The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 8, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; John Ribble; and, Nancy Gibb.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 004, September 8, 1998 (Tape 1), Scheduled case of:

9:00 A.M. BA VAN LE, SP 98-M-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.9 ft. from side lot line and accessory structure to remain 0.5 ft. from side lot line and 2.5 ft. from rear lot line. Located at 6100 Knollwood Dr. on approx. 12,448 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((15)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ba Van Lee, 6100 Knollwood Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for a modification to the minimum yards required based on error in building location to allow a building addition to remain 3.9 feet from the side lot line, and a shed to remain 2.5 feet from the rear lot line and 0.5 feet from the side lot line. For the addition, the Zoning Ordinance requires a side yard of 12 feet; the amount of error was 8.1 feet. For the shed, the Zoning Ordinance requires a side yard of 12 feet and a rear yard of 8.7 feet; the errors were 11.5 feet and 6.2 feet respectively.

Mr. Le stated that when he obtained the building permit, he did not know he had to have a separate permit for the addition. He said that was the reason the special permit application was filed so he would be able to keep the addition.

Mr. Pammel wanted to know what was the purpose of the addition. Mr. Le stated the addition was used for storage.

Mr. Hammack wanted to know why a copy of the building permit was not in the staff report. Staff stated that there was a building permit issued for a shed but not for the addition.

Mr. Hammack wanted to know what kind of material was being used to build the addition, was it insulated, and was there electricity.

Staff referred to a photo that showed the addition to have vinyl siding and a doorway.

The question of insulation was answered by Mr. Le, who stated there was one light and the insulation was done by his brother. Mr. Le stated that he was not aware of the type of insulation used in the structure.

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

Mr. Kelley moved to defer SP 98-M-029 to November 3, 1998, at 9:00 a.m. Mr. Kelley also suggested that the applicant obtain legal representation. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 001, September 8, 1998 (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL J. KASTLE AND KAREN A. JONES, VC 98-H-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.8 ft. from rear lot line. Located at 2097 Kedge Dr. on approx. 17,755 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax

Map 38-1 ((33)) 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. Michael J. Kastle, 2097 Kedge Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a variance to permit construction of a screened porch addition 13.8 feet from the rear lot line. The minimum rear yard requirement was 25 feet; therefore, a variance of 11.2 feet was being requested.

Mr. Kastle stated that when he bought the house in 1993, there was an existing deck behind the house. He said he wanted to construct a screened porch on the existing deck structure. Mr. Kastle stated that there was no direct shade behind his house and this would facilitate being able to utilize the screened porch during spring, summer, and fall months when direct sun was overhead.

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

Mr. Hammack moved to approve VC 98-H-068 for the reasons stated in the Resolutions subject to the development land. Contained in the staff report dated August 25, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL J. KASTLE AND KAREN A. JONES, VC 98-H-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.8 ft. from rear lot line. Located at 2097 Kedge Dr. on approx. 17,755 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((33)) 53. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have satisfied the nine required standards for the granting of a variance.
3. The lot is a pipestem lot.
4. The house is sited in the rear corner of the lot, leaving no side or rear yards to allow for a generous turn around in the front.
5. There is no other location for the screened porch addition.

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

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

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

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

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

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

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

1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Kenneth W. White, dated May 4, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 003 September 8, 1998 (Tape 1), Scheduled case of:

9:00 A.M. MARK D. AND SHELLEY BETTS, SP 98-D-028 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 1121 Crest Ln. on approx. 5.51 ac. of land zoned R-1. Dranesville District. Tax Map 22-4 ((1)) 30, 14B and 32A. (Concurrent with VC 98-D-067).

9:00 A.M. MARK D. AND SHELLEY BETTS, VC 98-D-067 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit accessory structure to remain 19.8 ft. from front lot line and 18.9 ft. from side lot line. Located at 1121 Crest Ln. on approx. 5.51 ac. of land zoned R-1. Dranesville District. Tax Map 22-4 ((1)) 30, 14B and 32A. (Concurrent with SP 98-D-028).

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 Hanes, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit for a Group 9 accessory dwelling unit to be located within a detached accessory building located on the same lot. The applicant was also requesting a variance to permit an accessory structure to remain 19.8 feet from the front lot line and 18.9 feet from the side lot line. A minimum 40 foot front yard and a minimum 20 foot side yard was required; therefore, variances of 20.2 feet and 1.2 feet were being requested. Staff concluded that the subject property was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Hanes presented a petition signed by neighbors in the Crest Lane area, and two additional conditions to be added to the special permit. He stated that the property was at the end of Crest Lane along the Potomac, which was an area with very steep slopes and topography. Mr. Hanes stated that the property was unique as far as size and shape and the structures had been there since the 1930s. He stated that the purpose of the application was to bring the existing structure into compliance with the Zoning Ordinance, and to add a stairway a little over 100 square feet from the other properties.

Mr. Hanes stated that the applicants wanted to fix the area so their parents could live there. He said this would be compatible with the Comprehensive Plan and would have no adverse impact with the neighborhood. Mr. Hanes stated that staff concurred with the applications and he asked the Board to approve both applications.

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

Mr. Pammel moved to approve SP 98-H-068 and VC 98-D-067 for the reasons stated in the Resolutions subject to the development land. Contained in the staff report dated August 25, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK D. AND SHELLEY BETTS, SP 98-D-028 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 1121 Crest Ln. on approx. 5.51 ac. of land zoned R-1. Dranesville District. Tax Map 22-4 ((1))14B, 30 and 32A. (Concurrent with VC 98-D-067). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicants are the owners of the land.
2. The application is for a Group 9 accessory unit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-903, 8-918, 18-404, and 18-405 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1121 Crest Lane, 5.51 acres, and is not transferable to other land

2. This Special Permit is approved for the purpose(s), structures and/or use(s) shown on the plat prepared by Theodore D. Britt, of TRI-TEK Engineering, April 21, 1998, submitted with this application and approved with this application, as qualified by these development conditions.

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

4. The 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.

5. The accessory dwelling unit shall contain no more than 2 bedrooms.

6. There shall be 4 parking spaces provided on site as shown on the special permit plat.

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 regulation 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. The applicant agrees not to rent the accessory dwelling unit.

10. The applicant agrees that there shall not be any windows on the western side of the upper most level bedroom.

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 Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of the 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. Dively was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1998. This date shall be deemed to be the final approval date of this special permit.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK D. AND SHELLEY BETTS, VC 98-D-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 19.8 ft. from front lot line and 18.9 ft. from side lot line. Located at 1121 Crest Ln. on approx. 5.51 ac. of land zoned R-1. Dranesville District. Tax Map 22-4 ((1))14B, 30 and 32A. (Concurrent with SP 98-D-028). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicants are the owners 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Theodore

D. Britt, of TRI-TEK Engineering, April 21, 1998, 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 addition 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. Dively was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 007 September 8, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ST. GEORGE'S UNITED METHODIST CHURCH, SPA 79-S-049-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-S-049 for church and related facilities to permit nursery school and child care center. 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.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Kraucunas, 8133 Leesburg Pike, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting approval of a special permit to allow operation of a nursery school and a child care center. Staff recommended approval.

Mary Kay Thompson, 4910 Ox Road, Fairfax, Virginia, stated that she was the Chairperson of the preschool board at St. George's United Methodist and that she was there to amend the uses of the property. She said it was the church's intention to operate a nursery school and day care center, but the information was inadvertently omitted from the prior application.

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

Mr. Ribble moved to approve SPA 79-S-049-2 for the reasons stated in the Resolution.
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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. GEORGE'S UNITED METHODIST CHURCH, SPA 79-S-049-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-S-049 for church and related facilities to permit nursery school and child care center. 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. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, St. Georges United Methodist Church, and is not transferable without further action of this Board, and is for the location indicated on the application, 4910 Ox Road (5.84 acres) lot 10, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Russell R. Smith, Professional Engineer, dated January 23, 1995, as revised by Paul J. Kraucunas, Professional Engineer, dated June 12, 1998, 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 Public Works and Environmental Services (DPW & ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity of the main worship area shall not exceed 350.

6. There shall be 106 parking spaces, including five (5) accessible spaces. All parking shall be on-site, as shown on the special permit plat.

7. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements 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. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined above. 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 the site as shown on the special permit plat to the satisfaction of the Department of Public Works and Environmental Services (DPW & ES) 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. If possible, the applicant shall redesign the pond and construct an embankment-only type SWM/BMP in order to reduce the size of the pond and maximize tree

preservation.

10. Interparcel access in the form of a travel aisle within the existing 47 foot ingress/egress easement shall be provided to Lot 13 to the south. The applicant shall construct this access or escrow the funds for future construction.

11. 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 (12) twelve feet.
    - The light shall be a low-intensity design which focuses the light directly on the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

12. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

13. The maximum daily enrollment for the nursery school and child care center shall be 99 children and the maximum number of children per day shall be 99 at any one time.

14. The maximum number of employees for the nursery school and child care center shall be 22.

15. The maximum hours of operation for the nursery school shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Friday.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 009 September 8, 1998 (Tape 1), Scheduled case of:

9:00 A.M. ROGERS C. BROOKS, JR., SP 98-M-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 16.6 ft. from side lot line. Located at 6435 Ichabod Pl. on approx. 24,911 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 48. (Concurrent with VC 98-M-069).

9:00 A.M. ROGERS C. BROOKS, JR., VC 98-M-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.9 ft., 39.7 ft and 39.1 ft. from street lines of a corner lot. Located at 6435 Ichabod Pl. on approx. 24,911 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 48. (Concurrent with SP 98-M-030).

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rogers C. Brooks, 6435 Ichabod Place, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting a special permit to allow reduction to the minimum yard requirements based on an error in building location to permit an addition (a garage) to remain 16.6 feet from a side lot line. A minimum of 20 feet was required, presenting a 17 percent error. The applicant also requested approval of a variance application to permit construction of additions 27.9 feet, 39.7 feet, and 39.1 feet from the front lot lines of a corner lot. A minimum of 40 feet was required.

Mr. Brooks spoke to the variance application. He stated that his house had no dining room or basement, that the living area was small and there was no room for laundry facilities. Mr. Brooks stated that the house must be exited in order to enter an area between the house and garage, which housed the laundry appliances. Mr. Brooks stated that the proposed construction would correct these functional and aesthetical problems which resulted from construction projects completed by previous owners. He stated that due to the cross-wise sitting of the existing structure at the back of the lot, he and the architect were not able to achieve satisfactory results. (When attempting to expand into the rear yard area.)

Mr. Brooks stated that if an attempt was made to build this addition on the back of the structure, it would consume more of the shallow backyard. He referred to a letter from the president of Sleepy Hollow Citizens' Association, which stated that the dwelling was set far back and cross wise on a shallow, dual frontage, odd-shaped lot. Mr. Brooks said this arrangements represented a rear yard situation differing from most lots in his neighborhood. He said six of three hundred lots fit this description and suffer as a result of the hardship. Mr. Brooks said his neighbors agreed that the proposed plan would offer quality development to the neighborhood.

Mr. Brooks spoke in reference to the special permit. He stated that the garage was built in 1951 and the present owner had the deed since 1972. He said there had been no complaints from neighbors since that time. Mr. Brooks said to force compliance would cause him to destroy one of the storage area existing on the property. He said the noncompliance was no fault of his and had not been detrimental to the use and enjoyment of other properties in the vicinity nor to the safety of others.

Ms. Gibb wanted to know if the applicant had seen the letter that was sent in by a neighbor asking for an additional development condition. Mr. Brooks stated the development condition was for shrubbery to be planted along Ichabod Place. He said he agreed with the condition.

Chairman DiGiulian called for speakers in support.

Mary Northrup, 6429 Ichabod Place, Falls Church, Virginia, stated that she lived next door. She presented a Virginia Department of Transportation (VDOT) map which showed the area of existing shrubbery. Ms. Northrup asked the Board to approve the application.

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

Ms. Gibb moved to approve SP 98-M-030 and VC 98-M-069 for the reasons stated in the Resolutions subject to the development land. Contained in the staff report dated August 25, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGERS C. BROOKS, JR., SP 98-M-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 16.6 ft. from side lot line. Located at 6435 Ichabod Pl. on approx. 24,911 sq. ft. of land zoned R-1. Mason

District. Tax Map 51-3 ((6)) 48. (Concurrent with VC 98-M-069). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicant is the owner of the land.
2. The garage was built in 1951 long before the current resident moved in.
3. The application is in conformance with the standard requirements.

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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the addition (garage) shown on the plat prepared by Alexandria Surveys, Inc., dated May 26, 1998, submitted with this application and is not transferable to other land.

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

September 16. 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

ROGERS C. BROOKS, JR., VC 98-M-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.9 ft., 39.7 ft. and 39.1 ft. from street lines of a corner lot. Located at 6435 Ichabod Pl. on approx. 24,911 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 48. (Concurrent with SP 98-M-030). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has submitted evidence showing the unusual siting of the house on a corner lot with a large front yard.
3. The lot is exceptionally shallow and is pie shaped.

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

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

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

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

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

1. This variance is approved for the location of the additions shown on the plat prepared by Alexandria Surveys, Inc., dated May 26, 1998, submitted with this application and is not transferable to other land.

2. The existing mature landscaping that is between the proposed addition and Ichabod Place shall be retained by the applicant, until any additional and/or infill landscaping desired by the applicant has been planted, and has attained both greater than 8 feet in height and mature density of the existing landscaping.

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

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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 September 16, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ODALYS SMITH, SPA 94-Y-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-Y-055 for child care center to permit change in development conditions. 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.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cole Smith, 13316 Braddock Road, Clifton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, Special Permit and Variance Branch, made staff's presentation as outlined in the staff report. The applicant was requesting approval to amend special permit for a child care center to permit a change in development conditions and an increase in the maximum daily enrollment from thirty (30) children to forty-three (43) children. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Smith wanted the conditions conveyed to the property instead of his wife. He said he and his wife expected to retire and wanted to sell the day care center. Mr. Smith stated that there were no structure or modification changes.

Chairman DiGiulian said it was his belief that the condition was granted to the applicant and not the

Susan Langdon, Chief, Special Permit and Variance Branch, responded saying that the Board indicated that the conditions go with the applicant. She stated that the Board had approved conditions that could be transferred to another entity, or a builder who wanted to sell to an association.

Mr. Smith stated that his wife had been running the day care for 13 years and wanted to retire. He said his wife found someone who wanted to run the day care, so they were hoping the special permit amendment could be approved and not have them wait three months for a name change.

Ms. Gibb wanted to know if there was a signed contract and Mr. Smith stated that he had a signed contract.

Mr. Hammack wanted to know what would be the procedure to change the name and whether it would be an after agenda item. Ms. Langdon said it would be a new item. She said they would have to go through the application process again.

Mr. Hammack asked if the case could be deferred to allow an additional applicant to be added. Ms. Langdon said the applicant could amend their affidavit and add an applicant to that and it would have to be readvertised. She said staff would need at least 30 days to readvertise.

Mr. Kelley wanted to know if the applicant already had a waiting list of students.

Mr. Smith said there was an abundance of students waiting to be enrolled. Mr. Smith stated that the fall was when they had the most students.

Mr. Pammel wanted to know if the applicant understood Condition #9.

Mr. Smith stated that it was his belief that the zoning inspector did not have an appropriate interpretation of Section 12-208. He said the building was deemed as a single family dwelling, but it in fact, had been used for a school.

Mr. Pammel stated that if the permit was approved, the applicant would be bound by the conditions of the permit as it was interpreted. He said the applicant would have to adjust or modify the sign.

Chairman DiGiulian stated that he had concerns about the permitee issue because if the application was approved, it would have to be approved for both.

Ms. Langdon stated that there was another case where the Board approved conditions to the applicant only with one transfer to a succeeding applicant.

Chairman DiGiulian asked for the name of the new owner.

Beth Shapiro came forward and spoke in support of the application. She stated that she was the new perspective owner.

Mr. Ribble asked Ms. Shapiro to submit a copy of the contract if she had it.

Mr. Kelley wanted to know if the day care would be in her name or would a company be set up for it. Ms. Shapiro stated there was a corporation already established and the name was KidsWay Child Care and Learning Center, Inc.

Mr. Dively wanted to know if the applicant considered the sign to be nonconforming. Mr. Smith said it was nonconforming and he intended to ask for an exception. Mr. Dively stated that if this was the argument the applicant intended to take, then the appeal issue would be moot.

Mr. Smith read Section 12-208-B concerning places of worship and schools. He said these were allowed one freestanding sign with or without a reader board not to exceed a sign area 40 square feet or 8 feet in height.

Mr. Dively wanted to know if Mr. Smith would argue that the sign conformed. Mr. Smith said he would need

a modification because of the location.

Chairman DiGiulian wanted to know if Mr. Smith would argue that the sign met the Code and Mr. Smith said that would be his argument.

Mr. Hammack asked if the contract was contingent for 45 days, financing, and licensing of KidsWay.

Mr. Smith said it was and that Beth Shapiro had applied for state licensing and she was working with the bank. Mr. Smith said this was standard just for the contract to be sure everyone covered their bases.

Mr. Hammack wanted to know if KidsWay was an existing corporation and was it in the business of providing day care services at the present time at a different location.

Beth Shapiro stated that she had a day care center for five years in New York state. She said she moved here and had just created the corporation so that she could have a day care center here in Virginia. She further stated she did not have a center in Virginia yet.

Ms. Langdon stated that it was the Zoning Administrator's opinion that the section of the Ordinance that Mr. Smith was discussing was about churches with day care centers and not a day care center on its own.

Chairman DiGiulian said the problem could be solved if the last sentence was taken out of Condition #9.

Mr. Kelley stated he would accept removing the last sentence from Condition #9. He asked about Condition # 11 whether it was in the existing permit.

Mr. Smith said he was not familiar with this. He said Lots 56 and 58 must run concurrent with the application because the house structure was 10 feet from the property line. Mr. Smith said he and his wife owned both lots. He said there was a median break on Braddock Road with a turn lane, and a decel and excel lane pulling out of the center, but there was no entrance into Lot 56.

Mr. Kelley wanted to know if Mr. Smith had any problem with Condition #11. Mr. Smith first stated he did not have a problem but later stated he did not understand the language.

Chairman DiGiulian explained what Condition #11 meant. Mr. Smith said he did not understand why the condition was there and asked that it be removed.

Mr. Smith asked that a transfer be available to Condition #1 to a purchasing party; Condition #11 be removed; and the last sentence of Condition #9 be removed.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ODALYS SMITH, SPA 94-Y-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-Y-055 for child care center to permit change in development conditions. 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. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-303, 8-305, 12-208, 12-210 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Odalys Smith, and may be transferred to KidsWay Child Care and Learning Center, Inc., and is for the location indicated on the application and is not transferable to other land. KidsWay Child Care and Learning Center, Inc. must meet all applicable County and State requirements.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Paul Conklin Quigg, and is dated March 1, 1994, as revised through May 29, 1998, and approved with this application, as qualified by these development conditions.

3. This Special Permit is subject to the provisions of Article17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.

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

5. Upon issuance of the Non-Residential Use for SPA 94-Y-055, the total maximum daily enrollment may increase to forty-three (43).

6. A minimum of twelve (12) parking spaces shall be provided as shown on the special permit plat. The parking spaces shall be delineated by concrete wheel stops. All parking shall be limited to on site.

7. The transitional screening and barrier requirements for all property boundaries shall be modified in favor of existing conditions, as depicted on the Special Permit Plat.

8. The barrier requirement shall be waived along the eastern and northern lot lines. The existing six (6) foot high word fence along the western lot line shall remain and be maintained in good repair.

9. Notwithstanding any plat depictions or plat notes, all signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

10. Prior to the issuance of a Non-Residential Use Permit, the applicant shall demonstrate to DPW&ES that the tree house play structure on site meets all applicable building codes and safety standards.

11. The maximum hours of operation shall be limited to 6:00 A.M. to 6:30 P.M., Monday through Friday. The maximum number of employees shall be limited to six (6).

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance

with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 017, September 8, 1998 (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage in the R-1 District in violation of Zoning Ordinance provisions. Located at 7615 Bakers Dr. on approx. 1.76 ac. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 43. (Concurrent with A 1998-MV-016).

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage, and is parking a commercial vehicle in an R-1 District, all in violation of Zoning Ordinance provisions. Located at 7611/7619 Pohick Rd. on approx. 119,354 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 45A. (Concurrent with A 1998-MV-015).

Chairman DiGiulian stated there was a request for deferral.

William E. Shoup, Deputy Zoning Administrator, stated there was letter from Francis A. McDermott, Attorney for the Appellants, requesting a 60 day deferral. He said staff supported the deferral request since there had been some improvement in cleaning up the property. Mr. Shoup stated there were still some concern with the cleanup of the rear of the property and these concerns were discussed with Mr. McDermott with the hope of coming to some resolution. Mr. Shoup recommended November 10, 1998, as the new hearing date.

Chairman DiGiulian asked if there was anyone in the audience who wished to speak to the deferral.

William G. Meeker and Rosemary Meeker stated they accepted the deferral date.

Chairman DiGiulian stated that this was the second appeal concerning the issue of trespassing. He said the appellant stated in a letter that he had informed the County that he wanted to be notified prior to any inspections. Chairman DiGiulian stated that appellant alleged that the inspector walked pass a no trespassing sign. Chairman DiGiulian said he did not believe the County had a right to trespass for a zoning violation and he wanted to know the Zoning Administrator's view on this issue.

Mr. Shoup stated he wanted the County Attorney's Office present to explain this issue. He said the appellant notified the County in 1994, in an appeal submission, that he wanted to be notified before the undertaking of an inspection. Mr. Shoup said the Zoning Administrator did not consider this request as a continuing request. He said the inspector would not have known there was a request made back in 1994, since the appeal was withdrawn. Mr. Shoup stated that it was the Zoning Administrator's opinion that a zoning inspector had the right to enter a property under the authority of law to inspect a property for potential zoning violations. He said the Zoning Administrator's position was that they can enter onto the

property, go to the front door, and seek permission to inspect the property. If the resident or property did not give permission, or no one was home, then an inspection could not be conducted, but they would walk the property and then leave. He said if anything in violation was observed in plain view while the inspector was on the property, would be subject to regulations.

Mr. Kelley wanted to know if a zoning inspector, who observed a family leaving to go on vacation, went on to the property without permission and observed anything on the outside, would they be able to bring a case on the property owner.

Mr. Shoup said they could enter on to the property for the purpose of seeking permission to conduct an inspection. He referred to another appeal that went before the Board, where the inspector went to the door and spoke with the appellant who walked the property with them.

Chairman DiGiulian said he believed the other appellant stated he was told the inspector was looking for an illegal business. He said he was familiar with the property and some of the items in violation could not been seen just from a casual walk from the street to the front door. Chairman DiGiulian said someone had to enter on the property to the back yard.

Mr. Shoup stated that there were unique circumstances involved when the inspector entered the property. He said the gate was opened when the inspector pulled into the driveway.

Ms. Gibb suggested that an opinion be obtained from the County Attorney to hear their view on the issue.

Mr. Kelley said he would like to have the County Attorney's opinion in writing and that they should be present at the hearing.

Mr. Dively moved to defer the appeal to November 10, 1998, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 018, September 8, 1998 (Tape 1), Scheduled case of:

9:30 A.M. ODALYS SMITH, A 1998-SU-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a freestanding sign within 10 ft. of the front property line, and which exceeds 4 ft. in height and 6 sq. ft. in area without a sign permit or building permit in violation of Zoning Ordinance provisions. Located at 13316 Braddock Rd. on approx. 38,227 sq. ft. of land zoned R-1. Sully District. Tax Map 66-1 ((3)) 57. (DEFERRED FROM 8/18/98).

Chairman DiGiulian called the appellant to the podium. Cole Smith, 13316 Braddock Road, stated he was representing the appellant.

Jack Reale, Staff Coordinator, Zoning Administration, stated that a determination was made that the appellant erected a freestanding sign within 10 feet of the front property line which exceeded 4 feet in height and 6 square feet in area. He noted that the freestanding sign measured 48 square feet in area and stood 9 feet in height. Mr. Reale referred to Paragraph 2-M, Section 12-208, of the Zoning Ordinance, which provided the provisions for structures of a single family appearance. He stated that it had been determined that the appellant erected a freestanding sign without the required sign or building permits as set forth under Sections 12-301 and 18-601.

Mr. Smith stated that the sign was erected improperly without permits and he was trying to have the situation rectified. He stated that when the business was first advertised, there was 2 foot by 3 foot sign on Braddock Road which was a 2 lane road; currently it was a 4 lane major thoroughfare with traffic speeds of 50 miles per hour. Mr. Smith said a 6 square foot sign would not be noticed from the road. He said the complaint was made by the inspector who rode back and forth on Braddock Road. Mr. Smith said the inspector stated the center had an exterior appearance of a single family detached dwelling. He said the center was a commercial business within a residential area.

Mr. Smith cited Section 12-205 of the Zoning Ordinance which referred to commercial usage with frontage on primary highway or major thoroughfares. It stated that an individual whose enterprise which was not located within or on the same lot as a shopping center shall be permitted one freestanding sign and the sign shall be limited to a maximum sign area of 80 feet. He said the center was located across the street from Braddock Park which had a sign of 15 feet in height and 40 square feet in area. Mr. Smith stated that the sign for the center had the same set back off the road as the park's sign. He said the reason the sign was within 10 feet of the lot line was because of the transitional screening requirements on the east side of the property, which he was instructed to preserved and maintained by the County.

Mr. Smith stated that his lot line was 12 or 14 feet from the road because of the Virginia Department of Transportation (VDOT) right-of-way. He asked for the Board's interpretation on the Code.

Mr. Kelley said it was his opinion that the center could not be mistaken for a residence.

Mr. Smith said the center had a commercial entrance which included a ramp, a paved parking lot with handicap parking spaces.

Mr. Pammel wanted to know if there was any language in Section 12-205 that referred to churches and schools which stated "associated therewith." Mr. Pammel said the language in the Ordinance would cause problems.

Mr. Reale said the provision stated "affiliated with those uses." He said the Zoning Administrator's office disagreed with the appellant's argument. Mr. Reale said the provision could be found in Section 12-208, Par 2B.

Ms. Gibb wanted to know if the problem with the sign was because of the location or the size of the sign. Mr. Smith said the posted speed limit was 35 miles per hour, but residents drove by at 50 miles per hour and a small sign would not be seen.

Mr. Hammack wanted to know if the County had checked the sign across the street and did it have to comply with the Zoning Ordinances. Deputy Zoning Administrator, William Shoup said the sign belonged to the Park Authority, and on a public use there was no limitation on size, or where the sign was located on the site. Mr. Shoup stated that the Park Authority had to comply with the Zoning Ordinance but different regulations applied to it. Mr. Shoup said the Park Authority sign should be limited to 6 feet in height and he would investigate this matter.

Mr. Smith asked the Board for exception on Section 12-205 which referred to commercially zoned land with commercial uses on a major thoroughfare. He said the center was a commercial use.

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

Mr. Hammack said the Board could not grant exception to the Code because the case was an appeal of the Zoning Administrator's interpretation. He moved to uphold the decisions of the Zoning Administrator. Mr. Pammel seconded the motion. Mr. Kelley indicated that he would vote for the motion but he stated that there was no equity present.

Chairman DiGiulian indicated that he opposed the motion. He said it was his understanding from the Zoning Administrator's office that an inspector would not have issued a Notice of Violation unless there was a complaint. He said the other reason he opposed the motion was because the Park Authority's sign was for a commercial use and it was bigger and higher than the appellant's.

Mr. Shoup said the complaint was issued by the Director of the Department of Planning and Zoning, who was also a resident of the nearby community.

Further discussion followed among Board members concerning whether or not there was equity in this issue. Mr. Pammel suggested that the Zoning Administrator's office look carefully at the provisions of the Zoning Ordinances as it related to public uses. He said the inequities must be cleaned up.

Mr. Shoup stated that the Zoning Administrator's office was working on a comprehensive sign amendment,

which would include government signs as it applied to public uses. He said the sign provision that the appellant read did not apply just to the school use on a church site, but for the combination of uses. Mr. Shoup stated that the Board of Supervisors had asked the Zoning Administrator's office to take a comprehensive look at the sign provisions and staff was already working on it.

The motion to uphold the Zoning Administrator's decision carried by a vote of 4-3 with Chairman DiGiulian, Mr. Ribble and Ms. Gibb voting nay.

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Page 020 September 8, 1998 (Tape 1), After Agenda Items:

Approval of January 13, 1998, Minutes

Mr. Pammel moved to approve the January 13, 1998, Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 020 September 8, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-V-095,
William L. & Gail H. Purvis

Mr. Dively made a motion to deny the Out-of-Turn Hearing request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 020 September 8, 1998 (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-M-098 and
SP 98-M-045, G. J. Romain

Mr. Pammel made a motion to deny the Out-of-Turn Hearing request. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 020 September 8, 1998 (Tape 1), After Agenda Item:

Update on Golf Park Inc., A 1997-HM-040
(Hunter Mill East, LLC, Jindo & Younghee Kim)

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant did not respond to the checklist that was sent to them by the Application Acceptance Branch. She stated the engineer had an appointment with the Application Acceptance Branch on September 9, 1998, to go over the items on the checklist. Ms. Langdon said the application had not been accepted.

Chairman DiGiulian wanted to know how long had it been since the applicant received the checklist and Ms. Langdon said it was two weeks ago. Chairman DiGiulian asked the scheduled date of the appeal. Mr. Shoup said the appeal had been deferred but that a date was not yet scheduled. Ms. Langdon said a date could not be scheduled on the special permit but it could be scheduled on the appeal. Mr. Pammel moved to schedule the appeal for November 17, 1998, at 8:00 a.m. Mr. Dively wanted to know if the special permit application was accepted on September 9, 1998, when would be the earliest date to schedule the public hearing. Ms. Langdon said it could be scheduled December 8, 1998; but if there were changes to be made the engineers would have to make them that same day.

Mr. Kelley made a motion to defer decision on the appeal until September 15, 1998, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:38 A.M.

Minutes by: Ann-Marie Wellington

Approved on: December 22, 1998

Regina Thorn, 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, September 15, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Robert Kelley; James Pammel; John Ribble and Paul Hammack.

Chairman DiGiulian called the meeting to order at 9:01 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 023, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PHILIPPE AND THERESA CASTEUBLE, VC 98-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 7223 Timber Ln. on approx. 10,010 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((7)) 17.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Theresa Casteuble, 7223 Timber Lane, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a room addition 7.0 feet from the side lot line. The minimum yard requirement was 10 feet; therefore, a variance of 3.0 feet was requested.

Ms. Casteuble presented the variance request as outlined in the statement of justification submitted with the application. Ms. Casteuble stated they wanted to construct a master bedroom and a family room on the side of the house. With the current side lot line restrictions, the rooms would be so narrow they would not function well.

Chairman DiGiulian asked if the placement of the house on the lot created the need for the variance.

Ms. Casteuble stated the lot was a very long and narrow lot which was originally parceled in the 1940's. She was unsure if they did not plan for additions, but stated the side lot lines were very narrow.

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

Mr. Hammack moved to approve VC 98-P-070 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 8, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIPPE AND THERESA CASTEUBLE, VC 98-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 7223 Timber Ln. on approx. 10,010 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((7)) 17. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; and

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

1. The applicants are the owners of the land.

2. The applicants have met the nine required standards for the granting of a variance.
3. The lot is a very narrow lot located in an older subdivision in the R-4 District.
4. There would be no other appropriate location to construct the addition.
5. There is no adverse impact on adjoining property owners.

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Harold Lee Pierce, dated June 15, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 025 September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JERRY AND ANA MARIA MOWERY, SP 98-L-031 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 14.0 ft. from side lot line. Located at 6008 Kathmoor Dr. on approx. 22,351 sq. ft. of land zoned R-1 and HC. Lee District. Tax Map 81-4 ((2)) 9A. (Concurrent with VC 98-L-071).

9:00 A.M. JERRY AND ANA MARIA MOWERY, VC 98-L-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.2 ft., 14.0 ft. and 9.0 ft from side lot lines and carport and addition 4.5 ft. from side lot line. Located at 6008 Kathmoor Dr. on approx. 22,351 sq. ft. of land zoned R-1 and HC. Lee District. Tax Map 81-4 ((2)) 9A. (Concurrent with SP 98-L-031).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerry Mowery, 6008 Kathmoor Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for an error in building location to permit a dwelling to remain 14.0 feet from side lot line. The minimum side yard requirement is 20.0 feet; therefore, a modification of 6.0 feet was requested. The applicants also requested variances to permit a second story addition 14.0 feet from the eastern lot line; a garage addition 9.0 feet from the eastern lot line; a two story addition 16.2 feet from the western side lot line; a carport 4.5 feet from western side lot line and a second story addition over the carport 4.5 feet from the western side lot line. A minimum side yard of 20.0 feet is required; therefore, variances of 6.0 feet and 11.0 feet were requested for the additions along the eastern side lot line and variances of 3.8 feet and 15.5 feet were requested for the additions along the western side lot line. A carport may extend 5.0 into the minimum required yard; therefore, a variance of 10.5 was requested.

Mr. Mowery presented the special permit and variance requests as outlined in the statement of justification submitted with the application. The subdivision was a 40 year old subdivision. The entire neighborhood was going through a regrowth and was being expanded. The existing homes being expanded were going up in value from $250,000 to $300,000. Their home was one of the remaining few homes not being significantly improved from its original design. The lot was 68 feet wide at the point the house was placed on the lot. There was no room to expand the house without a variance. A garage to the rear of the property currently existed, which made maximum use of that portion of the property. Mr. Mowery stated their family was growing and the only way to remain in their current home was to build additional bedrooms. The house was in an unusual situation, because it was located in the narrowest lot in the subdivision.

Mr. Pammel questioned Mr. Mowery regarding the fact that there was already an existing garage at the rear of the property, a proposed garage immediately to the rear of the property on the east side and also a carport as well. He asked Mr. Mowery to explain the need for all these structures.

Mr. Mowery replied that the carport was actually to support another bedroom over the carport. He did not want to build a bedroom at ground level, he wished to extend the second floor over the carport. The garage to the rear was proposed to be a small garage attached to the house. The existing garage is 250 feet away from the house and he explained that his wife is partially disabled and this made it difficult to get back and forth, therefore, a garage which was attached to the house would better serve the family.

Mr. Pammel asked if Mr. Mowery had seen the letter of opposition sent in by his neighbor. Mr. Mowery stated he had not seen the letter.

Ms. Langdon gave Mr. Mowery a copy of the letter for his review. Mr. Pammel asked Mr. Mowery to look over the letter and be prepared to comment on it.

Mr. Mowery stated he only had time to review the letter briefly. Four out of the five surrounding properties on the tax map already had variances for the same reason. All of the adjacent homes had been expanded except theirs. Some of the variances had placed carports exactly the way Mr. Mowery had proposed to build his carport, within 4 feet of the property line. The construction design had recognized the narrowness of the property and had taken into consideration the visual affect of the bedroom addition over the carport. The roof would be designed to slant away from the adjacent homeowners' property. He stated they were prepared to do whatever landscaping was required to provide separation between the two lots. He pointed out to the Board that the side of the house where the additions were proposed was the least used side of the property of their neighbors home and is fully blocked with 15 foot pine shrubs and an oil tank within 5 feet of the property line. Mr. Mowery stated he could not imagine any detriment to the neighbors side of the property. Both houses were close to the property line; however, every house suffered the same problem and were granted variances. The additions were consistent with the growth of the neighborhood, they were as attractive as possible, the original brick was sought out to be sure any construction was consistent with the original character of the house. Mr. Mowery stated the design plans called for the driveway to be moved approximately 2 feet further away from their neighbors property. The carport would come out 12 feet and some of the driveway would be taken away and replaced with grass and shrubs. Mr. Mowery referred to the pictures submitted with his neighbors opposition letter and stated they did not represent the architectural design of the addition.

There were no speakers in support of the application.

Mr. Carl Hudson, 6012 Kathmoor Drive, the adjacent neighbor to the applicant, came to the podium to speak in opposition of the application. He stated he was the most affected neighbor concerning the proposal, especially the carport with the living quarters above it. He had no objection to the special permit and no objection to the variance with the exception of the two story carport with living quarters above. The lots were 65 to 68 feet wide and over 310 feet deep. There was a lot of area behind the lot to build anything, as high as he would like. It was not unreasonable to attach this to the proposed two car garage. There was an existing 3 car garage in the rear, another 2 car garage and a 12 by 24 foot carport. The narrowness did not apply in terms of the Ordinance due to the fact the carport and living quarters could be located toward the back of the property. There would be no hardship in doing this. There was the same amount of space available on other areas of the lot where the existing carport was being proposed. The applicant was seeking a convenience. It was not as if there were no other alternatives. Mr. Hudson asked the Board to stipulate the carport only to locate it in another location on the property so there would not be a hardship to the applicant.

Mr. Mowery stated he appreciated Mr. Hudsons point of view, however, his opinions to what could be constructed on his property were not relevant. He stated he could go 80 feet straight back and then the house would have no material value. The type of construction taking place in the neighborhood was making maximum use of the existing land. All of the lots for approximately 1/4 mile radius were very narrow and all were pushing the limits with their creative designs on the available lots. Mr. Mowery referred to Attachment 2 of Mr. Hudson's letter regarding the ample room between the proposed construction and the easternmost addition to his property. He stated there would be approximately 20 to 25 feet between Mr. Hudson's existing dwelling and his proposed second story bedroom addition. The house was designed with the front door in the lower left hand corner of the house. The house was unbalanced from an architectural standpoint. Two architects who had looked at his property informed him there was very little to be done to make the house physically appealing and to improve the house unless the house was balanced, which would require something on the left side of the house.

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

Mr. Pammel moved to deny VC 98-L-071. Mr. Hammack seconded the motion.

Chairman DiGiulian asked Mr. Pammel if the motion was to deny all of the variances. Mr. Pammel stated only the variance with respect to the carport and the second story addition. The motion was amended to

approve variances 1 through 4 and deny variance 5.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY AND ANA MARIA MOWERY, SP 98-L-031 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 14.0 ft. from side lot line. Located at 6008 Kathmoor Dr. on approx. 22,351 sq. ft. of land zoned R-1 and HC. Lee District. Tax Map 81-4 ((2)) 9A. (Concurrent with VC 98-L-071). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a dwelling shown on the plat prepared by Jerry A. LaGarde, dated January 9, 1998 and revised April 10, 1998, 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 6 aye, 0 nay, 1 abstain. Mr. Ribble abstained from the vote. Mr. Kelley made a motion to waive the 12 month waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 028, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP D. YANEY, VC 98-M-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from street line of a corner lot. Located at 3036 Hazelton St. on approx. 16,977 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((13)) 29A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip D. Yaney, 3336 Hazelton Street, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an attached garage with the corner of the garage located 18 feet from the street line of a corner lot. A minimum front yard of 30 feet was required; therefore, a variance of 12.0 feet was requested.

Mr. Yaney presented the variance request as outlined in the statement of justification submitted with the application. Mr. Yaney stated his lot was an odd shaped corner lot which meant that on two long sides he was subject to a 30 foot building restriction. The only place a garage could be attached to the house was where it was shown on the lot line. He did not believe it would establish a precedent which would cause the Board difficulty.

Chairman DiGiulian called for speakers. There were no speakers to speak in support of the application.

Ms. Viola M. Howell, 3029 Hazelton Street, Falls Church, Virginia, came to the podium to speak in opposition of the application. Ms. Howell stated she objected to the variance due to it setting a precedent in a nice neighborhood. Once the setback stipulation was broken it would open the way for other people to apply for variances. She stated Mr. Yaney had an existing garage which was enclosed and made into a room. She had spoken to Mr. Yaney and asked why he would not reconvert the room back into a garage. She objected to the garage coming out 12 feet toward the street when there was room available on the corner of the lot.

Mr. Yaney came to the podium to rebut Ms. Howell's testimony. He stated the original one car garage became a bedroom and bath when his mother-in-law moved into the residence. If it was reconverted, it would mean tearing out a bathroom and reducing the house to a one bathroom home, in addition to being a very expensive task and would not solve the problem in that he needed space for two cars. He did not believe his proposal set a precedent due to the function of the variance and the Board's decision to determine what was and what was not legitimate.

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

Mr. Dively moved to approve VC 98-M-073 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 8, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP D. YANEY, VC 98-M-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from street line of a corner lot. Located at 3036 Hazelton St. on approx. 16,977 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((13)) 29A. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; and

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

1. The applicant is the owner of the land.
2. The lot is a corner lot with two front yards.
3. The request is a modest request for a variance and the garage was not very large.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by L. Carl Gardner, Jr., dated May 25, 1998, 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 to the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 030, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM A. AND SANDRA Y. ROOSMA, VC 98-V-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 8611 Oak Brook Ln. on approx. 12,718 sq. ft. of land zoned PDH-1. Mt. Vernon District. Tax Map 106-2 ((10)) (11) 14.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William A. Roosma, 8611 Oak Brook Lane, Fairfax Station, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a screen deck 14.3 feet from the rear lot line. The property was developed under the PDH-1 Design Standards and in this instance was most similar to the R-1 Cluster minimum yards. The minimum rear yard requirement is 25 feet; therefore, a variance of 10.7 feet was requested.

Mr. Roosma presented the variance request as outlined in the statement of justification submitted with the application. He stated the builder built the house too close to the back instead of in the center or toward the front of the property. His two neighbors were further forward and did not share the same hardship. Mr. Roosma stated he would like to move the existing deck out approximately 3 feet and screen it in. There would be no changes as far as intrusion on the side, only on the back of the property, facing the woods, which was owned by the homeowners association, who had already given their approval through the architectural board. The majority of the homes were built in the center of the lots; therefore, a precedent would not be set.

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

Mr. Ribble moved to approve VC 98-V-072 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 8, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM A. AND SANDRA Y. ROOSMA, VC 98-V-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 8611 Oak Brook Ln. on approx. 12,718 sq. ft. of land zoned PDH-1. Mt. Vernon District. Tax Map 106-2 ((10)) (11) 14. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for the granting of a variance.
3. The request is an extraordinary situation in the siting of the house toward the rear of the lot.
4. The property backs to the homeowners association common 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened deck addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated April 24, 1998, submitted with this application and is not transferable to other land.

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

3. The screened 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 032, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. EDWARD A. AND SYLVIA J. STOROZUK, VC 98-Y-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 15012 Ulderic Dr. on approx. 11,624 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2))(9) 7A. (Denied 7/14/98, Reconsideration granted 7/21/98).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward A. Storozuk, 15012 Ulderic Drive, Centreville, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a detached garage 5 feet from the rear lot line and 5 feet from the side lot line. The minimum rear yard requirement is 15 feet and the minimum side yard requirement is 8 feet; therefore, variances of 10 feet for the rear yard and 3 feet for the side yard was requested. This variance was previously heard on July 14, 1998, requesting location of the detached garage 2 feet from the rear lot line and 4 feet from the side lot line. The Board denied the requested; however, the applicants were granted a reconsideration of the case on July 21, 1998 and had submitted a revised plat showing the detached garage to be 5 feet from side and rear lot lines.

Mr. Storozuk presented the variance request as outlined in the statement of justification submitted with the application. He stated the biggest concern at the July hearing was the closeness of the fence in the back. The justification was if it was moved 5 feet from the fence line it would be acceptable; therefore, they had complied with that request. There were garages in the neighborhood that were currently 5 feet off the fence line which had been approved by the Board.

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

Ms. Gibb moved to approve VC 98-Y-058 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report addendum dated September 8, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD A. AND SYLVIA J. STOROZUK, VC 98-Y-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 15012 Ulderic Dr. on approx. 11,624 sq. ft. of land zoned R-2 (Cluster) and WS. Sully District. Tax Map 53-2 ((2))(9) 7A. (Reconsideration granted 7/21/98). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; and

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

1. The applicants are the owners of the land.
2. The house is sited in the center of a narrow lot.
3. The proposed garage location is reasonable and consistent with findings to approve a variance application.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a

strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a detached garage shown on the plat prepared by Kenneth W. White, dated April 1, 1998, as revised through July 29, 1998, 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. Kelley seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. VIVIAN A. CROSS, VC 97-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 6423 Second St. on approx. 11,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8)) (D) 28. (MOVED FROM 4/2/98; DEFERRED FROM 6/30/98).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Julio F. Cross, 6423 Second Street, Alexandria, Virginia, replied that it was.

Ms. Schilling noted to Chairman DiGiulian a revised affidavit, approved by the County Attorney's Office, was submitted for this case.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. There was an outstanding Notice of Violation for maintaining a second dwelling unit on the lot. The applicant was working with the Zoning Enforcement Branch to remove the second kitchen and open an interior entrance so the lot contains only one unit. The applicant requested a variance to permit construction of a garage addition 9.8 feet from the side lot line. The minimum side yard requirement is 15 feet; therefore, a variance of 5.2 feet was requested. Ms. Schilling stated that in the staff report it was previously noted there did not seem to be a reason for opening up an entrance to the attached garage. Since the publication of the staff report, staff and Zoning Enforcement made a site visit and the applicant had indicated the location where the interior opening would be located. The proposal to construct the attached garage would provide an opening into the garage rather than into the yard.

Mr. Cross presented the variance request as outlined in the statement of justification submitted with the application. Mr. Cross stated he and his wife purchased the home from an independent contractor. The contractor obtained all permits to make the addition. Over two years later they received the Notice of Violation. There was also a second kitchen which had been removed. The most logical place for the

garage would be as an addition toward the front of the house.

Mr. Kelley asked Mr. Cross to show him where the garage would be located. Mr. Cross showed the Board members on a plat what the proposal consisted of.

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

Mr. Kelley moved to approve VC 97-M-018 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VIVIAN A. CROSS, VC 97-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line. Located at 6423 Second St. on approx. 11,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8))(D) 28. (MOVED FROM 4/2/98; DEFERRED FROM 6/30/98). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance.

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

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

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

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

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

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

1. This variance is approved for the location of an attached garage shown on the plat prepared by Alexandria Surveys, (Kenneth W. White) dated July 16, 1997, as revised through October 30, 1997, 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.

4. Prior to issuance of any building permits for a garage addition, the applicant shall comply with the provisions of the notice of violation dated April 8, 1997, to the satisfaction of the Zoning Enforcement Branch of the Department of Planning and Zoning.

Pursuant to Sect. 18-407 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. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 23, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 036, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE AND ADELE MARSHALL, SP 98-M-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.3 ft. from side lot line. Located at 3608 Lacy Blvd. on approx. 21,138 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((23)) 9.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Marshall, 3608 Lacy Boulevard, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for modification to minimum yard requirements based on error in building location to allow a partially constructed sunroom to remain 6.3 feet from the side lot line. The minimum side yard requirement was 12 feet; therefore, the amount of error was 5.7 feet or 48%.

Mr. Marshall presented the special permit request as outlined in the statement of justification submitted with the application. He stated both he and his wife were senior citizens and on disability. They had lived in their home since 1949. The house was small with a small basement. They believed if they re-routed their water pipes from the basement, it would be more economic. Their plumber informed them their setback

was too far from the sewer and therefore would not comply with the plumbing code. To bring the house closer to the street line, they decided to add an addition to the side of their home. In doing so, Mr. Marshall stated a mistake was made in the size of his lot and his addition went closer to the property line than they had assumed. He asked the Board if there was any way to correct the mistake due to the addition already being under construction.

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

Mr. Pammel moved to approve SP 98-M-032 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 8, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE AND ADELE MARSHALL, SP 98-M-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.3 ft. from side lot line. Located at 3608 Lacy Blvd. on approx. 21,138 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((23)) 9. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 15, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition shown on the plat prepared by Thomas F. Conlon, Land Surveyor, dated March 16, 1998, as revised through June 16, 1998, 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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote. The Board waived the eight day waiting period.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 038, September 15, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA PRIMITIVE BAPTIST CHURCH, SPA 88-P-088 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-088 for church and related facilities to permit change in development conditions. Located at 9640 Blake Ln. on approx. 1.04 ac. of land zoned R-1. Providence District. Tax Map 48-3 ((1)) 51. (Def. from 8/4/98 for notices)

Chairman DiGiulian noted the applicant had requested a deferral.

Ms. Langdon stated that the gentleman on the affidavit who would present the case had an accident over the weekend and was bedridden. They had asked to defer to September 29, 1998. Due to some cases coming off of this date, there would be sufficient room.

Mr. Dively moved to defer the application to September 29, 1998. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 038, September 15, 1998, (Tape 1), After Agenda Item:

Approval of September 8, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the meeting.

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Page 038, September 15, 1998, (Tape 1), After Agenda Item:

Update on Pending Special Permit Amendment Application for Golf Park Inc.,
and consideration on setting a new hearing date for Appeal Application
A 1997-HM-040 (Hunter Mill East, LLC, Jindo & Younghee Kim)

Ms. Langdon stated that the applicant and their engineer had met with the Acceptance Branch on Wednesday, September 8, 1998, and indicated they would submit a revision. As of 8:30 a.m. on September 15, 1998, they had not submitted their revisions; therefore, the application had not been accepted.

The Board discussed this issue and Mr. Kelley moved to set a date for the appeal hearing as soon as possible allowing for advertising.

Mr. Dively asked if mid-December would be an appropriate time frame.

Ms. Langdon stated if the application was accepted by the end of the current week, it would most likely be scheduled for the night meeting on December 15.

Chairman DiGiulian asked when could the appeal hearing be scheduled.

Ms. Langdon stated October 20, 1998 would be the next night meeting, which currently had three scheduled appeals. The next day meeting would be October 27, 1998, with nine cases scheduled.

Chairman DiGiulian asked about the November night meeting.

Ms. Langdon stated that would be November 17, 1998, which currently had no cases scheduled.

Mr. Kelley moved to defer the appeal application to November 17, 1998. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:16 a.m.

Minutes by: Deborah Hedrick

Approved on: December 13, 1998

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

040

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 22, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

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

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Page 041, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. LABIB JOSEPH CHAMMAS, VC 98-D-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1103 Sharon Ct. on approx. 13,004 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((13)) 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. Labib Chammas, 1103 Sharon Court, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Tevya Williams. The applicant requested a variance to permit the construction of an addition 7.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 5.0 feet was requested.

Mr. Chammas presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was requested to have protection for his car and for security reasons. Mr. Chammas said his request would not cause hardship for the neighborhood.

Chairman DiGiulian called for speakers.

Helen Cannon, 1105 Sharon Court, came forward to speak in opposition of the application. She said she did not have a problem with the applicant enclosing the existing carport but expressed concern about not being able to determine where the property line existed between her property and the applicant's property. She said she didn't want to have this issue cause a problem when she sells her house. Ms. Cannon wanted to know if the Board could offer her some relief for her issue.

Mr. Hammack said her issue was not one that could be remedied by the Board.

Mr. Chammas stated in his rebuttal that he would be willing to pay for half the cost of getting the property surveyed or that Ms. Cannon could accept his plat as a survey.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 98-D-077 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LABIB JOSEPH CHAMMAS, VC 98-D-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line. Located at 1103 Sharon Ct. on approx. 13,004 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-4 ((13)) 17. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant satisfied the required standards for a variance
3. Only a corner of the carport requires the variance.
4. The request was for enclosure of the existing carport
5. The photographs submitted with the application reflected some topographical constraints that warranted 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition (enclosed carport) shown on the plat prepared by Alexandria Surveys, Inc., dated August 21,1997, 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 6-0-1. Mr. Dively abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 30, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 043, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ANA P. FLORES, VC 98-L-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in the front yard of a corner lot. Located at 6921 Floyd Ave. on approx. 14,009 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((2))(2) 13. (Deferred from 6/2/98 and 7/28/98 for notices).

Susan Langdon, Chief, Special Permit and Variance Branch indicated that the applicant did not do the notices. She stated that this application had been deferred twice previously for the same reason.

Mr. Pammel moved to dismiss the subject application. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 043, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM L. ALLISON, VC 98-B-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in front yard. Located at 7304 Gresham St. on approx. 11,489 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4))(31) 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. William Allison, 7304 Gresham Street, Springfield, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicant requested a variance to permit a 6.1 foot high fence to remain in the front yard. The maximum height permitted for a fence in a front yard is 4.0 feet; therefore, a variance of 2.1 feet was requested.

Mr. Allison presented the variance request as outlined in the statement of justification submitted with the application. He said his neighbors garden extends to the height of the fence which was the reason he erected the fence.

Chairman DiGiulian asked if the fence obstructed the view. Mr. Allison replied that it did not.

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

Mr. Pammel moved to approve VC 98-B-074 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM L. ALLISON, VC 98-B-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in front yard. Located at 7304 Gresham St. on approx. 11,489 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4))(31) 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 September 22, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. Currently the vegetation on the adjacent property is higher than the subject fence.
4. The fence does not obstruct the view of any parties in that direction.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

limitations:

1. This variance is approved for the location of a 6.1 foot high fence in the location shown on the plat prepared by Kenneth W. White, dated May 27, 1998, submitted with this application and is not transferable to other land.

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

Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 30, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 045, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DAVID A. TRISSELL, SP 98-M-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.3 ft. from side lot line. Located at 3043 Heather Ln. on approx. 8,100 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-4 ((2))(F) 15. (Concurrent with VC 98-M-078).

9:00 A.M. DAVID A. TRISSELL, VC 98-M-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 0.3 ft. from side lot line. Located at 3043 Heather Ln. on approx. 8,100 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-4 ((2))(F) 15. (Concurrent with SP 98-M-034).

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 Trissell, 3043 Heather Lane, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicants requested a special permit for an error in building location to permit the dwelling to remain 8.3 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 3.7 feet was requested. The applicant also requested a variance to permit construction of an accessory structure to be located 0.3 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 11.7 feet was requested.

Mr. Trissell presented the requests as outlined in the statement of justification submitted with the application. He said the need for a special permit was discovered after filing the variance application. He said the house had been there for 36 years. Mr. Trissell said the variance request was to permit the construction of a garage and that it would follow the same foot plan of the existing garage.

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

Mr. Dively moved to approve SP 98-M-034 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. TRISSELL, SP 98-M-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 8.3 ft. from side lot line. Located at 3043 Heather Ln. on approx. 8,100 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-4 ((2))(F) 15. (Concurrent with VC 98-M-078). Mr. Dively moved that the Board of

continued from Page 045

Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a dwelling shown on the plat prepared by Louis J. Maticia, dated May 12, 1998 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. 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 September 30, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively moved to approve VC 98-M-078 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. TRISSELL, VC 98-M-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 0.3 ft. from side lot line. Located at 3043 Heather Ln. on approx. 8,100 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-4 ((2))(F) 15. (Concurrent with SP 98-M-034). Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicant is the owner of the land.
2. The garage is not very large and it has been there since the house was constructed.
3. The garage is well shielded by vegetation on all sides.
4. There is no other way to expand the garage because of topographic reasons and the layout of the deck to the back and side. An extension forward seems appropriate.

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

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

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

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

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

1. This Variance is approved for the location of a garage addition shown on the plat prepared by Louis J. Matacia, dated May 12, 1998, 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 to the garage shall be architecturally compatible with the existing dwelling and garage.

Pursuant to Sect. 18-407 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 September 30, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ST. PAUL'S EPISCOPAL CHURCH AND WOODLAND COOPERATIVE PRESCHOOL, SP 98-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities and nursery school. Located at 3439 Payne St. on approx. 2.36 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17))(B) 12, 13, 14, 15, 16, 17, 18, 19 and 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bonita H. DeLooper, 5918 Colfax Avenue, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicants requested approval of a special permit for a church and related facilities and a nursery school. The existing church was constructed in the 1950's. In 1974, a special permit was approved to permit an addition to the church, but was never implemented. The applicant requested approval for a nursery school with a maximum daily enrollment of 26 children. The proposed hours of operation were 9:00 a.m. to 12:00 noon Monday through Friday. Staff concluded that the subject application is in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Ms. DeLooper, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the Woodland School had been in operation for 26 years in Alexandria and that the school had been serving the community for a long time. Ms. DeLooper requested a waiver of the 8-day waiting period.

Chairman DiGiulian called for speakers.

Corinne Gorsky, Board member of the Woodland Preschool, 3813 Munson Road, came forward to speak in support of the application. She said the school would be a fabulous addition to the community and without

it would create a hardship for the community.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-M-036 for the reasons noted in the Resolution. Mr. Ribble moved to waive the 8-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. PAUL'S EPISCOPAL CHURCH AND WOODLAND COOPERATIVE PRESCHOOL, SP 98-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities and nursery school. Located at 3439 Payne St. on approx. 2.36 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17))(B) 12, 13, 14, 15, 16, 17, 18, 19 and 20. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 3439 Payne Street (2.36 acres) and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Bruce A. Menne, Professional Engineer, dated October 7, 1974, as revised by John K. White, Professional Engineer, dated May 8, 1998, 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 Public Works and Environmental Services (DPW & ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity of the main worship area shall not exceed 156.

6. There shall be 44 parking spaces, including two (2) accessible spaces. All parking shall be on-site as shown on the special permit plat.

7. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the property lines. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined above.

8. The barrier requirements shall be waived.

9. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.

10. 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 (12) twelve feet.
    - The light shall be a low-intensity design which focuses the light directly on the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

11. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

12. The maximum total daily enrollment for the nursery school shall be 26 children.

13. The maximum hours of operation for the nursery school shall be limited from 9:00 a.m. to 12:00 p.m. Monday through Friday.

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

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

Mr. Pammel seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 350, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ANDRE AND CHRISTINA BARLOW, VC 98-P-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 22.0 ft. and stoop 15.0 ft. from one front lot line of a corner lot. Located at 7148 Shreve Rd. on approx. 8,987 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((10)) 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. David Isaac, 2240 Gallows Road, Vienna, Virginia, replied that

it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of a dwelling 22.0 feet and a stoop 15.0 feet from one front lot line of a corner lot. The minimum yard requirement is 30 feet; therefore, variances of 8 feet and 10 feet were requested respectively.

Mr. Isaac, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants purchased a pre-manufactured home for delivery and installation on the subject property. Mr. Isaac also stated that the applicants submitted an application for a building permit and that was when it was discovered they would need a variance before the building permit could be issued.

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

Ms. Gibb moved to approve VC 98-P-076 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANDRE AND CHRISTINA BARLOW, VC 98-P-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 22.0 ft. and stoop 15.0 ft. from one front lot line of a corner lot. Located at 7148 Shreve Rd. on approx. 8,987 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((10)) 1. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot is an extremely narrow corner lot.
4. This is the only way a fairly modest size home could be sited on the property.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

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

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

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

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

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

1. This variance is approved for the location of the dwelling and stoop shown on the plat prepared by Huntley, Nyce & Associates, Ltd. dated February 16, 1998, 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 September 30, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 052, September 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER S. MOLIVADAS, VC 98-B-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 8256 Branch Rd. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 13. (Deferred from 8/4/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Molivadas, 8256 Branch Road, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage 4 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 11 feet was requested.

Mr. Molivadas presented the variance request as outlined in the statement of justification submitted with the application. He said the lot had sloping topography and a septic field and that was the reason for the variance request. Mr. Molivadas said the garage would be next to a wooded lot and that the neighbors did not object to the request.

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

Mr. Kelley moved to approve VC 98-B-063 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER S. MOLIVADAS, VC 98-B-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 8256 Branch Rd. on approx. 22,000 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 13. (Deferred from 8/4/98). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. There are exceptional topographical conditions.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

1. This variance is approved for the location of the detached garage shown on the plat prepared by John Anderson, Architect, dated April 21, 1998 and revised May 18, 1998, 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. 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 September 30, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 054, September 22, 1998, (Tape 1&2), Scheduled case of:

9:00 A.M. MUSTAFA CENTER, SPA 95-M-036-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 95-M-036 for place of worship and related facilities to permit site modifications and change in development conditions. Located at 6844 Braddock Rd. on approx. 40,187 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 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. Tracy Steele Scileppi, Rudnick, Wolfe, Epstein & Zeidman, 1201 New York Avenue, N.W. Washington, D.C., replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment of the approved special permit in order to change the development conditions to expand the hours of operation from Fridays from noon to 3:00 p.m. to week long operation from 10:00 a.m. to 8:00 p.m., with hours of noon to 10:00 p.m. during the month of Ramadan. The applicant also requested amendment to Condition 15 to incorporate a revised architecture which included a covered entrance with a dome and two minarets. The height of the dome would be 22 feet with a spire, while the height of the minarets would be 30 feet. The roof height would remain the same at 20 feet. The dome was proposed to be painted Islam blue, as were the minarets. The applicant also requested revision of the access to the site to relocate the second access point to the north side of the lot.

Staff did not take a position in opposition or support of the request for the expansion of the hours of

operation, and the proposed development conditions provided a choice of hours identified as either 6a or 6b for the Board to select. With respect to the architecture, staff believed that in order to keep the structure in scale with the adjacent residential neighborhood, and retain the appearance of the parcels associated with a stable residential neighborhood as recommended by the Comprehensive Plan for this lot, the minarets should not be included and the structure should have more muted colors to blend better with adjacent residences. Staff supported the request for revision of the access point to the lot. Staff recommended approval subject to the development conditions provided in the staff report.

Staff received proposed revised development conditions from the applicant late the day prior to the public hearing and had not had sufficient time to circulate and evaluate them. However, with a very cursory review of the development conditions, staff did not object to proposed changes to conditions 6a, 7, and 19. Staff did not support revised Condition 15 which proposed to retain the minarets and paint them gold or Islam blue. Staff needed more time to review condition 8.

Mr. Pammel expressed concern that staff did not take a position pertaining to the hours of operation. He said that it did not help the Board when they did not get a professional recommendation from staff.

Chairman DiGiulian agreed with Mr. Pammel and said that issue should have been addressed as it relates to the compatibility with the neighborhood.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the original hours for the subject application where adopted at the suggestion of the applicant. She said typically with places of worship, staff forwards to the BZA the requested hours of operation and does not usually comment on the hours. Ms. Langdon said if there was a day school or something similar, sometimes staff would comment on those hours.

Chairman DiGiulian stated the subject application's staff report had suggested hours of operation, he said it had two options, but it was a recommendation.

Ms. Langdon stated that one option was the one adopted originally and the other was what was currently requested by the applicant.

Mr. Dively asked if staff objected to the condition about the hours of operation. Ms. Langdon replied no.

Ms. Scileppi, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the mosque was not yet operational, but was under construction and the 1995 approval did not accommodate the needs of the applicant. Ms. Scileppi said the applicant requested modifications to development conditions pertaining to hours of operation, the elevation and certain site modifications. She said the applicant had been up-front with neighbors, staff, and the BZA with its need for having certain necessary building design and use approvals in place prior to opening the facility. Ms. Scileppi stated the applicant had held three community meetings in which 5 community associations, Combined Properties, and Total Crafts invited. She stated the applicant proposed a new condition which would require that they hire an off-duty police officer to monitor the traffic flow into and on the site before, during and after the Friday afternoon prayer. The applicant also proposed to impose on itself a requirement to promote car pooling as a mechanism to address vehicle trips and on-site parking. She said overflow parking was an issue and modified condition #7 addressed that issue by encouraging car pools and by requiring a shared parking agreement in conjunction with the Board of Supervisors if excess parking was to be provided off site. Ms. Scileppi submitted letters of support from neighbors and the Bradlick Shopping center. She also asked everyone present at the hearing to stand to show their support for the application. *(Approximately 3/4 of the Board Room was full of citizens standing to show their support of the subject application).*

Mr. Kelley stated that if all the people present at the hearing went to church at the same time the church would have an overflow of the amount of people allowed on site at one time. He asked with whom did the applicant propose to have shared parking with.

Ms. Scileppi replied the shopping center, due to its proximity. She said there currently was a private agreement with the shopping center to allow excess overflow parking in the shopping but staff required that

it become a formalized agreement through the County.

Chairman DiGiulian called for speakers in support of the application. The following came forward: Mariam Nawabi, 2059 Huntington Avenue, Hassam Sherdill, 12308 Oakwood Drive, Raymond Ewing, 7045 Cindy Lane, Nadir Atash, Sammy Khalifeh, 4450 Exeter Street, Noria Faryar, 7035 Leebrad Street, Randall Royer, Civil Rights Coordinator with the Council of American Islamic Relations, and Abdullah Abadi.

Chairman DiGiulian called for speakers in opposition. The following came forward: Barbara Scarboro, 6909 Pacific Lane, Hillbrook/Tall Oaks Civic Association, Judith Courier, 7021 Leebrad Street, President Lee Wood Homeowners Association, Nelson Johnson, 7006 Braddock Mews, Board of Braddock Mews, Ray Gingrich, 6610 Independence Avenue, Edsall Park Civic Association, Garfield Cross, 6936 Colvin Drive, and Jim Mooney, 509 Dodson Drive. The speakers expressed concerns about an increase in traffic, traffic jams in the parking lot, access to the site, the hours of operation, overflow parking, the number of members, adequate buffering, and noise.

Tom Thomas came forward to speak on behalf of Combined Properties. He informed the Board that he was available for questions about access and issues related to the shopping center. Mr. Thomas said to the extent that Combined Properties could cooperate with the applicant they would, recognizing that shared parking was directly related to their ability to function as a shopping center and that nothing the applicant did could impede with that. He said the parking agreement between Combined Properties and the Mustafa Center was directly related to issues of reasonableness as not to encumber the parking for the shopping center. He said the parking was for exceptional circumstances when it didn't interfere with the main business of the shopping center.

Chairman DiGiulian asked if the parking agreement would comply with the requirements for a shared parking agreement to be approved by the Board of Supervisors. Mr. Thomas said he had not reviewed the agreement in the context of a shared parking agreement. He said having not reviewed it for that purpose, he was not in a position to say it could be submitted at this point.

Ms. Scileppi addressed the speakers' concerns in her rebuttal. She said the site did have access to a major road network and that the Mustafa Center was not located in a neighborhood. She said the use was small in size, but not all members would attend the facility at the same time. Ms. Scileppi said the applicant wanted to be a good neighbor.

Mr. Hammack asked what were the other proposed activities to take place on the site. Ms. Scileppi replied religious classes, individual prayer, condolence services and office work.

Mr. Hammack asked how the applicant would monitor the number of people on site. Ms. Scileppi said the applicant would be responsible for counting the number of people.

Mr. Kelley asked what would happen when the 101st person showed up. Ms. Scileppi replied that the applicant was aware of their limitations and they knew that their permit would be on the line if they were found to be violating their conditions, so they would want to conform with the conditions.

Discussion ensued between Ms. Gibb and Ms. Scileppi pertaining to the architectural design of the Mustafa Center.

Chairman DiGiulian said he didn't have a problem with the Muslims and he supported the first application, but the site was small and access was a problem, and it was right up against a subdivision and a big part of his reasoning to support the previous application was the minimal use. He said he had a problem with the proposed intensity.

Mr. Kelley said he felt either the first application or the subject application was not done in good faith. He said there was a significant change.

Ms. Scileppi said the application was not done in bad faith.

Mr. Kelley asked if the applicant could obtain an iron-clad agreement for parking with the County. Ms.

Scileppi said she could not speak for what the Board of Supervisors would approve.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he was present in 1995 when the original application was presented. He said he remembered very clearly that the representatives of the Mustafa Center understood the questions by the Board Members and that because of the size of the site, the ingress/egress problems, and other issues the use would be a limited use. Mr. Hammack said this was one of those situations which was sometimes difficult because the Board would rather not approve a site that is inadequate for a use, but on the other hand, balance what an applicant presents to you. They said it would be a limited use and you take it at face value and then it comes back for substantial modifications. He said he was concerned about the traffic issues and the parking as well as the impact on the community. Mr. Hammack said he didn't have any reservations about a mosque, he said it was land use issues that he was concerned with. He said the Mustafa Center had to understand that there were limitations with the site. He said the simple demonstration of support made by the Afghan community, those present at the hearing, indicated that the center would be a heavily utilized facility. He said the potential for having an adverse impact on the community was there. Mr. Hammack said the Board granted the original use and the hours of operation did not bother him. He said a mosque should be permitted to operate during its normal hours. He stated he was not concerned with the height of the minarets and that it was not appropriate for the Board to get involved with the architectural design.

Mr. Hammack moved to approve SPA 95-M-036-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MUSTAFA CENTER, SPA 95-M-036-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 95-M-036 for place of worship and related facilities to permit site modifications and change in development conditions. Located at 6844 Braddock Rd. on approx. 40,187 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 28. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 22, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6844 Braddock Road (40,187 square feet), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Zia U. Hassan, Hamid Moghavemi Tehrani, of Site Design Engineering dated November 9, 1995, as revised through June 1, 1998, 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 Public Works and Environmental Services (DPW & ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of individuals, including employees, on the site at any one time shall not exceed 100.

6. The hours of operation shall be limited to 10:00 a.m. to 8:00 p.m. seven days a week, with hours of operation limited to 12:00 noon to 10:00 p.m. seven days a week during the month of Ramadan. The applicant shall notify the Zoning Administrator in writing of the start of Ramadan at least 7 days prior to the start of the religious observance of Ramadan.

7. Forty nine parking spaces shall be provided as shown on the special permit plat. All parking shall be on-site, except that parking that is proposed to be shared with other uses in excess of the 49 spaces provided on-site shall be provided subject to approval a shared parking agreement by the Board of Supervisors.

8. The existing vegetation may be used to satisfy Transitional Screening 1 along the eastern property line, provided it is supplemented with evergreen plant materials, subject to the review and approval of the Urban Forestry Branch of DPW & ES. A six foot solid wood fence shall be provided along the eastern boundary of the site, as shown on Attachment B, to accommodate existing vegetation and the location of ground HVAC units on the eastern side of the building. Transitional Screening 1 shall be provided along the southern property line, along the Braddock Road frontage of the site. The barrier requirement shall be waived along the southern property line.

9. Landscaping and building foundation plantings shall be provided along the southern and western side of the proposed building in order to enhance the visual appearance of the building. The landscaping and foundation plantings shall be shown on a landscape plan which shall be provided to the Urban Forestry Branch of DPW & ES for review and approval.

10. Interior and peripheral parking lot landscaping shall be provided as required by the Director of DPW & ES.

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

12. Best Management Practices shall be provided to the satisfaction of the Director, DPW & ES. If a larger stormwater management facility than the proposed underground stormwater management facility shown on the plat is needed, there shall be no infringement into the required transitional screening yards to accommodate such enlarged facility.

13. Access to the site shall be via the ingress-egress easement shown on the special permit plat from Bradlick Shopping Center. If access to the site cannot be via the ingress-egress easement shown on the special permit plat, this special permit shall be null and void.

14. The parking lot shall not be illuminated except for the provision of low level safety lighting with a height not to exceed 4 feet. All lights shall be shielded and directed downward away from adjacent residences.

15. Subject to the allowance of minor modifications as permitted in the Zoning Ordinance, the maximum Floor Area Ratio for the proposed structure shall be 0.092; the maximum building height shall not exceed 20 feet measured to the top of the roof; and the maximum height of all architectural features (dome and minarets) shall not exceed 30 feet. The structure shall be constructed in substantial conformance with the architectural elevation submitted with the special permit application attached herein (Attachment A). The entire facade and parapet of the building shall be painted a single color that is a muted, darker earth tone color similar to the residential homes to the east. The inside of the parapet roof and its contents shall be painted a flat black color to remain unobtrusive to adjacent residences. The architectural embellishments shown in Attachment A (including the dome and minarets) shall be painted in lighter earth tone colors, gold or Islam blue. The wrought iron railing may be painted black as proposed.

16. There shall be no pole mounted signs associated with this use. Building mounted and free standing signs shall be permitted in accordance with Article 12, Signs of the Zoning Ordinance.

17. The Board of Zoning Appeals shall review the activity on the site approximately one year from the issuance of the Non-Residential Use Permit and annually thereafter to determine compliance with all development conditions. To facilitate such review, the applicant shall provide relevant information as requested by staff of the Zoning Evaluation Division for the purpose of preparing a report. This report shall be presented as an after agenda item to the Board of Zoning Appeals.

18. The use of loudspeakers shall not be permitted outside the building.

19. For a period of one year after the issuance of a Non-Residential Use Permit, the Applicant shall hire an off-duty police officer, or the like, to direct traffic flow into and on the site for the main Friday worship service. This shall include the one-half hour before and after service. If after approximately one year it is determined by the BZA, during its review of the activity on the site in accordance with Condition 17, to be necessary in the interest of safety to continue this practice, then the Applicant shall continue with such practice for the duration of time that may be specified by the BZA.

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

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 September 30, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 060, September 22, 1998, (Tape 2), Scheduled case of:

9:30 A.M. J.D.A. CUSTOM HOMES, INC., A 1997-HM-033 Appl. under Sect(s). 3-108 of the Zoning Ordinance. Appeal the Department of Environmental Management's determination that the consolidation of two parcels into one as proposed on Subdivision Plan #3804-RP-02-1 did not satisfy the maximum density requirement as set forth in Sec. 3-108 of the Zoning Ordinance and therefore could not be approved. Located at 9516 Leemay St. on approx. 0.90 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((18)) A and 28-1 ((1)) 28. (Rescheduled from 1/13/98; deferred from 3/24/98).

Chairman DiGiulian indicated that the applicant submitted a letter requesting withdrawal. Mr. Pammel moved to accept the withdrawal. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 060, September 22, 1998, (Tape 2), Action Item:

Approval of February 10, 1998 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 060 September 22, 1998, (Tape 2), Action Item:

Out-of-Turn Hearing Request
James C. Pirius, VC 98-V-110

Ms. Langdon noted that the out-of-turn hearing request had been withdrawn.

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Page 060, September 22, 1998, (Tape 2), Action Item:

Request for Intent to Defer
Kent Redden/Happy Homes, A 1998-MA-023
Kingston Constructors A 1998-MA-024

Mr. Hammack moved to approve the request for Intent to Defer. Mr. Pammel seconded the motion. The application was deferred to December 1, 1998. The motion carried by a vote of 7-0.

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Page 060, September 22, 1998, (Tape 2), Action Item:

Approval of September 15, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:39 a.m.

Minutes by: Regina Thorn
Approved on: December 22, 1998

Regina Thorn

Regina Thorn, 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 Tuesday, September 29, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 201, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA PRIMITIVE BAPTIST CHURCH, SPA 88-P-088 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-088 for church and related facilities to permit change in development conditions. Located at 9640 Blake Ln. on approx. 1.04 ac. of land zoned R-1. Providence District. Tax Map 48-3 ((1)) 51. (Def. from 8/4/98 for notices. Deferred from 9/15/98 at the applicants 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. Frank E. Williams, Jr., 3008 Cyrandall Valley Road, Oakton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant was requesting a modification to the development conditions to allow the requirement to provide transitional screening along the northern, southern and western lot lines to be waived. No changes were proposed to the uses and structures on the lot. The applicant proposed to demolish an existing residential structure on the site that had fallen into disrepair. Staff recommended approval of the special permit amendment application subject to the development conditions contained in the staff report.

Mr. Williams presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Williams stated he appreciated the efforts of staff in accommodating the request and agreed with the staff report.

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

Mr. Hammack moved to approve SPA 88-P-088 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 28, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTHERN VIRGINIA PRIMITIVE BAPTIST CHURCH, SPA 88-P-088 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-P-088 for church and related facilities to permit change in development conditions. Located at 9640 Blake Ln. on approx. 1.04 ac. of land zoned R-1. Providence District. Tax Map 48-3 ((1)) 51. (Def. from 8/4/98 for notices. Def. from 9/15/98 at appl. req.). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony before the Board indicating compliance with special

permit standards.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 9640 Blake Lane (1.04 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by BDLK Inc. (Ronald P. Lauziere, Land Surveyor) dated June 14, 1988, as revised through July 29, 1997 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 Public Works and Environmental Services. 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 154 with a corresponding minimum of 39 parking spaces and a maximum of 41 parking spaces. All parking shall be on-site in the location shown on the plat.

6. Landscaping shall be provided on the site as required below, and shall be deemed to meet the transitional screening requirements for the site:

   North

   Additional landscaping within a landscape area of 10 feet in width shall be planted along the northern property boundary on both sides of the access drive from Bel Glade Street shall be provided to soften the appearance of the parking lot from residences opposite the site. An evergreen hedge shall also be planted along the northern and western boundaries of the parking lot to provide a continuous screen to shield surrounding properties from headlight glare.

   South

   An evergreen hedge shall be planted along the south side of the parking lot to provide a continuous screen to shield adjacent properties from headlight glare.

   East

   The existing hemlock hedge and berm shall be maintained as it exists on the site. Any dead or dying shrubs shall be replaced to maintain a continuous screen.

   West

   Transitional screening shall be waived in favor of the existing lawn and trees as shown on the approved plat.

7. The barrier requirement shall be waived along the western and northern lot lines. The existing 4 foot high chain link fence along the eastern and a portion of the southern property lines shall be deemed to meet the barrier requirements.

8. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

9. Improvements to Bel Glade Street shall be provided in accordance with the Virginia Department of Transportation project plans for the Blake Lane project as determined by the Virginia Department of Transportation (VDOT) and DPW & ES. An equivalent contribution as determined by DPW & ES in lieu of construction can be made to Fairfax County.

10. The entrance from Bel Glade Street shall be widened to thirty (30) feet at the property line to meet VDOT standards for commercial entrances.

11. Right-of-way as shown on the plat submitted with the application shall be provided for the necessary improvements to the surrounding street system.

12. Any lighting installed 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 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. All sign shall be provided in conformance with Article 12 of the Zoning Ordinance.

14. This property shall be used as a church and no other additional use is permitted.

15. The applicant shall obtain approval of a new Non-Residential Use Permit which encompasses the modifications to the site approved with this special permit amendment, including the demolition of the residential structure.

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Ribble, Mr. Kelley and Mr. Dively were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JONATHAN HURT, VC 98-L-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 5327 Trumpington Ct. on approx. 6,698 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12))(44) 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. James Garner, Agent, Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 17.4 feet from the rear lot line. The minimum rear yard requirement is 25 feet; therefore, a variance of 7.6 feet was requested.

Mr. Garner presented the variance request as outlined in the statement of justification submitted with the application. Mr. Garner stated the subject property was acquired in good faith. He said it had exceptional shallowness at the time of the effective date of the Ordinance. Mr. Garner said the variance would be in harmony with the intended spirit and purposes of the Ordinance and would not be contrary to the public interest.

Chairman DiGiulian asked Mr. Garner what was the hardship which created the need for the variance.

Mr. Garner stated the way the subdivision was developed, there was no where else to build the addition on the property other than the rear.

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

Mr. Pammel moved to approve VC 98-L-075 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JONATHAN HURT, VC 98-L-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 5327 Trumpington Ct. on approx. 6,698 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12)) (44) 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 September 29, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with variance standards.
3. The lot is extremely shallow, less than 100 feet deep.
4. This is the only location for such an addition and is the logical addition for 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition shown on the plat prepared by BC Consultants, dated May 6,1998, signed May 15,1998, 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 5-0. Mr. Ribble and Mr. Dively were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LAURANCE P. LONGTIN, VC 98-H-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.5 ft. from side lot line such that side yards total 37.4 ft. Located at 10205 Tamarack Dr. on approx. 24,465 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 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. Laurance Longtin, 10205 Tamarack Drive, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 25.5 feet from the side lot line, such that side yards total 37.4 feet. The minimum total side yard requirement is 40.0 feet; therefore, a variance of 2.6 was requested.

Mr. Longtin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Longtin stated they currently had a single car garage and wanted to build a second car garage. The property was identical to most other properties on the street which had two car garages. There were no complaints from any neighbors regarding the addition.

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

Ms. Gibb moved to approve VC 98-H-081 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAURANCE P. LONGTIN, VC 98-H-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.5 ft. from side lot line such that side yards total 37.4 ft. Located at 10205 Tamarack Dr. on approx. 24,465 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((3)) 61. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1998; and

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

1. The applicant is the owner of the land.
2. The house is located to the rear of the lot.
3. The request is a modest variance of 2.6 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated June 1, 1998, 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. Kelley seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 067, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN D. AND EDWARD V. WALKER, III, VC 98-D-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from rear lot line. Located at 12014 Rosiers Branch Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((7)) 26.

continued from Page 207

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Walker, 12014 Rosiers Branch Drive, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 17.3 feet from the rear lot line. A minimum rear yard of 25 feet was required; therefore, a variance of 7.7 feet was requested.

Mr. Walker presented the variance request as outlined in the statement of justification submitted with the application. Mr. Walker stated the development was approximately 15 years old and he had lived there for 12 years. He said over the years, many homeowners had looked for ways to modernize their homes. He stated that they had been exploring ways to increase the utilization of the family room and eat-in kitchen area. A design was created in the neighborhood that increased these living areas and was constructed in the neighborhood. He stated their preference was to do the same, however, due to the irregular shape of their lot it could not be done without the variance. There were no neighbors immediately to the rear of the property or on the east side of the property. They had discussed their proposal with the neighbors on the west side of their property, who agreed with the proposal to construct an addition 8 feet by 25 feet onto the rear of the family room and eat-in kitchen area.

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

Mr. Ribble moved to approve VC 98-D-082 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN D. AND EDWARD V. WALKER, III, VC 98-D-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from rear lot line. Located at 12014 Rosiers Branch Dr. on approx. 8,500 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((7)) 26. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for the granting of a variance.
3. The siting of the house, due to the converging lot lines toward the side of the property, require the need for a variance.

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

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

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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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an room addition shown on the plat prepared by Richard J. Cronin IV, dated July 1, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 069, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RANDALL A. AND PATRICIA E. PARIS, SP 98-Y-033 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit construction of deck 9.8 ft. from side lot line. Located at 15553 Eagle Tavern Ln. on approx. 15,635 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4))(1) 7.

Chairman DiGiulian called the applicants to the podium.

The applicant was not present in the Board Auditorium. Ms. Langdon stated Mr. Bernal had talked with the applicant the week prior at which time they stated they planned on attending the public hearing. She recommended to Chairman DiGiulian to move the application to the end of the agenda.

Chairman DiGiulian stated he would move the hearing to the end of the agenda.

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Page 370, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. RIEGER, VC 98-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 15.5 ft. from both side lot lines, chimneys 13.2 ft. and bay window 13.5 feet from side lot line. Located at 1129 Dogwood Dr. on approx. 15,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((3))(3) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barnes Lawson, Jr., Agent, 6045 Wilson Boulevard, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant planned to demolish the existing outdated residential structure and develop the lot with a new dwelling. The applicant requested a variance to permit the proposed dwelling to be located 15.5 feet from both side lot lines; two chimneys to be located 13.2 feet from a side lot line and a bay window to be located 13.5 feet from a side lot line. The minimum side yard requirement was 20 feet; therefore, a variance of 4.5 feet was required for the dwelling and variances of 3.8 feet and 3.5 feet for the chimneys and bay window respectively, was requested.

Mr. Lawson presented the variance request as outlined in the statement of justification submitted with the application. He stated the property was part of a subdivision which was recorded in 1926. At that time, they had created 50 foot lots. This property consisted of two 50 foot lots, therefore, the application property was 100 feet in width and 15,000 square feet in depth. The existing house was built in 1940. Mr. Riegers parents bought the house in 1950 and lived there until his mother passed away. Mr. Lawson said the applicant wanted to purchase the property and move his family to the property and build a new home and raise his children in the same neighborhood in which he grew up. The existing house currently had side yard setbacks of 15.4 feet and 14.5 feet. The proposed house would not encroach into the setbacks to the extent the existing house already did. Mr. Lawson presented an architect rendering of the proposed home to the Board. The house is a modest house traditional in style, with a standard two car garage. He stated the Riegers had met their neighbors who had agreed to support the application. Mr. Lawson submitted nine statements to the record from those neighbors in support of the application. He stated, to his knowledge, there was no opposition to the application. The architecture of the home would be compatible with the neighborhood. To support that statement, Mr. Lawson presented a board of pictures depicting the homes which were across the street, on either side and behind their lot. Also shown on the board were pictures of other variances and grandfathered situations which currently existed in the neighborhood. Mr. Lawson discussed various setbacks with the Board in the R-1 and R-2 zoning districts. The current home is an old home with a one car garage, insufficient closet space and kitchen. The Riegers wanted to replace this old home with a modern home with modern amenities. To bring the house up to Code, renovation of the old house did not make economic sense to the Rieger's.

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

Mr. Kelley moved to approve VC 98-D-079 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 22, 1998.
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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES H. RIEGER, VC 98-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 15.5 ft. from both side lot lines, chimneys 13.2 ft. and bay window 13.5 feet from side lot line. Located at 1129 Dogwood Dr. on approx. 15,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((3))(3) 21. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance.
3. The lot is exceptionally narrow.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following

limitations:

1. This variance is approved for the location of the new dwelling and the chimneys and bay window shown on the plat prepared by Gallifant, Hawes & Jeffers, Ltd., dated May 29, 1998, as revised through September 11, 1998, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 072, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BELLE HAVEN COUNTRY CLUB INCORPORATED, SPA 82-V-093-5 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 82-V-093 for country club to permit construction of two platform tennis courts and site modifications. Located at 6023 Fort Hunt Rd. on approx. 156.7 ac. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((1)) 5; 83-4 ((2))(5) 1-32 and B; 83-4 ((2))(6) 1-29; 83-4 ((2))(13) 1-30; 83-4 ((2))(14) 1-32; 83-4 ((2))(21) 1-5; 83-4 ((2))(22) 1-19; 83-4 ((2))(23) 1-30; 83-4 ((2))(30) 1-4 and 11-30; 83-4 ((2))(31) 1-32; 83-4 ((2))(33) 1-15 and A; 83-4 ((2))(34) 1-30; and 83-4 ((2))(41) 3-11, 14-19.

Mr. Kelley stated he was a member of the country club. The club was not a stock club in which he did not have a financial interest. He asked the Board if he could participate in the decision on the application.

Mr. Ribble stated he also was a member of the country club and had checked with the County Attorney's office on his participation in the hearing. The County Attorney stated he could participate.

Chairman DiGiulian acknowledged this and called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Murphy, General Manager, 1601 Norell Place, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit construction of two platform tennis courts at a location near the north end of the existing athletic facility. The site was within a residential district and a highway corridor overlay district. Staff recommended approval of the application. Mr. Murphy presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated the members of the club wished to have an amenity added to their club on the north side of the building. They had spoken to a number of neighbors who were in agreement that there would be no impact that would negatively impact the neighborhood. Mr. Murphy stated concerns had been addressed regarding tree screening the area from the road, which is 210 feet away. He said there would be no noise factor.

Mr. Kelley asked Mr. Murphy if he had seen the letter submitted in opposition of the application.

Mr. Murphy stated he had not and received a copy of the letter from Mr. Kelley. Mr. Murphy presented pictures to the Board of the location. He stated due to the fact it was the first time he had seen the letter he would attempt to address the concerns from Mr. Martin.

He stated Mr. Martin referred to in his letter that he was not pleased with the facility in general because it blocked his view to the river. Mr. Murphy stated the club had been there since 1921 and did not necessarily block the view of the river in that area. He stated the floodlights in the parking lot were closer to Fort Hunt Road than to Mr. Martins residence and the proposed location of the two platform tennis courts would only have a height of 20 feet. There were presently lights of 30 feet. He said the new lighting for these courts did not spread off-site. They were a direct halogen light onto the court and therefore there would be no off lighting from the added lights in the area which would be further away than the lights that were already in the present area.

Mr. Martins letter stated he heard the swimming pool speakers clearly. Mr. Murphy stated the swimming pool was closer to the road than the proposed tennis courts and they would also be bermed and screened by trees that were proposed. He stated this was a winter sport and not a summer sport. Noise should not be a factor during the winter when the sport is being played. Mr. Martin's letter stated the facility was not a good neighbor and did not address his previous complaints. Mr. Murphy stated he had never received a complaint from Mr. Martin since he had been there for the past 14 months.

Mr. Ribble stated he was on the Board at Belle Haven and also its President for one year and had also never heard of any complaints from Mr. Martin.

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

Mr. Hammack moved to approve SPA 82-V-093-5 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BELLE HAVEN COUNTRY CLUB, INCORPORATED, SPA 82-V-093-5 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 82-V-093 for country club to permit construction of two platform tennis courts and site modifications. Located at 6023 Fort Hunt Rd. on approx. 156.7 ac. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 83-4 ((1)) 5; 83-4 ((2))(5) 1-32 and B; 83-4 ((2))(6) 1-29; 83-4 ((2))(13) 1-30; 83-4 ((2))(14) 1-32; 83-4 ((2))(21) 1-5; 83-4 ((2))(22) 1-19; 83-4 ((2))(23) 1-30; 83-4 ((2))(30) 1-4 and 11-30; 83-4 ((2))(31) 1-32; 83-4 ((2))(33) 1-15 and A; 83-4 ((2))(34) 1-30; and 83-4 ((2))(41) 3-11, 14-19. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 29, 1998; and

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

1. The applicant is the owner of the land.
2. The two tennis courts are adequately shielded.
3. The lighting is properly directed so as not to interfere with surrounding residences.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

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

1. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by R. C. Fields, dated April, 1998, as revised through September 2, 1998 and approved with this application, as qualified by these development conditions.

2. 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.

3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

4. The hours of operation shall be limited to 8:00 a.m. to 11:00 p.m., Tuesday through Sunday.

5. There shall be 201 paved and striped parking spaces. In addition, the existing overflow parking area shall be retained. All parking shall be confined to the site.

6. All lighting and noise shall be confined to the site.

7. The total family membership shall not exceed 540 family members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.

8. Transitional Screening 1 shall be installed for 500 feet on either side of the main entrance, unless waived by DPW&ES based on engineering and/or right-of-way constraints.

9. The barrier requirement shall be fulfilled by the six (6) foot chain link fence that presently exists on the property.

10. Construction of the deceleration/acceleration lanes and road improvements shall be provided at such time as determined necessary by the Director, DPW & ES.

11. No fuel storage facilities shall be located within the floodplain.

12. Evergreen trees shall be planted adjacent to the platform tennis courts as depicted on the special permit plat. All proposed trees shall be a minimum of six (6) feet in height at time of planting and shall be maintained and replaced as necessary to provide continual screening for the tennis courts.

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

Page 075, September 29, 1998, (Tape 1), BELLE HAVEN COUNTRY CLUB INCORPORATED, SPA 82-V-093-5, continued from Page 074

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 7, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 075, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SPA 81-V-066-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-V-066 for church and related facilities to permit addition and site modifications. Located at 2000 George Washington Mem. Pkwy. on approx. 7.3 ac. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((1)) 2. (RESCHEDULED FROM 9/8/98).

Chairman DiGiulian noted there was a deferral request on the application.

Susan Langdon, Chief, Special Permit and Variance Branch, stated the applicant had asked for an indefinite deferral. The case was pulled by the Planning Commission and they had deferred it on September 24, 1998, to work on a Plan Amendment which might address the problems in the Plan language.

Mr. Hammack moved to defer the application indefinitely. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 075, September 29, 1998, (Tape 1), Scheduled case of:

9:30 A.M. CENTREVILLE LAND CORPORATION, A 1998-SU-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the property is split-zoned part I-5 and part I-6, and Appl. under Par. 4 of Sect. 19-209 of the Zoning Ordinance requesting interpretation by the BZA of the zoning district boundary. Located at 15700 Lee Hwy. on approx. 96,865 sq. ft. of land zoned I-5, I-6, and WS. Sully District. Tax Map 64-1 ((4)) 1, 2, and 3.

William Shoup, Deputy Zoning Administrator, stated Ms. Johnson-Quinn would make the presentation on the appeal.

Diane Johnson-Quinn, Zoning Administration Division, stated the appeal was filed by Centreville Land Corporation to appeal the Zoning Administrator's determination that the subject property was split-zoned, part I-5 and I-6.

Background details and a discussion of the issues of this case were contained in the staff report, however, she presented a brief summary.

The property was located at 15700 Lee Highway and was identified as Lots 1, 2 & 3. They were 3 of 7 lots owned by the appellant and which were used for a concrete batching plant. The property was depicted on the current Zoning Map as being split-zoned I-5 and I-6. The appellant's attorney requested a determination by the Zoning Administrator concerning the location of the zoning district boundary. The appellant's attorney maintained that Lots 1, 2 &3 were entirely zoned I-6 and that the split-zoning was the result of a mapping error which occurred in the late 1960s.

The Zoning Administrator determined that while an error may have occurred in the 1960s, the fact that the zoning district boundary, as it appeared on the current Zoning Map, was in the same location depicted on the map adopted by the Board of Supervisors in 1978 as part of the remapping of the County as part of the adoption of the new Zoning Ordinance in 1978. Thus, any mapping error which may have occurred prior to 1978, was adopted by the Board of Supervisor's action in August 1978, in essence, the Board of Supervisors rezoned the property.

The appellant did not dispute the fact that the error appeared on the 1978 Zoning Map adopted by the Board of Supervisors, however, they maintained that it was merely an error which the Zoning Administrator could correct by virtue of the provisions set forth in Par. 5 of Sect. 2-204 of the Zoning Ordinance. This section only provided the Zoning Administrator with the power to interpret the zoning district boundaries of the Zoning Map when uncertainties existed. In this case, no such uncertainty existed. The only remedy of this error was a rezoning of the property by the Board of Supervisors. The appellants had a pending rezoning application on file which had been indefinitely deferred.

Chairman DiGiulian asked if it was the Zoning Administrator's position that the zoning map overruled the action of the Board of Supervisors when the property was rezoned.

Ms. Johnson-Quinn stated only in this situation because the zoning map was adopted officially by the Board of Supervisors in 1978.

Chairman DiGiulian stated, in his mind, the zoning action received a lot more scrutiny than one piece of property on the zoning map. He said it did not make sense to him that this would be the Zoning Administrators position.

Ms. Johnson-Quinn stated with the adoption of the new Zoning Ordinance, all the designations and categories changed so there was a conversion and resulted in, essentially, a rezoning by the Board. It was a legislative act to remap and recategorize every property in the County to the new designations.

Chairman DiGiulian asked if there was an error in the map and it was a residential piece of property and by mistake it was categorized as an I-6 use, would the Zoning Administrator take the same position.

Ms. Johnson-Quinn stated she believed so.

Mr. Dively asked what the practical consequence was of a single parcel being split zoned. What did it mean as far as the use. Would staff have to treat them as two properties.

Ms. Johnson-Quinn replied that different zoning categories had different uses that were permitted by-right, by special exception and special permit. In this particular case, the concrete batching plant was not permitted in the I-5 but only in the I-6 by special exception.

Mr. Dively asked if the one property had to be treated as if it were two properties.

Ms. Johnson-Quinn stated certain uses were permitted on the portions that were I-6 and not permitted on the portions which were I-5.

Mr. Dively stated when a person buys a piece of property it was not usually their intention to have half of it used for one thing and half of it used for another, it was usually one use. He asked if staff was stating it would have to be treated as two separate units.

Ms. Johnson-Quinn stated there were limitations on portions of the property due to the different zoning categories.

Mr. Hammack asked since there were two different categories, would the uses allowed under the different sections of the Ordinance be subject to setbacks.

Ms. Quinn stated in the industrial district there were not side yard setbacks and where the boundary was it may not have too much of an impact but where the boundary exists, if it considered a front yard, it would be possible it would have to set back, however, Ms. Quinn stated she did not believe that was the case in this situation.

Mr. Hammack asked how much, in terms of linear feet, on the frontage between Lot 6 and Lot 5, where the district boundary changes.

Ms. Johnson-Quinn stated she could not determine due to scale changes, however, along the road it would

be small, maybe 50 feet.

Mr. Hammack asked if to the rear it couldn't be alot, but a perpendicular across the rear wouldn't be too much, 100 feet. On one of the exhibits it showed as it went to the rear of the property, away from Lee Highway, the zoning district lines diverge a little bit. What would the width at the rear at the widest point be. Ms. Johnson-Quinn stated that possibly the appellant would be able to make that determination. Due to the scales being reduced several times, she was not sure if she could measure it.

Mr. Hammack asked if it was staff's position that the entire A-17 parcel was I-5, under the previous zoning category before the map changed.

Ms. Johnson-Quinn asked if he was referring to the rezoning A-717. It was staff's position that it was zoned to the I-G in its entirety. What was to become Lot 6 was to be the I-L but the lot lines were not there until the subdivision was recorded and that was when the error occurred.

Mr. Hammack asked even though certain uses were initiated on the property, were those uses not grandfathered because of the change in the map in 1978.

Ms. Johnson-Quinn stated the use was not initiated until after the zoning was approved in the 1960s.

Mr. Hammack stated the use was initiated before the map change in 1978. Was there nothing that would grandfather this.

Ms. Johnson-Quinn stated it was not legal. You could not do the concrete batching plant in the I-L or the future I-5. By establishing the use erroneously it would not grandfather it.

Chairman DiGiulian stated they had rezoned everything except Lot 6 to the I-G. If they established the concrete batching plant on the other lots, wouldