 1995.

Mr. Pammel asked if it was true that Trott Avenue was not a dedicated public right of way. Mrs. Greenlief replied that it was not a dedicated public right of way, but that it was a street.

Ms. McMahon stated that the church was proud of the work they had done in terms of design of the project. She stated the lot is exceptionally shallow, is not on public sewer, and because of the topography of the lot, the drainfill has very limited locations. She said that there is a large area at the back of the property which is an Environmental Quality Corridor area that cannot be developed and they were trying to maintain the natural buffer. Ms. McMahon stated that Trott Avenue is classified as a street, but that functionally it is a driveway. She stated that letters of support were received from Supervisor Frey's office, the Park Authority, and the notified property owners.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 95-H-052 and SPA 85-C-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 13, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-H-052 by THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), under Section 18-401 of the Zoning Ordinance to permit construction of addition 43.0 feet from street line of a corner lot, on property located at 2361 Hunter Mill Road, Tax Map Reference 37-2((1))26A, 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 11, 1995; 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 7.16 acres.
4. The applicant has satisfied the nine required standards.
5. There is a lack of dedication of Trott Avenue.
6. The drainfill is in close proximity to side of building and puts constraints on where addition could be placed.
7. There is a necessity to preserve the EQC.
8. The building sets back from the Hunter Mill lot line.
9. The proposed addition will not impact adjoining property.
10. The lot is narrow and deep.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Land Design Consultants, dated Feb. 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. 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 18, 1995. This date shall be deemed to be the final approval date of this variance.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT AMENDMENT RESOLUTION OF**

**THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 85-C-003 by THE CHURCH OF THE GOOD SHEPHERD (UNITED METHODIST), to amend SP 85-C-003, under Section 3-E03 of the Zoning Ordinance to permit building addition, site renovations and change in development conditions, on property located at 2361 Hunter Mill Road, Tax Map Reference 37-2((1))26A, 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 [redacted]c, a public hearing was held by the Board on July 11, 1995; 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 7.16 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Land Design Consultants, dated February, 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 determined 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 400. The maximum number of seats in the outdoor worship area shall be 30.

6. There shall be no amplification used in the outdoor seating area.

7. One hundred and thirty-six (136) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site. The parking lot may be reconfigured as provided for in Condition 12 as long as the number of parking spaces provided on site is no less than 100.

8. Transitional Screening 1 shall be provided along the eastern lot line, along the northern lot line in the area not adjacent to the existing parking lot and along the southern lot line east of the proposed addition. The transitional screening requirement shall be modified along the portion of the northern lot line adjacent to the existing parking lot and along western lot line to allow existing vegetation and that shown on the special permit plat to satisfy the requirement. Transitional Screening 1, plus the additional plantings as shown on the special permit plat, shall be provided along the portion of the southern lot line in front of and west of the proposed addition. The barrier requirement shall be waived.

9. Limits of clearing and grading shall be provided as shown on the special permit plat and shall be subject to review and approval by the County Urban Forestry Branch. There shall be no structures and no removal of vegetation except for dead or dying trees or shrubs in this area.

10. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height, directed downward onto the site, and shall be shielded, if necessary, in a manner that would prevent light or glare from projecting onto adjacent properties.

11. The width of the existing entrance shall be provided as determined by Virginia Department of Transportation.

12. Public access easements, as determined necessary by Virginia Department of Transportation and Department of Environmental Management to facilitate the construction of a consolidated entrance with the adjacent property located at Tax Map Reference 37-2((1))26 to the north, shall be provided in conjunction with the (re)construction of Hunter Mill Road to a four-lane divided facility and/or at such time as Lot 26 redevelops. Construction of the improvements may be by others. If provision of the consolidated entrance necessitates the removal of parking spaces, existing asphalt on the site may be restriped to make up for the lost spaces without the approval of an amendment to this special permit. However, the total number of

parking spaces shall not be more than 140 or less than 100. If VDOT determines that the existing entrance onto Hunter Mill Road must be closed, landscape plantings shall be provided in that area similar to that provided between the existing parking lot and the front lot line abutting Hunter Mill Road.

The above conditions incorporate and supercede all previously approved conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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 19, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 456a July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. RICKETTS, VA 94-H-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 94-H-017 to permit enlargement in building footprint and height. 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.

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 L. Ricketts, 9911 Corsica Street, Vienna, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report stating that the subject property is 12,379 square feet in size and is located on the east side of Corsica Street, north of Vale Road. The property and surrounding lots in the Tanglewood subdivision are zoned R-2 and are developed with single family detached dwellings which are developed under the cluster provisions of the Zoning Ordinance. He stated that on April 26, 1994, the BZA approved VC 94-H-017 to permit construction of a garage addition 10.9 feet from the side lot line such that the total side yards total 21.3 feet. This variance amendment application resulted from the applicant's request to amend VC 94-H-017 to allow an enlargement in footprint and building height for a garage which was constructed 10.9 feet from the side lot line in accordance with the approved variance. The approved footprint was 22 feet by 22 feet for 484 square feet and the requested dimensions were 22 feet in the rear, 19.3 feet wide in the front with a depth of 32 feet. The footprint total was 677 square feet and the approved height of the garage was 16 feet; whereas, the applicant requested a one and one half story garage that is 25 feet high, and an unfinished second floor addition exists above the garage.

Mr. Ricketts stated that the original case was brought before the Board because of discrepancies in the construction of the garage. He discussed the process taken to bring the construction into compliance. Mr. Ricketts also explained why the garage had to be redesigned. He said that he was issued a Notice of Violation and was presented with two options; to tear down the existing structure, or rebuild it the way it was originally approved. Mr. Ricketts stated he contacted the County to inquire if other options were available to him, and this request for an amended variance was the other option. He said every attempt was made to stay within the zoning regulations and similar designs were in the neighborhood. Mr. Ricketts also noted that his plans were supported by the Tanglewood Community Association Architectural Design Committee.

Chairman DiGiulian asked if there was anyone to speak to the application.

Constance Bibb, 9909 Corsica Street, Vienna, Virginia, spoke in opposition stating that she was not opposed to the previously approved garage but she did object to the second story because it diminished her privacy and the value of her property.

Mr. Ricketts, in rebuttal, said he asked the designer to increase the pitch of the roof because the structure would have made a flat and unflattering structure. He said he looked at other houses in the neighborhood and tried to be as close to compliance as he could.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VA 94-H-017 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Amendment Application VA 94-H-017 by DAVID L. RICKETTS to amend VC 94-H-017, under Section 18-401 of the Zoning Ordinance to permit enlargement in building footprint and height, on property located at 9911 Corsica Street, Tax Map Reference 38-1((22))84, 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 11, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 12,379 square feet.
4. The applicant has met the nine standards required.
5. The application is an extraordinary situation of the condition of the subject property.
6. The extra height is architecturally compatible with the extension in front for the pitch roof.
7. The applicant went through an extraordinary situation with 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 location of the specific garage addition shown on the plat prepared by Ross & France, LTD dated June 30, 1971, and revised through May 6, 1995, submitted with this application and is not transferable to other land.

Page 458, July 11, 1995, (Tape 1), DAVID L. RICKETTS, VA 94-H-017, continued from Page 457 )

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 458, July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. GARNETTE S. DUPONT, VC 95-D-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 7006 Girard St. on approx. 10,530 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((32)) 29.

Mr. Pammel moved to defer VC 95-D-047 to morning of October 10, 1995, it was seconded by Mr. Ribble and the motion carried by a vote of 6-0 with Mr. Dively not present for the vote.

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Page 458, July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RONNIE BAILEY, VC 95-L-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line and permit greater than 30% minimum rear yard coverage. Located at 6801 Lois Dr. on approx. 11,031 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 233.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronnie Bailey, 6801 Lois Drive, Springfield, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 1,031 square foot property is zoned R-3 and is located on the south side of Lois Drive within the Loisdale Estate Subdivision. The property is surrounded on three sides by single family detached dwellings and a vacant parcel on the south which is also in the R-3 district. The applicant requested two variances; variance one was to allow a one story, 13.2 foot high two car garage addition, with the storage area to be located 2.0 feet from a side lot line. The Zoning Ordinance requires a 12 foot minimum side yard for an addition, therefore, a variance was requested for 10.0 feet. The second variance was to allow an accessory structure to cover approximately 36% of the minimum required rear yard, the Zoning Ordinance requires that all uses in structures accessory to the single family detached dwelling cover no more than 30% of the minimum required rear yard. Therefore, a variance was requested for the minimum rear yard coverage requirement.

Mr. Bailey stated that he has lived at the residence for 29 years. He presented photographs to the Board pertaining to his request for a variance. He stated they had suffered vehicle theft which was one reason for the variance request.

David Printz, Architect, described the design for the garage and stated that it would be in harmony with the existing house and with the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 95-L-043. Mr. Ribble seconded the motion which failed by a vote of 3-4 with Chairman DiGiulian, Mr. Dively, Mr. Hammack, and Mr. Pammel voting nay.

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**MOTION TO GRANT FAILED**

**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-L-043 by RONNIE BAILEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition of 2.0 feet from side lot line and permit

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greater than 30% minimum rear yard coverage, on property located at 6801 Lois Drive, Tax Map Reference 90-4((6))233, 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 11, 1995; and

WHEREAS, 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 11,031 square feet.
4. There is 20 feet difference between the side lot line and the other property, Lot 232.
5. The lot is somewhat oddly shaped.
6. The lot backs up to the Fredericksburg/Potomac line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific garage addition and accessory uses and structures to cover approximately 36% of the minimum required rear yard as shown on the plat prepared by R. C. Fields, Jr. and Associates, dated December 28, 1994, revised March 15, 1995, 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.

Mr. Ribble seconded the motion which **FAILED** by a vote of 3-4, with Chairman DiGiulian, Mr. Hammack, Mr. Dively, and Mr. Pammel voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 460, July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JOHN JR. & ELIZABETH J. YESFORD, VC 95-L-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.1 ft. from rear lot line. Located at 7827 Bold Lion Ln. on approx. 6,172 sq. ft. of land zoned PDH-4 and NR. Lee District. Tax Map 99-2 ((7)) 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. Elizabeth Yesford, 7827 Bold Lion Lane, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 6,172 square foot subject property is zoned PDH-4 and is located on the northeast side of Bold Lion Lane within the Landsdowne Subdivision. The property is surrounded by single family detached dwellings in the PDH-4 district. The applicant requested a variance of a screened porch addition to be located 13.1 feet from the rear lot line. The property is in the PDH-4 District, which is most similar to the R-4 District, and developed under the cluster provisions of the Zoning Ordinance, which requires a 25 foot minimum rear yard. Therefore, a variance was requested for 11.9 feet from the minimum yard requirements.

Mr. Pammel asked if the proposed addition would have been necessary if it had been shown on the development plan. Mr. Heine replied it would have been okay as is if it was shown on the development plan.

Ms. Yesford stated that the property is enclosed by a 6 foot high fence and the entire addition is within the requirements. She stated that the Landsdowne Architectural Review Board and the neighbors were in support of the proposed structure.

Mr. Dively asked if there was a patio already there, Ms. Yesford replied no.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-L-044 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-L-044 by JOHN JR. AND ELIZABETH J. YESFORD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.1 feet from rear lot line, on property located at 7827 Bold Lion Lane, Tax Map Reference 99-2((7))33, 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 11, 1995; 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-4.
3. The area of the lot is 6,172 square feet.
4. The subject property is a small lot.
5. The variance requested is not of a great nature.
6. A rear yard variance was requested.
7. This use was permitted by right if shown on approved development 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 location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 11, 1995, 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 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 461, July 11, 1995, (Tape 1), Scheduled case of:

9:00 A.M. WALTER P. & JOCELYN NEWCOMB, VC 95-S-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 8208 Marcy Ave. on approx. 12,382 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-1 ((4)) 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. Fred Taylor, Agent, 8134 Old Keene Mill Road, Springfield, Virginia replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 12,382 square foot subject property is zoned R-3 and is located on the north side of Marcy Avenue within the West Springfield Subdivision. The property adjoins single family detached dwellings on the south, east, and west and the Springfield Golf Course on the north, all of which are in the R-3 District. The applicant requested a variance to allow a 25.8 foot high garage to be

located 6 feet from a side lot line, the Zoning Ordinance requires a 12 foot minimum side yard; therefore, a variance was requested for 6 feet from the minimum side yard requirements.

Mr. Taylor stated they proposed removing a carport and replacing it with a two car garage and a room addition at the back of the house. Mr. Taylor discussed how garages are built considering the topography in the area. He noted that the neighbors were in support of the application, the architecture would be consistent with the existing house, and the addition would be buffered by dense vegetation.

Mr. Ribble stated that it appeared there were converging lot lines and that only a portion of the addition would require a variance. Mr. Taylor stated that was correct and that it was compounded by the topography because the garage could not be set back.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 95-L-046 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-S-046 by WALTER P. JOCELYN NEWCOMB, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.0 feet from side lot line, on property located at 8208 Marcy Avenue, Tax Map Reference 89-1((4))101, 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 11, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,382 square feet.
4. Only the left front corner requires a variance.
5. The rear of the proposed addition meets the ordinance requirements of 12 feet.
6. There is convergence of the lot lines which pinch the front of the house.
7. There is adequate room to maintain the property.
8. The application satisfies the nine required standards.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific garage addition shown on the plat prepared by Larry N. Scartz, dated July 2, 1987, revised November 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 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.

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 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 463, July 11, 1995, (Tape 1&2), Scheduled case of:

9:00 A.M. BRIAN F. VAUGHAN, SP 95-D-030 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 1.0 ft. from side lot line. Located at 1869 Kirby Rd. on approx. 20,993 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 42. (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. Brian F. Vaughan, 1869 Kirby Road, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the subject property is a 20,993 square foot lot developed in a single family dwelling with an attached garage. The property is located on the south side of Kirby Road and is surrounded by single family detached dwellings in the R-2 District on three sides and on the north by single home detached dwellings in the R-3 District. The special permit requested was to allow a reduction to the minimum yard requirements based on error in building location to allow an addition to remain 1.0 feet from a side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, a modification for 14.0 feet from the minimum yard requirement was requested.

Mr. Vaughan stated that his family had increased in size since the original purchase of the house and that they needed to expand the house. Consequently, the only practical solution was to build on top of the existing garage. He discussed the history of the property. Mr. Vaughan stated that all the houses in the neighborhood are a couple of feet from the lot line and they all have the same problem. He stated he submitted plans to build an addition on top of the existing garage, the plans were approved and passed three inspections before the error was noted by an inspector. Mr. Vaughan said he was concerned to keep the addition in compliance with County regulations. He stated, in his opinion, that he dealt with the County in good faith and thanked the Board for granting an Out of Turn Hearing.

Mr. Heine stated there was an opposition letter from a neighbor.

Mr. Vaughan addressed the letter stating that the Metz have not lived next door since 1986. Mr. Vaughan said that he had discussed the addition with Mr. Metz and believed he had no problem with his family building an addition. Mr. Vaughan stated that he received a letter from Mrs. Metz stating her objection to the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked Mr. Heine why were the building plans allowed to go through the zoning department without a building permit. Mr. Heine gave no response.

Mr. Pammel moved to grant SP 95-D-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-D-030 by BRIAN F. VAUGHAN, 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 1.0 feet from side lot line, on property located at 1869 Kirby Road, Tax Map Reference 41-1((1))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 July 11, 1995; and

WHEREAS, the Board has made the following findings of fact:

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 two-story garage addition shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat, entitled Vaughan Property, Chesterbook, prepared by Rice Associates, P.C., dated May 5, 1994, submitted with this application, as qualified by these development conditions.

3. A new building permit shall be obtained and final inspections shall be approved for the addition.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 7-0. Mr. Dively moved to waive the 8 day waiting period it was seconded by Mr. Ribble the motion carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 465, July 11, 1995, (Tape 2), Scheduled case of:

9:00 A.M. MR. & MRS. RONALD A. DALL, VC 95-V-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.5 ft. and deck 10.0 ft. from rear lot line. Located at 8201 Treebrooke Ln. on approx. 8,857 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((20)) 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. Ronald Dall, 8201 Treebrooke Lane, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the property is located in the Oak Brook at Fort Hunt Subdivision, contains 8,857 square feet, is zoned R-3, and is developed under the cluster provision of the Ordinance. The surrounding lots are all zoned R-3 and developed with single family detached dwellings, with the exception of the property to the north which is homeowners' open space. The variance request was to allow an addition consisting of a kitchen and dining area, to be located 18.5 feet from the rear lot line and to allow a 10 foot high deck to be located 10 feet from the rear lot line. The minimum rear yard requirement for the addition is 25 feet, so the variance requested was 6.5 feet. The minimum required yard for the deck, with the permitted extension allowed by Section 2 412, is 13 feet; therefore, the variance requested for the deck was 3 feet.

Mr. Dall stated that the architectural committee and the homeowners association approved of the addition and the addition would not infringe on anyone's property.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 95-V-048 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-048 by MR. AND MRS. RONALD A. DALL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.5 feet and deck 10.0 feet from rear lot line, on property located at 8,857 square feet, Tax Map Reference 102-2((20))29, 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 11, 1995; 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 8,857 square feet.
4. The applicants have met nine required standards.
5. The location of the house on the lot and the shape of the lot; the rear yard is shallow.
6. The Homeowners Association and the Architectural Review Board had no objection.
7. This is a good plan.
8. The easement prevents it from going anyplace else.
9. The proposed addition is architecturally compatible.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 and deck shown on the plat prepared by John B. Kelso dated February 24, 1995, 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, with Mr. Pammel not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 466, July 11, 1995, (Tape 2), Scheduled case of:

9:00 A.M. DALE M. & SUSAN J. DUNLOP, VC 95-H-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard on lot containing less than 36,000 sq. ft. Located at 2134 Owls Cove Ln. on approx. 17,533 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((7)) (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. Susan Dunlop, 2134 Owls Cove Lane, Reston, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the subject property is located in Reston. It contains 17,533 square feet and is zoned PRC, the surrounding lots are zoned PRC and developed with single family detached dwellings with the exception of Lake Audobon, which is located to the south. The variance request was to allow an accessory structure, a detached two car garage, to be located in the front yard of a lot containing less than 36,000 square feet. Section 10-104 of the Zoning Ordinance states that no accessory structure or use shall be located in any front yard on any lot containing less than 36,000 square feet.

Ms. Dunlop stated they had intended to build the garage when an addition to their home was done in 1994. She stated they found that the site plan had not originally been filed and there was not an approval to build the garage in that location. Ms. Dunlop said it is an unusual lot, the house is built into the hillside, and the topography makes it impossible to park anywhere besides the flat part of the lot which is where they intended to build the garage.

Tom O'Neil, Architect and Agent, stated the design was reviewed and approved by the Reston Architectural Review Board. He stated that houses in the surrounding area also have garages in the front yard and the addition would be in harmony with the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-H-049 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 6, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-H-049 by DALE M. & SUSAN J. DUNLOP, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard on lot containing less than 36,000 square feet, on property located at 2134 Owls Cove Lane, Tax Map Reference 27-1((7))(1)18, 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 11, 1995; 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 17,533 square feet.
4. The lot unusually configured.
5. The lot is narrow at the front, exceedingly tapering and is a pipestem lot.
6. The proposed placement of the garage is closer to the garage on Lot 19 than to the existing dwelling, and on lot 20 the existing is house is closer to the existing dwelling than the proposed garage.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific detached garage shown on the plat prepared by Thomas J. O'Neil, dated March 6, 1995, and revised March 27, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0, with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this variance.

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The meeting recessed at 11:00 a.m. and reconvened at 11:10 a.m.

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Page 468, July 11, 1995, (Tape 2), Scheduled case of:

9:30 A.M. RIDGEVIEW COUNTRY CLUB LIMITED PARTNERSHIP, SP 95-Y-003 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course, golf driving range, and accessory uses such as swimming pool, tennis courts, club house with eating establishment. Located at 16850 Sudley Rd. on approx. 546.20 ac. of land zoned R-C and WS. Sully District. Tax Map 52-1 ((1)) pt. 1, 2; 52-2 ((1)) pt. 4; 52-3 ((1)) 1. (IN ASSOCIATION WITH SE 95-Y-007) (APPLICATION AMENDED AND MOVED FROM 4/25. DEF. FROM 5/23 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. Elizabeth Baker, Planner, Walsh, Colucci, Stackhouse, Emrich & Lubely, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report stating the subject property is located in the westernmost part of the County off of Bull Run Post Office road. It is zoned R-C and Water Supply Protection Overlay District and it contains 546 acres. It is bordered along the western and southern edge by the Bull Run River and Prince William and Loudoun Counties, lots are zoned R-C and developed with single families detached dwellings, and vacant land to the east and north. The property was originally placed under special permit in 1959 when a permit for a golf course was approved; the permit was amended in 1963 to add a pool and clubhouse. During the 1960's, a large amount of building activity took place on the site without special permit approval or a building permit. The previous owners applied for a special permit under the name Cedar Crest Country Club, after the fact in 1984 and in 1987, and was approved each time for a golf course and outdoor recreational facility. However, the previous owners had not obtained site plan approval or fulfilled the other development conditions imposed by the Board of Zoning Appeals, and the 1984 and 1987 permits expired. The current applicant applied for a special permit under the name Ridgeview Country Club, for a commercial golf course and related facilities to try and rectify the violations caused by the previous owners.

Ms. Greenlief stated that on the southern portion of the plat is the existing 27 hole golf course and the existing driving range with the proposed improvements, and a proposed 9 hole golf course. The clubhouse is shown in red with the pool adjacent to it and there is four picnic areas in the northern portion of the site which is rented to groups and companies for picnics. Each area contains facilities such as a shelter, volleyball, ping pong, softball and other types of recreational facilities. Staff has worked with the current applicant to try and resolve the important environmental issues surrounding the development of this 546 acre site which is near the Occoquan.

Ms. Greenlief said there were only a few conditions that staff and the applicants had not come to an agreement on. The site is zoned R-C and is zoned as such partly for environmental reasons, maximizing tree preservation is one of the objectives of the R-C zoning the goal being preservation of the sensitive, environmental qualities of the Occoquan. They spent considerable time working on Condition 17 which requires reforestation in the area of the nine hole golf course. Staff proposed condition required reforestation equal to an amount of 50% of the expansion area but allows the planting to occur anywhere on the site. Ms. Greenlief stated 50% was a benchmark percentage of what staff typically saw in terms of tree preservation for residential R-C developments. The other development condition that staff and the applicant didn't agree on involved the public access easement to dedicated parkland. She noted that a revised set of conditions proposed by the applicant were passed out dated July 11, 1995 and staff concurred with the development conditions except for Condition 17 and 27 which involved the reforestation and the public access easement issues. With the implementation of the revised proposed development conditions, staff believed the application would meet the standards for approval and the applicable Zoning Ordinance provisions and recommended approval of SP 95-Y-003.

Ms. Baker stated the applicant inherited numerous problems when they purchased the property from its previous owner. She said the new owners and the applicant worked hard with Fairfax County and with the membership of the Country Club to rectify the situation and to correct all deficiencies that existed on the property. Ms. Baker discussed the two development conditions on which staff and the applicant had not come to a consensus. She stated they would like to change Condition 17 from "50%" to "46%" of reforestation and Condition 27, to provide a maintenance access as opposed to a public access. Ms. Baker also asked to change the time frame for obtaining building permits from "12" months to "24" months.

Mr. Kelley and Mr. Dively discussed the archaeological study and the various phases with Ms. Baker.

Mr. Pammel complimented Ms. Baker on her excellent presentation.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelly moved to grant SP 95-Y-003 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-003 by RIDGEVIEW COUNTRY CLUB LIMITED PARTNERSHIP, under Section 3-C03 of the Zoning Ordinance to permit commercial golf course, golf driving range, and accessory uses such as swimming pool, tennis courts, club house with eating establishment, on property located at 16850 Sudley Road, Tax Map Reference 52-1((1))pt.1, 2,; 52-2((1))pt. 4; 52-3((1))1, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 11, 1995; 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 546.20 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 3-C03 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 & Elkin, Ltd., dated December 12, 1994, revised through June 27, 1995 (5 sheets) 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 the Department of Environmental Management. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. The BZA has no objection to a waiver of the site plan.

5. Upon approval of this special permit amendment, the maximum number of memberships in the golf club shall be seven hundred (700).

6. As it applies to this Special Permit, the term "attendance" shall mean the total number of persons (picnickers) who attend or utilize all of the picnic areas on the site in any one day, not at any one time, excluding golf club members and golf club tournament attendees. These numbers shall include all people who park in Fairfax County or traverse through Fairfax County to utilize facilities in Loudoun County. Should any picnickers also utilize the golf course or driving range, they shall still be counted in the "attendance" number. Upon approval of this special permit amendment, the maximum attendance for the picnic area shall be as follows:

   1,200 persons on Saturdays, Sundays and holidays except that fifteen hundred (1,500) persons per day may be allowed on site twenty (20) times per year, with such occasions occurring solely on Saturdays, Sundays and holidays. However, attendance may be increased to two thousand (2,000) persons on Saturdays, Sundays and holidays no more than five(5) times a year provided this does not occur in two consecutive days.

   Three hundred (300) persons per weekday, except that seven hundred and fifty (750) persons per weekday may be allowed fifteen (15) times a year;

7. The hours of operation shall be limited to dawn to dusk; however, the hours of operation for the clubhouse shall be limited to 7:00 a.m. to 12:30 a.m., except the clubhouse may be open to 2:00 a.m. no more than five (5) times a year.

8. There shall be no outdoor lighting of the golf course, driving range and picnic facilities except that security lighting may be used on the buildings and ground lighting may be permitted for walkways. Lighting may be installed within the golf bubbles. If parking lot lighting is installed, standards shall be no more than twelve (12) feet in height and shall be directed downward to reduce glare and the potential for upward glow.

9. The total number of parking spaces on site shall be nine hundred and twenty-nine (929) as shown on the special permit plat.

10. Parking attendants shall be utilized for parking areas number 6 and 63 for days where attendance is expected over 1,500 persons.

11. The existing pond (#64) may be used for paddleboating. However if the pond silts in, there shall be no dredging of the siltation in order to perpetuate use of the pond for paddleboating. There shall be no storage of boats in the Environmental Quality Corridor (EQC).

12. The applicant shall be responsible for contacting the Virginia Marine Resources Commission, the Army Corps of Engineers, and the Virginia Department of Environmental Quality to determine if permits are necessary for the existing dam and ford in the Bull Run River. If one or both of the structures is required to be removed, the applicant shall comply with regulations for removal established by the Virginia Marine Resources Commission, the Army Corps of Engineers and/or the Virginia State Department of Environmental Quality in a manner so as to ensure the least disruption to the river.

13. The approval of softball field #12 is only for that portion of the field located in Fairfax County. This approval shall not be construed as approval of any uses in Loudoun County.

14. In order to restore a forest cover to the areas within the areas shown with "slashes" on page 3 of 5 of the special permit/special exception plat within the Environmental Quality Corridor (EQC) of Bull Run, the applicant shall submit an EQC restoration plan as part of the site plan for review and approval by the Urban Forestry Branch of DEM. The EQC restoration plan shall identify existing trees to be preserved within the above cited areas and shall establish a reforestation strategy that will be sufficient, as determined by the Urban Forestry Branch, to restore a natural forest cover, while allowing for trails and utilities as determined to be necessary by DEM. Vegetation shall be planted that is native to the area, well adapted to the soil and hydrological conditions of the areas being

reforested, and of high value to wildlife, as determined by the Urban Forestry Branch of DEM. The type (trees and seedlings) and density of plantings shall be no less than that which is set forth within Article 12 of the Fairfax County Public Facilities Manual for replanting, unless otherwise determined by the Urban Forestry Branch.

15. The existing gravel trail/road located within the EQC may remain provided it is consistent with the design and location recommended in the Trails Plan of the Comprehensive Plan, as determined by DEM. If DEM determines that it is not consistent, the gravel shall be removed and the area revegetated in accordance with Condition 14.

16. The boundaries of the EQC within the nine-hole golf course expansion area shall be generally as drawn on sheet 5 of 5 and discussed in note 3 on sheet 5 of 5 of the special permit plat. An exact delineation shall be determined through an EQC study submitted by the applicant at the time of site plan review and shall be subject to review and approval by the Department of Environmental Management in coordination with the Office of Comprehensive Planning. Within the EQC within the nine-hole expansion area, there shall be no structures and no clearing of any vegetation, except for the following:

    Dead or dying trees or noxious shrubs or plants which are determined to be hazardous by the Urban Forestry Branch of DEM may be cleared.

    Clearing may occur, to the minimum extent necessary as determined by the Department of Environmental Management, for the construction of golf cart path crossings. To the extent possible, as determined by DEM, such crossings shall occur perpendicular to the orientation of the EQC areas.

    Selective tree removal may occur, to the minimum extent necessary as determined by the Urban Forestry Branch, for the provision of play-through areas of individual holes. To the extent possible, as determined by DEM, such play-through areas shall occur perpendicular to the orientation of the EQC areas. Any removal of trees within these areas shall occur such that soil is not exposed. Unless otherwise determined by the Urban Forestry Branch, all tree stumps shall remain. No disturbance to the existing ground cover shall be permitted, unless such disturbance is determined by the Urban Forestry Branch to be desirable. Where play-through areas are established in the EQC, they shall be designed and maintained as "Golf Course Hazard Areas." Within these areas, no play of golf balls shall be allowed. If balls are hit into these areas, they shall be "out of bounds hazards areas." These areas shall be clearly signed to prohibit play and entrance into the area. Where determined to be desirable by the Urban Forestry Branch, the existing vegetation within these areas shall be supplemented with shrubs and herbaceous species that are well suited to soil, hydrologic, and microclimatic conditions of the areas being planted, are effective as nonpoint source pollution filters, and have a moderate to high value for wildlife as determined by the Urban Forestry Branch.

17. The applicant shall, through tree preservation within the proposed golf course expansion area (as shown on the Special Permit Plat) and/or planting of seedlings for reforestation anywhere on the subject property, provide at least 60.25 acres of forested areas which is equivalent to 46% of the golf course expansion area. Seedlings that are planted pursuant to this condition shall be well suited to soil, hydrologic, and microclimatic conditions of the areas being planted and shall have a moderate to high value for wildlife as determined by the Urban Forestry Branch of DEM. The density of planting of seedlings shall be consistent with Sect. 12-808.7 of the Fairfax County Public Facilities Manual, unless otherwise determined by the Urban Forestry Branch of DEM.

18. A wetlands study shall be conducted and submitted to DEM for review and approval for the area proposed for the nine-hole expansion prior to the time of site plan approval for the expansion area. Any wetland area that is identified as being contiguous to a watercourse on the property shall be preserved, allowing for selective removal of trees, to the minimum extent necessary as determined by the Urban Forestry Branch of DEM, for the provision of play-through areas of individual golf holes. Any removal of trees within these areas shall occur such that soil is not exposed. Unless otherwise determined by the Urban Forestry Branch, all tree stumps shall remain. No disturbance to the existing ground cover shall be permitted except for that which may be necessary to support elevated golf cart crossings where there are no other feasible options to locating the golf cart paths as determined by Department of Environmental Management. Where allowed, clearing shall be the minimum extent necessary as determined by the Department of Environmental Management, for the construction of golf cart path crossings. To the extent possible, as determined by DEM, such crossings shall occur perpendicular to the orientation of the wetlands areas. All wetland areas contiguous to watercourses shall be designed and maintained as "Golf Course Hazard Areas." Within these areas, no play of golf balls shall be allowed. If balls are hit into these areas, they shall be "out of bounds hazards areas." These areas shall be clearly signed to prohibit play and entrance into the area.

19. Any land disturbing activity that will occur within the Columbia Gas Transmission Easement shall be coordinated with the Columbia Gas Transmission Corporation, and shall meet the requirements of the Zoning Ordinance.

20. The limits of clearing and grading for all uses/structures on the site shall be established such that clearing of trees will be minimized to the greatest extent possible, as determined by the Urban Forestry Branch of DEM.

21. Fertilizers and pesticides shall not be applied to any turf that is allowed to be maintained within the EQC associated with Bull Run. In order to minimize adverse water quality impacts associated with the use of fertilizers and pesticides elsewhere on the property, an integrated pest management (IPM) plan for the maintenance of all other turf that has been or will be established on the property (including all existing and future golf course areas) shall be developed and implemented in accordance with the most current Virginia Cooperative Extension Service Pest Management Guide. The IMP plan shall demonstrate the measures/techniques that will be applied to minimize runoff of nutrients and pesticides into Bull Run River and shall include provisions ensuring that records of applications of fertilizers and pesticides will be maintained and be made available to the County upon request. In addition, the IPM plan shall address the storage of fertilizers and pesticides in order to ensure that the potential for leaching of these substances into groundwater and spillage of these substances into surface water area minimized. The IPM plan shall be submitted to DEM prior to site plan approval and shall be subject to the review and approval of Virginia Cooperative Extension, Fairfax County Office, as determined by DEM.

22. A spill prevention, containment, control, and response plan shall be developed for review and approval by the Fairfax County Fire and Rescue Department for all existing and proposed vehicle fuel or motor oil tanks on the property and for any use or storage of petroleum products and/or hazardous materials within the maintenance area on the property. This plan shall demonstrate, to the satisfaction of the Fire and Rescue Department, that spill prevention, containment, control and response measures will be taken to minimize the potential for, and severity of groundwater and surface water impacts of, releases from this area. Where consistent with the Fairfax County Fire Prevention Code, containment structures shall be provided around above ground storage tanks (ASTs) and drainage from areas within which petroleum products and/or hazardous materials are used and/or stored shall be conveyed to a subsurface catchment system or other containment system designed to contain or remove potential contaminants, as determined by the Fire and Rescue Department.

23. Adequate sight distance in accordance with Virginia Department of Transportation standards shall be provided at the entrance to the site on Bull Run Post Office Road.

24. The portion of the 100-year floodplain, associated with Bull Run shown crosshatched on sheet 2 of 5 of the special permit/special exception plat, shall be dedicated to Board of Supervisors at the time of site plan approval. This land shall be for public park purposes, with the exception of Sub Area III which may also be used for the road improvement/realignment of Bull Run Post Office Road, as determined necessary by the Department of Environmental Management. The remainder of the Environmental Quality Corridor which lies outside the limits of the 100-year floodplain of Bull Run, with the exception of the areas with approved recreational uses, shall be preserved in its natural state. In the area to be dedicated and/or retained in its natural state, there shall be no clearing or grading, except for dead or dying trees or shrubs which are determined to be hazardous by the Urban Forestry Branch, activities necessary for the construction of trails in accordance with the Countywide Trails Plan, and utilities, if determined to be necessary by DEM.If it is determined that clearing or grading is necessary for the construction of trails or utilities, the clearing and grading shall be accomplished in the least disruptive manner possible as determined by the County Urban Forestry Branch. Any existing golf holes which intrude on the EQC may be allowed to remain. A usable maintenance access easement from the area being dedicated to a public road shall be provided. The floodplain and EQC areas may be utilized in calculating credits for meeting Best Management Practices on site, as determined by Department of Environmental Management.

25. Transitional Screening requirements shall be modified to allow existing vegetation to satisfy the requirement along all lot lines with the exception of the following:

    A. the lot lines shared with Lots 1, and 17 and the lot line shared with the western boundary of Lot 7

    B. the entire south side of Sudley Road

    In those areas, a landscape plan shall be submitted to the Urban Forestry Branch for review and approval which shows the type and location of vegetation to be provided within a 50 foot wide strip. If existing vegetation in these areas is not equivalent to that of Transitional Screening 2, as determined by the Urban Forester, the areas shall be supplemented to the level of Transitional Screening 2. The barrier requirement shall be waived.

26. Permanent restroom facilities, if approved by the Fairfax County Health Department, may be installed in the existing gazebos in the picnic area. The applicant shall comply with State and Local Health Department Regulations regarding on-site sewage disposal. Additional septic field locations may be approved by the Fairfax County Health Department without requiring an amendment to this special permit provided development of the septic fields be accomplished with no clearing of vegetation, and shall not conflict with any other development condition of this approval.

27. Proper pool cleaning procedures shall be implemented. Pool waters not discharged through the pool's filter system shall be properly neutralized prior to being discharged during seasonal draining and/or cleaning operations. The recommended method involves adding sufficient amounts of lime or soda ash to the acid cleaning solution 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. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

28. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual and that meet the requirements of the Chesapeake Bay Preservation Ordinance shall be provided as determined by the Director, DEM. Existing ponds, with or without modifications, may be utilized for this purpose if deemed acceptable by the Director, DEM.

29. Modifications to the fairways and putting greens may be made without the approval of a special permit amendment provided such modifications do not infringe on delineated EQCs, limits of clearing and grading, reforestation areas, or conflict with any other development condition of this approval. If any vegetation is to be removed for such modifications, an equivalent amount shall be replaced in the vicinity.

This approval, contingent on the above-noted conditions, shall not relieve 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, all uses associated with this special permit approval, with the exception of the proposed nine-hole expansion area as delineated on Sheet 5 of 5 of the special permit plat, shall expire without notice, thirty (30) months after the date of approval* unless site plan approval has been obtained, all required building permits have been obtained and all required Non-Residential Use Permits have been issued, as determined by Department of Environmental Management (DEM) or unless additional time is approved by the Board of Zoning Appeals because of the occurrence of conditions unforeseen at the time of the approval of this special permit. With the exception of the nine-hole expansion area as described on Sheet 5 of 5 of the special permit plat, Non-Residential Use Permits may be issued upon satisfaction of all of the development conditions, as determined by DEM, except 16, 17, 18, and 25. Approval of the nine-hole expansion area shall expire without notice ten (10) years after the final approval date of this special permit unless construction has commenced and is diligently prosecuted or unless additional time is approved by the Board of Zoning Appeals because of the occurrence of conditions unforeseen at the time of the approval of this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 19, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 473, July 11, 1995, (Tape 2), Scheduled case of:

9:30 A.M. ROBERT L. MOORE, APPEAL 95-D-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of vehicles, construction equipment and other items in an R-1 District and the installation of a fence is in violation of Zoning Ordinance provisions. Located in the 9900 Block of Georgetown Pi. on approx. 4.94 ac. of land zoned R-1. Dranesville District. Tax Map 13-1 ((9)) 3A. (DEF. FROM 6/22 FOR LACK OF A QUORUM.)

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Since the appellant was not present, staff contacted the appellant's attorney, Frederick Taylor. After talking to Mr. Taylor it was determined that there was confusion over a previous request by the appellant to defer the case. Mr. Taylor assumed that the only action that the Board would take today would be to defer the case. Given the circumstances, the Board discussed deferring the appeal.

Martin Jones, homeowner, spoke to the request for deferral stating that he had originally requested a postponement of the case but had since made arrangements to come to the hearing and deferring it would be an imposition.

Mr. Dively motioned to defer Appeal 95-D-020 to the evening of September 19, 1995 at 8:00 p.m. It was seconded by Mr. McPherson and the motion passed by a vote of 7-0.

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Page 474, July 11, 1995, (Tape 2), 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. (DEF. FROM 10/11 AT APPLICANT'S REQUEST. RESCHEDULED ON 3/14)

Mr. Hammack moved to defer Appeal 94-V-015 to the morning of September 14, 1995. It was seconded by Mr. Pammel and the motion carried by a vote of 7-0.

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Page 474, July 11, 1995, (Tape 2), Scheduled case of:

9:00 A.M. LEWIS C. MEYERS, APPEAL 95-L-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of construction equipment, machinery and the keeping of a dump truck on appellant's property is in violation of Zoning Ordinance provisions. Located at 7200 Telegraph Rd. on approx. 2.0 ac. of land zoned R-1. Lee District. Tax Map 91-4 ((1)) 14. (DEF. FROM 4/4 FOR ADDITIONAL INFORMATION)

William Shoup, Deputy Zoning Administrator, said the issue was the storage of construction equipment and machinery which they determined was a storage yard and also the keeping of dump trucks on the appellant's residential property. He stated the letters received from the appellant's attorney addressed the keeping of dump trucks on the property. He noted that to show nonconforming rights to keeping three dump trucks on the property would require going back prior to 1959. Mr. Shoup stated the affidavits were lacking detail but said that they seemed to indicate that three dump trucks were on the property prior to 1959. He also stated that the appellant had not registered the vehicles in Fairfax County but in Thornburg, Virginia. Mr. Shoup said the appellant represented in the letter that the storage yard had been removed and that recent inspections revealed there were a couple of trailers on the site, and a few other items that still constituted storage yard activity. He stated that no nonconforming rights had been shown on the affidavits pertaining to the storage yard activity.

Corinne N. Lockett, Agent, stated that she mostly agreed with the Zoning Administrator and they were willing to register the vehicles in Fairfax County pending approval.

Mr. Meyers discussed how the storage yard was formed and why the trucks were registered in Thornburg.

Mr. Hammack asked Mr. Meyers about the history of the trucks. Mr. Meyers stated the trucks had been on the property prior to 1959.

Mr. Pammel questioned Mr. Meyers pertaining to the licensing of his corporation. Mr. Meyers answered that his attorney advised him to license his corporation in Thornburg, Virginia.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to uphold the Zoning Administrator's determination, it was seconded by Mr. Pammel, Mr. McPherson abstained from the vote, Mr. Hammack withdrew the motion.

Mr. Dively stated that Mr. Meyers had given testimony to prove the dump trucks were on the property prior to 1959 and he moved to overturn the Zoning Administrator's determination regarding storage of the dump trucks, it was seconded by Mr. Hammack and the motion carried by a vote of 4-2-1, with Chairman DiGiulian and Mr. Kelley voting nay. Mr. McPherson abstained from the vote.

Mr. Dively moved to uphold the Zoning Administrator's determination regarding the storage yard it was seconded by Mr. Kelley, the motion carried by a vote of 6-0-1. Mr. McPherson abstained from the vote.

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Page 475, July 11, 1995, (Tape 3), Action Item:

Approval of July 6, 1995 Resolutions

The Board voted to approve the Resolutions as submitted by staff. The motion carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 475, July 11, 1995, (Tape 3), Action Item:

A. Budd Fenton Trust Fund Number One Appeal Request

Mr. Pammel motioned to accept A. Budd Fenton Trust Fund Number One Appeal and scheduled the public hearing for the morning of October 10, 1995, it was seconded by Mr. Hammack, and carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 475, July 11, 1995, (Tape 3), Action Item:

Request for Additional Time
A&K Recreational Center

Mr. Pammel motioned to grant the request for Additional Time for A & K Recreational Center SP 92-M-040, it was seconded by Mr. Ribble, and carried by a vote of 6-0, Mr. Dively was not present for the vote. The new expiration date will be October 15, 1996.

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Page 475, July 11, 1995, (Tape 3), Action Item:

Request for Reconsideration
Monte P. Asbury, Jr. t/a The Cue Club

Mr. Kelley motioned to deny the Request for Reconsideration for Monte P. Asbury, Jr. t/a The Cue Club, SP 95-M-011, it was seconded by Mr. McPherson. and carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 475, July 11, 1995, (Tape 3), Action Item:

Request for Reconsideration
Katherine L. Frazier

Mr. Hammack motioned to deny the Request for Reconsideration for Katherine L. Frazier, SP 95-L-022, it was seconded by Mr. Ribble. The motion carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Jane Kelsey, Chief, Special Permits and Variance Branch, reaffirmed the fact that the Board members agreed to vacate the Board Auditorium on the date requested by the Office of Personnel by 12:30 p.m. Chairman DiGiulian said they had agreed to conduct the public hearing but had not agreed to move into a conference room. He added that whatever cases had not been heard by 12:30 would be deferred. He directed Ms. Kelsey to check on dates in September that would be available to schedule a hearing.

Mr. Ribble stated that Vi Taylor, President of Fairhaven Civic Association, asked for a deferral of Sharkey's Billiard Hall that was scheduled for July 20, 1995. Ms. Kelsey stated that it would not be possible to defer the case because it would not fall within the ninety day time frame, also it could not be deferred beyond 90 days from the date of acceptance without the applicant's consent.

John Garrott, 4020 Justine Drive, questioned the Board as to the reason they denied the Request for Reconsideration of Monte P. Asbury Jr. t/a The Cue Club. Chairman DiGiulian and Mr. Kelley agreed that the information submitted with the Reconsideration had not swayed their original decision.

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As there was no other business to come before the Board, the meeting was adjourned at 1:14 p.m.

Minutes by: Regina Thorn

Approved on: October 10, 1995

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 18, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Timothy McPherson and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 477, July 18, 1995, (Tape 1), Scheduled case of:

8:00 P.M. VIRGINIA KOREAN BAPTIST CHURCH, SPA 80-S-043 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 80-S-043 for church and related facilities to permit building additions, change in permittee and change in development conditions. Located at 7200 Ox Rd. on approx. 15.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 1A and 1L.

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, Stephen K. Fox, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by David Hunter stating the application was for an amendment to a special permit for a church to permit building additions and an increase in parking spaces from 96 to 166 and an increase in seating from 252 to 400. Proposed Development Condition #13 was distributed to the Board to reflect the applicants' option of having lights in the parking lot.

Mr. Fox presented the case as contained in the applicant's statement of justification contained in the staff report. He discussed the concerns the applicant had with Development Conditions 6 and 10.

In response to Mr. Hammack's question, Ms. Kelsey replied staff had no objections to revised Development Conditions 6 and 10.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SPA 80-S-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SPA 80-S-043 by VIRGINIA KOREAN BAPTIST CHURCH, under Section 3-C03 of the Zoning Ordinance to amend SP 80-S-043 for church and related facilities to permit building additions, change in permittee and change in development conditions, on property located at 7200 Ox Road, Tax Map Reference 87-4((1))1A and 1L, 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 18, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is approximately 15.0 acres.
4. It was deemed appropriate to modify Proposed Development Conditions 6 and 10, and to add a new condition numbered 13, as reflected in this Resolution.

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 Gordon Associates comprised of 2 Sheets, dated February 10, 1995 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The number of seats in the sanctuary shall be 252 until such time as 100 parking spaces are provided for a maximum of 400 seats.

6. There shall be 166 parking spaces provided as shown on the special permit plat. All parking shall be on site. The parking area surface shall be reviewed by DEM during site plan review. Illumination of the parking lot, if it is desired, shall be approved by DEM. (See Condition 13.)

7. Transitional Screening 1 shall be modified along the southeastern and northern property lines as shown on the special permit plat. The existing trees located between the northern property line and the existing playground shall be remain. Existing vegetation shall satisfy the transitional screening requirement along the western property line.

   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, DEM.

   Interior parking lot landscaping and building foundation plantings shall be provided to the satisfaction of the Urban Forestry Branch DEM.

   The barrier requirement shall be waived along all lot lines.

8. Stormwater Best Management Practices (BMPs) shall be provided on site as shown on the special permit plat to the satisfaction of the Department of Environmental Management (DEM) in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

9. 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 the Department of Environmental Management (DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DEM, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM.

10. Right-of-way to 90 feet from the centerline of Ox Road necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan review, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

    The existing deceleration lane shall be maintained on Ox Road.

    An interparcel access easement shall be provided to Lot 7F to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County at the time of site plan review.

11. The applicant shall provide an off-duty police officer to be stationed at the entrance of the site on Sunday mornings between 9:00 a.m. and 12:00 noon to facilitate left-turns into and from the site.

12. Signs shall be permitted in accordance with Article 12, signs.

13. The combined height of the light standards and fixtures shall not exceed twelve (12) feet. The lights shall be a design which focuses the light directly onto the subject property. Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

These conditions incorporate and supercede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

The additional parking spaces to satisfy the parking requirement for 400 seats shall be provided within twelve (12) months of the approval date* of this special permit amendment.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 479, July 18, 1995, (Tape 1), Scheduled case of:

8:00 P.M. SEOUL PRESBYTERIAN CHURCH, SP 95-S-029 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities. Located at 6426 Ox Rd. on approx. 5.77 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-3 ((1)) 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, Sarah Hall, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the request was for approval of a special permit for church and related facilities. The existing single family dwelling was proposed to be used as a fellowship hall and classroom space. Ms. Langdon said a 12,200 square foot building would be constructed to serve as a sanctuary on the first floor and classrooms and offices on the lower level. The sanctuary would contain 250 seats and the existing gravel entrance would be paved and lead to an 86 space paved parking lot in front of the sanctuary. Ms. Langdon said staff believed the application was in harmony with the Comprehensive Plan, was in conformance with the applicable Zoning Ordinance Provisions and recommended approval of the applicationl; therefore, staff recommended approval.

Ms. Hall represented the applicant and presented the case as outlined in the statement of justification submitted with the application. Ms. Hall introduced the Pastor and some of the elders of the church.

Chairman DiGiulian called for speakers. There were no speakers in support and the Chairman called for speakers in opposition to the application.

Richard and Stasha Camby, 6515 Wolf Run Shoals, and Quong Sun, 6430 Ox Road, spoke in opposition and expressed their concerns pertaining to future development near the Environmental Quality Corridor (EQC).

Ms. Hall, in rebuttal, addressed the speakers concerns to indicate that before any future additions could be constructed, a special permit amendment would be necessary and they are very sensitive to the EQC.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SP 95-S-029 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-S-029 by SEOUL PRESBYTERIAN CHURCH, under Section 3-C03 of the Zoning Ordinance to permit a church and related facilities, on property located at 6426 Ox Road, Tax Map Reference 77-3((1))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 July 18, 1995; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The present zoning is R-C and WS.
3. The area of the lot is approximately 5.77 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Han D. Chey, P.E., dated April 18, 1995, revised and submitted to the Special Permit & Variance Branch dated June 21, 1995 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 determined 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 western and a portion of the southern lot line shall be preserved and maintained as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1. Transitional Screening 1 shall be provided along the eastern and a portion of the southern lot lines as depicted on the approved special permit plat. Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review.

6. Foundation plantings and shade trees 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.

7. The barrier requirement shall be waived along the western, eastern and a portion of the southern lot lines. Barrier D shall be provided along a portion of the southern and northern lot line as depicted on the approved special permit plat. Along the southern lot line, the barrier shall be located adjacent to the parking lot with the trees as approved for transitional screening planted between the barrier and southern lot line.

   The barrier along the northern lot line shall be located off the lot line as far as practicable as determined at the time of site plan review by the Urban Forestry Branch in order to protect the trees on the adjacent property.

8. The maximum number of seats in the main area of worship shall be 250.

9. Eighty-six (86) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.

10. The applicant shall provide a twenty-four (24) foot wide area along the eastern lot line south of the proposed driveway for a future interparcel connection with Lot 33. The church shall construct that portion of the interparcel connection and grant appropriate public access easements if, and when, Lot 33 is required to construct an interparcel connection.

11. 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).

12. The existing wooded area denoted on the special permit plat, including the Environmental Quality Corridor (EQC), shall not be disturbed. There shall be no clearing or grading of any vegetation except for dead or dying vegetation, as determined by the Urban Forestry Branch. There shall be no structures located in the wooded preservation area.

13. A sign permit shall be obtained for any sign proposed for this site.

14. 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 and glare 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. 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. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 481, July 18, 1995, (Tape 1), Scheduled case of:

8:00 P.M. MOUNT VERNON YACHT CLUB, INC., SPA 80-V-028 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-V-028 for swimming pool and marina to permit increase in number of boat slips and increase in acreage. Located at 4817 Tarpon Ln. on approx. 8.82 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((4)) (H) 1; 110-3 ((4)) A. (MOVED FROM 6/22 AND 7/6 AT APP.'S REQUEST)

(The verbatim transcript can be found in the file for this application.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Elizabeth Baker, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report stating the applicant requested approval of a special permit amendment to permit an increase in the number of boat slips from 80 to 137 slips and an increase in acreage from 3.6 acres to 8.82 acres. The additional 57 slips exists on site and were constructed on the subject property without special permit approval. The applicant was also requesting approval to increase land area. Ms. Langdon said no additional construction or other uses were proposed with the application. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with all applicable Zoning Ordinance provisions; consequently, staff recommended approval subject to the proposed development conditions.

Ms. Baker outlined the applicant's request as set forth in the statement of justification submitted with the application. She explained that the additional 57 boat slips were constructed intermittently over numerous years and that she believed it was due to the turnover in ownership and poor record keeping that had resulted in the construction of boat slips not permitted by the existing special permit. Ms. Baker stated that the applicant was not aware of the noncompliance of the special permit and upon discovering the error they filed a special permit amendment to rectify the noncompliance. She said there will be no other physical changes to the Yacht Club and distributed the applicants' proposed development condition changes. Ms. Baker said it appeared from the letters that the opposition stems from an internal issue regarding the control of the club by its membership which dealt with an issue that was the subject of a lawsuit last summer. She did not believe the issue was related to this land use case since the applicant was merely proposing improving existing uses on the site, not changing any activities or intensifying the uses on the site.

Chairman DiGiulian called for speakers and the following came forward.

Ted Pearsall, 4804 Tarpon Lane, Geri Pogue, Al Johnson, adjacent property owners, William Lacey 9515 Mount Vernon Landing, Elroy C. Avery, 4321 Tarpon Lane, and Joan Kanadiman, 4709 Tarpon Lane, spoke in support of the application.

John Sweeney, 4728 Neptune Drive, William Allen, 4724 Neptune Drive, John Echter, 4328 Tarpon Lane, Arthur R. Benke, President of the Yacht Haven Estates Property Owners Association, George Callahan, 4720 Neptune Drive, James Hess, 4405 Tarpon Lane, Michael J. Waters, 4401 Tarpon

Lane, William Beckman, 4700 Tarpon Lane, Kenneth Campbell, John F. White, 4412 Dalton Lane, Dick L. Porter, 4329 Tarpon Lane, William Clinkscales, 4621 Tarpon Lane, Alvaro Lopez, Lot 12, Charles Porterlupe, 4601 Tarpon Lane, and Gladys Merrick spoke in opposition of the application.

Ms. Baker addressed the issues of membership stated by the speakers in her rebuttal stating that 85 percent of the members come from the Mt. Vernon area. She also stated that the plat is correct insofar as the number and location of the parking spaces.

Mr. Hammack and Ms. Baker discussed the membership level.

Ms. Langdon commented on the proposed amendments to the development conditions concerning staff's position that fuel only be sold to members of the Club and stated that the condition relating to after hours parties is carried over from the previous approval.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SPA 80-V-028 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions dated July 18, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Amendment Application SPA 80-V-028 by MOUNT VERNON YACHT CLUB, INC., under Section 3-203 of the Zoning Ordinance to amend SP 80-V-028 for swimming pool and marina to permit increase in number of boat slips and increase in acreage, on property located at 4817 Tarpon Lane, Tax Map Reference 110-3((4))(H)1; 110-3((4))A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 18, 1995; and

WHEREAS, 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 8.82 acres.
4. It was found to be advisable to modify Proposed Development Conditions 4, 6, 7 and 10, as reflected in this Resolution.
5. It was found to be inadvisable to address the issue of riparian rights which are covered by laws outside the purview of the Board.

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 Larry N. Scartz, dated April 28, 1993, revised through June 6, 1995, 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 determined 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. The Board of Zoning Appeals has no objection to the waiver of this requirement.

5. The operation of the pool shall be limited to Memorial Day through Labor Day, seven days a week from 8:00 a.m. to 9:00 p.m.*

6. The maximum hours of operation of the fuel dock shall be Saturday and Sunday from 9:00 a.m. to 12:00 noon.

Page 483, July 18, 1995, (Tape 1), MOUNT VERNON YACHT CLUB, INC., SPA 80-V-028, continued from Page 482 )

7. Unless otherwise qualified herein, extended-hours for parties or other activities of outdoor community swim clubs or recreation associations shall be governed by the following:

   (A) Limited to six (6) per season.
   (B) Limited to Friday, Saturday and pre-holiday evenings.
   (C) Shall not extend beyond 12:00 midnight

8. The maximum number of memberships shall be 234.

9. The maximum number of boat slips shall be 137.

10. Seventy-eight (78) parking spaces shall be provided as shown on the Special Permit Plat and all parking spaces shall be striped. All parking shall be on site. The parking spaces existing on Tarpon Lane shall be removed.

11. Existing vegetation along the northern, eastern and western lot lines shall be preserved and maintained as indicated on Sheet 2 of the approved Special Permit Plat and shall satisfy the requirements of Transitional Screening 1. The existing wood, wire and chain fences along the northern, eastern and western lot lines shall be maintained as indicated on Sheet 1 of the approved Special Permit Plat and shall satisfy the barrier requirements.

It is noted that these development conditions incorporate and supersede all previously imposed conditions. The previous conditions are noted above with an asterisk (*).

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall obtain a Non-Residential Use Permit through established procedures, within six (6) months of the approval date* of the special permit or the special permit shall be null and void. The Non-Residential Use Permit shall include the additional land area and 137 boat slips.

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 26, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 483, July 18, 1995, (Tape 1), After Agenda Item:

Approval of July 11, 1995 Resolutions

The July 11, 1995 Resolutions were approved by the Board of Zoning Appeals, and carried by a vote of 6-0 with Mr. Pammel absent from the meeting.

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Page 483, July 18, 1995, (Tape 1), After Agenda Item:

Approval of May 9, 1995 Minutes

The May 9, 1995 Minutes were approved by the Board of Zoning Appeals and carried by a vote of 6-0 with Mr. Pammel absent from the meeting.

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Page 483, July 18, 1995, (Tape 1), After Agenda Item:

Request of Waiver of the 12-Month Limitation

The request for a Waiver of the 12-Month Limitation was granted to Ronnie Bailey, VC 95-L-043, and carried by a vote of 6-0 with Mr. Pammel 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 p.m.

Minutes by: Regina Thorn

Approved on: November 9, 1995

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 20, 1995. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Timothy McPherson was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 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 485, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD C. & LINDA L. JARMAN, SP 95-Y-025 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 6.3 ft., deck 4.2 ft., and stoop 2.8 ft. from side lot line. Located at 15471 Meherrin Dr. on approx. 13,094 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 48. (OUT OF TURN HEARING GRANTED. DEF. FROM 6/27 FOR APPL. TO CORRECT ENCROACHMENTS AND SUBMIT REVISED PLAT.)

Mr. Hammack stated that he had reviewed the revised plat prepared by Greenhorne & O'Mara and noticed that a note #12 had been added to the plat to the effect that the plat had been prepared for the purpose of locating the dwelling unit, deck and stoop only. He said that, with the referenced note and a slight modification of the Proposed Development Conditions, the Board could approve this special permit application.

Mr. Hammack moved to grant SP 95-Y-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 13, 1995, with the modifications reflected in the Resolution.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, pointed out that, at the original hearing, the words "...the required permits..." were changed to "...any required permits...," and that change was accepted as part of the motion.

The Board waived the eight-day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-Y-025 by RICHARD C. & LINDA L. JARMAN, 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 6.3 feet, deck 4.2 feet, and stoop 2.8 feet from side lot line, on property located at 15471 Meherrin Drive, Tax Map Reference 53-3((4))(1)48, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

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 to allow reduction to the minimum yard requirements based on an error in building location to allow an existing dwelling to remain 6.3 feet from the side lot line, a deck to remain 4.2 feet from the side lot line, and a stoop to remain 2.8 feet from the side lot line, as shown on the Special Permit Plat prepared by Greenhorne & O'Mara, Inc., dated July 13, 1995 submitted with this application, as qualified by these development conditions.

3. 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 July 13, 1995 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 any 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 4-0-1. Mr. Pammel abstained because he had not been present for the original hearing. Mr. Ribble was not present for the vote. Mr. McPherson was absent from the meeting.

Mr. Hammack moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 4-0-1. Mr. Pammel abstained because he had not been present for the original hearing. Mr. Ribble was not present for the vote. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 486, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. NINTEMAN, VC 95-M-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. and deck 8.5 ft., dwelling to remain 8.6 ft. and stairs 3.7 ft. from side lot line. Located at 6248 Columbia Pi. on approx. 12,210 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((14)) 40.

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 M. Ninteman, 6248 Columbia Pike, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report dated July 11, 1995.

Mr. Ninteman presented the statement of justification, previously submitted in writing with the application and incorporated into the file. He also submitted letters of support from neighbors and a realtor from whom they purchased the home; he also submitted photographs for the Board's review. Mr. Ninteman said he had learned of a letter of objection from a neighbor who was in the process of selling his property. He said that, the previous evening, he had spoken with the purchasers of that property who are in favor of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 95-M-051 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-M-051 by JAMES M. NINTEMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.6 feet and deck to remain 8.5 feet, dwelling to remain 8.6 feet and stairs to remain 3.7 feet from side lot line, on property located at 6248 Columbia Pike, Tax Map Reference 61-3((14))40, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

WHEREAS, 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 12,210 square feet.
4. The lot has topographical problems.
5. The lot is narrow.
6. The applicant is restricted from placing the addition in any location other than the one proposed, primarily because of a pond and spring to the rear of the property and the topography.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition, dwelling, deck and stairs shown on the plat prepared by Alexandria Surveys, Inc., dated March 7, 1995, revised through May 30, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the addition and deck 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.

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Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 488, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. PETER CONLON, VC 95-H-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8 in. from rear lot line. Located at 13230 Stable Brook Way on approx. 8,983 sq. ft. of land zoned PDH-16. Hunter Mill District. Tax Map 25-1 ((14)) (6) 47.

Chairman DiGiulian advised that he had a note stating that the notices were not in order for this application. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she had discussed this with the applicant, who was present and, with the Board's concurrence, staff would like to set a new hearing for October 3, 1995, at 9:00 a.m. Mr. Ribble so moved. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

Ms. Kelsey also said she had called the applicant's attention to the Board's previously expressed concerns about an addition being constructed so close to the property line.

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Page 488, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. MR. & MRS. MARK S. ORLING, VC 95-V-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 2019 Swan Tr. on approx. 24,765 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((39)) 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. Mark S. Orling, 2019 Swan Terrace, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report dated July 11, 1995. He stated that staff had received two letters in support of the application.

Mr. Orling presented the statement of justification, previously submitted in writing with the application and incorporated into the file. He said he had spoken with many of the neighbors and none were in opposition to the application. Mr. Orling requested a waiver of the eight-day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing

Mr. Ribble moved to grant VC 95-V-054 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995. The Board moved to waive the eight-day waiting period.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-V-054 by MR. & MRS. MARK S. ORLING, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 square feet, on property located at 2019 Swan Terrace, Tax Map Reference 93-1((39))11, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; 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 24,765 square feet.
4. The pipestem lot has an unusual shape.

5. Mature trees on the property would have to be removed if the structure were to be located elsewhere on the property, other than the proposed location.
6. Adjacent neighbors support the application and have no objections.
7. The Architectural Review Board in the community has given its "stamp of approval" to the proposal.
8. The granting of this request would in no way adversely affect the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific detached garage shown on the plat prepared by Rust, Orling, and Neale, Architects, dated April 5, 1995, revised through May 2, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the detached garage prior to any construction and final inspections shall be approved.

3. The detached garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1995. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RONALD EARYES, SP 95-S-027 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification for certain lots to permit construction of addition 16.5 ft. from side lot line. Located at 11510 Clara Barton Dr. on approx. 32,437 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((7)) 632.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronald Earyes, 11510 Clara Barton Drive, Fairfax Station, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report dated July 11, 1995.

Mr. Earyes presented the statement of justification, previously submitted in writing with the application and incorporated into the file.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley addressed staff and referenced Proposed Development Condition 3 and the paragraph immediately following Condition 4. He said that he detected a redundancy and Mr. Heine agreed. The result is reflected in Mr. Kelley's motion.

Mr. Kelley moved to grant SP 95-S-027 for the reasons set forth in the applicant's statement of justification and reflected in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995, as amended by deleting Condition 3.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-S-027 by RONALD EARYES, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit construction of addition 16.5 feet from side lot line, on property located at 11510 Clara Barton Drive, Tax Map Reference 76-2((7))632, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

WHEREAS, 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 32,437 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.
8. It was found to be appropriate to delete the original Proposed Development Condition 3 because it was redundant, based upon a succeeding paragraph, which is reflected in this Resolution.
9. The applicant's statement of justification was incorporated into the findings of fact through reference.

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 Ross, France, and Ratliff, Ltd., undated, revised by Ronald J. Earyes, Professional Engineer, April 21, 1995, submitted with this application and not transferable to other land.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 490, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. EFIM AND MAJA DRUCKER, VC 95-D-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.3 ft. from front lot line and 9.0 ft. from side lot line. Located at 7022 Hector Rd. on approx. 14,335 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-3 ((9)) 99.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Efim Drucker, 7022 Hector Road, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated July 11, 1995.

Mr. Drucker presented the statement of justification, previously submitted in writing with the application and incorporated into the file.

Mr. Hunter directed the Board's attention to an error in the applicant's presentation: The minimum required front yard for an R-3 lot is 30 feet; therefore, the variance is 7.7 feet. Mr. Hammack asked staff if the application had been properly advertised and Mr. Hunter replied that it had.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 95-D-050 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Variance Application VC 95-D-050 by EFIM AND MAJA DRUCKER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.3 feet from front lot line and 9.0 feet from side lot line, on property located at 7022 Hector Road, Tax Map Reference 21-3((9))99, 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 20, 1995; 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 14,335 square feet.
4. Although the Board generally does not favor front yard variances, the variance requested is marginal to the front and side yards.
5. The addition is architecturally compatible with and an improvement to the neighborhood.
6. The yard is very narrow and tapers toward the front.
7. The dwelling unit is shoved toward the narrow front end, which makes it difficult to get around to the back and locate anything there.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings 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 Alexandria Surveys, Inc. dated February 28, 1995, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this variance.

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Page 492, July 20, 1995, (Tape 1), Scheduled case of:

9:00 A.M. KRISTEN J. AMUNDSON, SP 95-V-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 permit addition to remain 10.2 ft. from side lot line. Located at 1402 Middlebury Dr. on approx. 13,118 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((5)) (5) 11A. (MOVED FROM 6/13 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. Kristen J. Amundson, 1402 Middlebury Drive, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report dated July 11, 1995.

Ms. Amundson presented the statement of justification, previously submitted in writing with the application and incorporated into the file.

There were no speakers and Chairman DiGiulian closed the public hearing.

Chairman DiGiulian addressed staff, noting that the location had been approved by the Zoning Administrator in 1956. At that time, the required setback was stated by Mr. Heine to have been 15 feet, in answer to a question from Mr. Pammel. When rezoned to R-3, the lot did not conform to the building requirements of the day, so the side yard was never considered to be in conformance. Mr. Heine said a building permit had been issued for 10.5 feet. When Ms. Amundson came in to apply for a building permit, it was discovered that the lot did not conform to the requirements under the R-3 rezoning and that a special permit for an error in building location was required.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SP 95-V-015 for the reasons stated by the applicant and set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-V-015 by KRISTEN J. AMUNDSON, 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 10.2 feet from side lot line, on property located at 1402 Middlebury Drive, Tax Map Reference 93-2((5))(5)11A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

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 garage addition shown on the plat submitted with this application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat, entitled Plat, Showing Lot 11A, Block 5, Resubdivision of Lots 11 thru 16, Westgrove, prepared by Alexandria Surveys, dated December 20, 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 porch enclosure addition.

4. The porch enclosure 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.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 494, July 20, 1995, (Tape 1), Scheduled case of:

9:30 A.M. HERMANN J. ESSER, SP 95-D-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 6.1 ft. from side lot line and 4.8 ft. from rear lot line and dwelling to remain 16.8 ft. from side lot line. Located at 1300 Altamira Ct. on approx. 1.13 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((7)) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hermann J. Esser, 1300 Altamira Court, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated July 11, 1995.

Mr. Esser presented the statement of justification, previously submitted in writing with the application and incorporated into the file.

Kathleen McGillan, 1345 Woodside Drive, McLean, Virginia, spoke in opposition to the application. Her concerns were that the shed could be seen clearly from her property in the winter and that it reduced her property value. She agreed with Mr. Esser's plan to use trees for screening. Ms. McGillan wished to have the Board take steps to guarantee her screening from the view in the event that the property is sold.

Mr. Dively asked Ms. McGillan what the distance was from the property line to her dwelling. She said she did not know in feet how far it was but guessed it was about half-an-acre and, in summer, the leaves offered screening. Ms. McGillan said she had approached the builder, in Mr. Esser's absence, to tell him not to proceed with the project because it was too close to the property line; however, she said he speeded up the construction at that point.

At Chairman DiGiulian's invitation to rebut, Mr. Esser said he had signed an agreement to maintain and continue to maintain the trees and color of the fence agreed upon. He said that, at a greater distance away from the lot line, the shed would be even more visible to the neighbors because it would not be screened as effectively. He said he planned the location of the shed to take advantage of existing screening offered by trees on other properties.

Mr. Hammack moved to grant SP 95-D-026 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 11, 1995, as amended by adding two new conditions between Conditions 1 and 2 and renumbering Condition 2 to be Condition 4.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-D-026 by HERMANN J. ESSER, 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 6.1 feet from side lot line and 4.8 feet from rear lot line and dwelling to remain 16.8 feet from side lot line, on property located at 1300

Altamira Court, Tax Map Reference 29-1((7))5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

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. The applicant shall plant, maintain and replace when required, in perpetuity, a row of evergreen trees between the shed and the property line of adjacent Lot 34.

3. The shed shall be painted in architecturally compatible colors and maintained in good condition at all times.

4. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Andrew P. Dunn, Land Surveyor, dated April 17, 1995 submitted with this application, as qualified by these development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. SHARKEYS, INC. D/B/A FAST EDDIE'S BILLIARD CAFE, SP 95-V-031 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a billiard hall. Located at 6220 Richmond Hwy. on approx. 2.84 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 22C and 22D.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William C. Thomas, Jr., FAGELSON, with the law firm of SCHONBERGER, PAYNE & DEICHMEISTER, P.C., 1733 King Street, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report dated July 11, 1995. He advised that several letters had been received by staff. Mr. Hunter further stated that staff recommended approval of the application, subject to the Proposed Development Conditions contained in the staff report. He said that the applicant's agent was prepared to address proposed additions to staff's Proposed Development Conditions.

Mr. Thomas said that he would propose supplemental conditions and that they took issue with two of the conditions proposed by staff. With respect to the Jamaica Drive entrance, the applicant was interested in providing limited access from that area during the hours of 10:00 a.m. and closing, because of neighborhood concerns. Mr. Thomas said, for that reason, they would agree to the Condition proposed by staff; however, they would like to add conditions regarding gating and chaining the entrance, whether it is widened or designated "exit only," during the other times of day. He said the applicant would like to make improvements not generally considered "by right" in the C-8 District and not actually requested by staff, although they agreed to all of the conditions proposed by staff, other than the two mentioned in the letter addressed to Southeast Fairfax Development Corporation (SFDC) and forwarded to the Board members. He said he would present the "package" that the community would receive: The parking lot would be completely repaved and restriped. The buildings, which have been subjected to graffiti and are in disrepair through lack of use and look like the old-style grocery buildings or like industrial property, will have the side walls torn down and rebuilt and new windows will be installed to eliminate the "old" look. Mr. Thomas said that the adjoining Staples store will be expanded and converted to contribute to the overall upgraded appearance of the Center by creating a Staples Superstore. He said that the other improvements the applicant has agreed to are shown in the letter to the SFDC, which has been incorporated into the file.

Mr. Thomas said he believed that one of the substantial benefits to the community was that, on a site where barrier and transitional screening issues have all been waived, they had an opportunity to voluntarily add landscaping on the north Kings Highway frontage, the Richmond Highway frontage and, in compliance with the current tenant, the landlord and the applicant, they had an opportunity to provide a modified transitional screening area on the property line that abuts the adjacent residences. Mr. Thomas submitted an exhibit for the Board's review, to which he said they would commit. He said the landscaping showed the fence as designated by staff's conditions; however, the applicant was agreeable to placing the fence within the evergreen plantings or on the inside of the evergreen plantings. Mr. Thomas said that, since the six-foot-high fence was a mitigation measure, they did not wish to foist it upon the neighbors, some of whom have stated that they did not wish to be shut in by a fence. For that reason, the applicant would agree to place the fence in a location compatible with the wishes of the neighbors, which obviously would be to have the plantings on the side of the fence facing the residences.

Mr. Thomas related the differences between the "Music Man" stereotypical pool halls of the 1950's and the billiard parlors of today. He said the subject had been discussed with the community and, for those interested, he suggested visits to established facilities of this type, to be convinced that they are upscale and acceptable and not the stereotypical facilities of the past. He referenced the fact that they are also eating establishments, some have bars, and he submitted photos and brochures describing existing facilities.

Mr. Thomas emphasized that the applicant had gone to great lengths to meet the concerns of the community. He said the existing facilities had been accepted by the communities in which they exist and previous opponents of the uses had provided testimony on behalf of the owners of such establishments.

Mr. Dively asked Mr. Thomas when a bar/restaurant became a billiard parlor, assuming that one billiard table did not constitute a billiard parlor. Mr. Thomas said that the County standard allowed utilization of as much as 15% of gross floor area for amusement activity; in a 15,000-square-foot area, as many as ten pool tables could be placed by right as part of a restaurant operation. In answer to a question from Mr. Dively, Mr. Thomas said that the applicant proposed 26 pool tables in the facility and again described the screening.

Edward W. Gillis, 7737 Timberland Drive, Springfield, Virginia, the president of Fast Eddie's I and II in Springfield and Fairfax, and a future partner of the subject operation, came forward and spoke in favor of the application. He stated that the existing establishments had improved the communities in which they are located by providing jobs, paying taxes and offering alternate entertainment, among other things. He said they were relatively expensive, which catered to an upscale clientele and kept out any "bad" element. Mr. Gillis said he agreed to all of the conditions imposed by staff, some of which were quite expensive. He said he would agree to a condition calling for a review after a year or two, at which time the hours could be changed if there was proof that use was not trouble-free.

In answer to a question from Mr. Hammack, Mr. Gillis said that the existing Springfield and Fairfax locations were both open from 11:00 a.m. to 2:00 a.m., as were all other restaurants in the area, by right.

Sean Adler came forward to state that he represented the owner of the shopping center and spoke in favor of the application, citing many of the benefits to the community already mentioned.

Pleasant Lewis and Brenda Lewis, partners of Mr. Gillis is this venture, came forward to support the application, stating that they have owned Golds Gym for three years, about three miles from the subject site.

The following people spoke in opposition: Vi Taylor, President of the Fairhaven Civic Association, 2506 Fairhaven Avenue; Kendall Wilson, 6112 Bangor Drive; Ray Foote, 6004 Bangor Drive; Ray Kelley, 2623 Jefferson Drive, president of the civic association at Jefferson Manor; Monsoor Azar, 2505 Belleview Avenue; David E. Bolte, 836 Herbert Springs Road, Chairman of the Planning and Zoning Committee of the Mt. Vernon Council of Citizens Associations which voted in opposition to the application; Paula Solarzano, 6010 Park Place; Bonnie Hawkins, 2513 Jamaica Drive; Betsy Arnett, 2501 Fairhaven Avenue; Richard Neil, Bellehaven on the Green, a mile north of the site; John Garrett, 4020 Justine Drive, Annandale, Virginia, president of the Concerned Citizens of Fairfax County; and James Parsonese, 2510 Jamaica Drive.

Concerns related by speakers were: Notification was not considered timely and did not include enough people outside of the institutional and business community; at a local civic association meeting in June, 79 voted and 78 voted against the application; affect on revitalization; the community has been in a conservation area for fifteen years; Mt. Eagles School is located across the street from the subject site; Calvert Presbyterian Church is also across the street; elderly people live nearby; crime already is a problem in the area and the Captain of the local police station could not be present but could back up that fact that the area had the heaviest trafficking in prostitution, drugs and related incidents; the community did not want the children to be impacted by this facility because of the drinking and the possibility that drunken patrons might be thrown out into the surrounding community; drunken, rowdy and noisy patrons would be leaving the proposed establishment; the area does not need the additional vehicular traffic until 2:00 a.m.; the Mt. Vernon Supervisor did not advise in favor of the application; juvenile delinquency; vehicles exiting onto residential streets; the use was not considered appropriate for the community; the stigma of a pool hall in the neighborhood; quality of life; disregard for the residents' concerns; evening and late night traffic and in an area with no sidewalks; proximity to the residences; proper and adequate screening; the closing time should be earlier; potential extensive loitering; police statistics claimed to have resulted from similar uses in other areas (challenged by Chairman DiGiulian, who said he had spoken directly with the Police, as not specifically having been attributed to Fast Eddie's or Champions, as claimed by Mr. Garrett).

Mr. Pammel asked Ms. Taylor if she was aware that a Sports Bar and Grill is a permitted by-right use on this property. She said she believed there was a narrow line. Mr. Pammel said that a restaurant serving alcoholic beverages was permitted by right. He asked if the Association had given Mr. Thomas an opportunity to make a presentation to them so that they would better understand the proposed use. She said their schedule did not permit it, but the community was 100% against the use and added she had not been invited to the SFDC meeting.

In answer to a question from Mr. Ribble, Mr. Hunter stated that the notices were in order.

During the discussion, Mr. Dively pointed out the fact that the proposed use was legal.

The BZA discussed the statement by opponents that this type of use had a proven record of increase in crime, which he challenged, and requested statistics which were not forthcoming from any of the opponents. Mr. Hunter said the police department in the area of an existing use of this type had no statistics. The BZA and speakers had a lengthy discussion.

Mr. Thomas returned for rebuttal, stating that what he had heard was an opposition which was galvanized against the application. He said the applicant had not been afforded the opportunity to speak to many of the groups for many reasons. He described his efforts to contact groups and associations, among which was his contact with Ms. Taylor directly to let her know that he was going to SFDC, who had made the request for his visit two days previous to his call to Ms. Taylor. His rebuttal continued along the lines of previous assurances expressed by him. In addition, he said the applicant was willing to have uniformed security guards to police the area and Mr. Dively asked if Mr. Thomas was submitting the language about the uniformed security guards and good neighbor policy as a Condition 14 and Mr. Thomas replied in the affirmative.

Mr. Gillis came forward to confirm that he would accept Condition 14 relating not only to the uniformed security guard, but a uniformed off-duty police officer. Mr. Thomas said they had offered to gate and chain the Jamaica Drive entrance and to adopt the changes to that entrance, which are actually Office of Transportation issues, contained in the staff report. Mr. Thomas said he did not believe there would be impacts during the hours in question, especially with the other operational constraints; however, his understanding was that, based upon the lease between the landlord and Staples, the applicant cannot completely close the Jamaica Drive entrance. Vehicles exiting the property late at night and running through the neighborhood would be effectively eliminated because the vehicles would be forced to use Richmond Highway. It was stated that Staples closed at 9:30 p.m.

Mr. Dively asked Mr. Thomas if the applicant would agree to transitional screening on the north and Mr. Thomas referenced the exhibit which demonstrated a 10-foot transitional screening area not previously proposed.

The discussion continued concerning the Jamaica Drive entrance with the landlord's agent, Sean Adler, said he would be willing to lock the entrance.

Mr. Hunter referenced staff's indication that, because the entrance does not meet VDOT standards, it must be widened or narrowed in order to remain open for one-way entrance or exit or widened to meet the two-way commercial entrance and exit. Mr. Thomas said they agreed with staff's comments, as previously stated, and were willing to do either modification.

Chairman DiGiulian closed the public hearing.

Mr. Pammel addressed the members of the community present that day and said he wished them to know that for eight years he previously had worked with the SFDC in their ongoing effort to upgrade the quality of the Route 1 Corridor. He said he believed that to be the most important objective in any community. He said that, without viable businesses, the entire community would suffer, which was previously demonstrated in the Corridor. This goal was for the benefit of both the businesses and the community which relied upon the services. Mr. Pammel referenced the concern about alcohol which had been repeatedly mentioned; he wished to assure the community that no rational businessman anywhere would permit intoxicated patrons to leave their business because of their potential liability. Mr. Pammel pointed out that the applicant had agreed to monitor their own premises to assure that the patrons would leave in a sober state, which concluded their responsibility. He said he believed most businesses embrace this practice and there is a national corporation which was created to provide assistance to businesses throughout the country in this endeavor.

Mr. Pammel moved to grant SP 95-V-031 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 20, 1995, as amended and reflected in the Resolution.

Mr. Hammack seconded the motion and suggested an additional condition imposing the compliance of the applicant with Alcohol, Beverage and Control (ABC) laws and regulations because of the citizens' concerns.

Mr. Ribble pointed out that the applicant was required by the State laws to comply with the ABC laws and Mr. Dively said that the special permit was automatically dependent upon that compliance. A discussion ensued on this issue. Mr. Dively seconded this condition as an amendment.

Mr. Kelley opposed the motion, stating that he did not believe the Board should enter into that area of discipline. He requested from the maker of the original motion a further explanation of SFDC's inclusion in the conditions and assigning duties to them which are not within their charge. Mr. Pammel said that the SFDC wished to be involved and had agreed to do so. Mr. Pammel noted that a period of two years was stipulated for a review of the approval and he had no objection to placing such a review period in this Resolution by amending Condition 16, also requiring the applicant to again come before the Board in two years to request an extension of the special permit. Chairman DiGiulian said he would be opposed to that action. He remembered that testimony indicated the applicant would spend over three quarters of a million dollars and believed that a two-year permit would be constricting on so great a financial commitment. Chairman DiGiulian said he had no objection to a two-year review; however, he did not believe the applicant should have to come before the Board again with a new application. Mr. Kelley concurred and reminded the Board that they had the power to revoke a special permit for lack of compliance.

Chairman DiGiulian reminded the Board that the motion for a two-year review period was on the floor and Mr. Pammel said he would like to clarify that to stipulate only that a review would be conducted in two years. Mr. Dively seconded that motion.

The main motion carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

Mr. Thomas inquired about the two-year review and its relationship to the hours of operation, requesting a stipulation as to what would be reviewed in two years. Mr. Kelley said that, at the time of the review, the applicant could request an amendment to the special permit in respect to the hours of operation. Mr. Hammack said he would not wish the Board to be limited at this point to what would be reviewed in two years. He said he believed the citizens should be allowed to raise any issue they might wish to in regard to the operation.

Mr. Dively addressed the community members present, stating that the special permit application was designed in a manner deserving approval by the Board and community efforts were not in vain. He commended Mr. Pammel on his motion and pointed out to the community members that the applicant would be required to comply with the Conditions imposed. Mr. Dively said this application was superior to that of the Cue Club and photos and documents promised a well-run organization. Among other things, Mr. Dively went on to state that the community could monitor the establishment for compliance.

Mr. Hammack addressed Ms. Taylor's comments about the school and church and stated that the Board, to his knowledge, had not received any indication of opposition from the church, school or principal, although they were given notice. He continued his comments and included reference to revitalization along the Route 1 Corridor and said that establishments of a different type might more adversely affect the neighborhood.

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**COUNTY OF FAIRFAX, VIRGINIA**

**SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

In Special Permit Application SP 95-V-031 by SHARKEYS, INC., D/B/A FAST EDDIE'S BILLIARD CAFE, under Section 4-803 of the Zoning Ordinance to permit a billiard hall, on property located at 6220 Richmond Highway, Tax Map Reference 83-3((1))22C and 22D, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1995; and

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 2.84 acres.
4. It was found to be appropriate to modify Proposed Development Conditions 6, 8 and 10, and add new Conditions numbered 14, 15, 16, and 17, as reflected in this Resolution.

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 6220 Richmond Highway consisting of 12,808 square feet of gross floor area and associated parking and is not transferable to other land. Other by-right, Special Exception and Special Permit uses on the commercial site may be permitted without an amendment to this special permit.

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 R.C. Fields & Associates dated April, 1995 and revised June 20, 1995, and the floor plan included and approved with this application, as qualified by these development conditions. A revised plat is necessary to reflect the changes made in the Proposed 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 the Director, 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.

5. There shall be a maximum of twenty-six (26) billiard tables and 163 seats in the facility, 6220 Richmond Highway.

6. The hours of operation of the billiard parlor shall not exceed 10:00 a.m. to 12:00 Midnight, Monday through Thursday; on Friday and Saturday, 10:00 a.m. to 2:00 a.m.; and, on Sunday, 12:00 Noon to 10:00 p.m.

7. The number of parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance, as Determined by the DEM.

8. A six foot high board on board fence shall be provided within ten (10) feet of the northern property line as shown on the special permit landscape plat presented to the Board of Zoning Appeals on July 20, 1995. The barrier requirement shall be waived along all other property lines. Ten (10) feet of planting along the northern property line shall be placed along the outside of the board on board fence and the plant materials shall be approved by the Urban Forestry Branch, DEM.

9. Transitional screening shall be waived along all other property lines.

10. Interior parking lot landscaping shall be provided as shown on the special permit plat and as approved by the County Urban Forestry Branch, DEM.

11. Interparcel access shall be provided to Lot 22B to the south and necessary public access easements provided shall be recorded among the land records of Fairfax County.

12. The entrance on Jamaica Drive shall be limited to "Entrance Only" and shall be gated at 9:30 p.m. The entrance shall be narrowed to a one-way width.

13. A bench shall be provided at the transit stop on site along Route 1.

14. The applicant shall provide uniformed security guard(s) to police the area from the hours of 10:00 p.m. until closing.

15. The applicant shall police the premises for trash and debris on a daily basis.

16. The applicant shall comply with the applicable Alcoholic Beverage Control laws.

17. This special permit shall be reviewed twenty-four (24) months after the date of approval.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

At its meeting on July 25, 1995, the Board moved to further modify the Proposed Development Conditions, as reflected in this Resolution.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1995. This date shall be deemed to be the final approval date of this special permit.

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Page 500, July 20, 1995, (Tape 1), Scheduled case of:

9:30 A.M. JOHN C. AND RAMONA J. SPEICHER, APPEAL 95-D-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is operating a retail sales establishment from a residence in an R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 805 Ridge Dr. on approx. 20,112 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((7)) 212. (RESCHEDULED FROM 5/9 AT APPL'S. REQ.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board members that a last-minute request for withdrawal had been received and that William E. Shoup, Deputy Zoning Administrator, was present to answer any questions.

Mr. Ribble moved to allow the withdrawal. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. McPherson was absent from the meeting.

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Page 500, July 20, 1995, (Tape 1), Scheduled case of:

9:30 A.M. MOBIL OIL CORPORATION, APPEAL 95-M-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination by the Director of the Zoning Evaluation Division that the language of Par. 28 of the recorded lease agreement between appellant and property owner is not in substantial conformance with Condition #11 of SEA 81-M-097-2 which requires provision of a public access easement to the west. Located at 6451 Edsall Rd. on approx. 20,582 sq. ft. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) pt. 7D. (RESCHEDULED FROM 5/9 AT APP.'S REQ.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that a request for withdrawal had been received. It was the consensus of the Board to accept the withdrawal.

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As there was no other business to come before the Board, the meeting was adjourned at 12:25 p.m.

Minutes by: Geri B. Bepko

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals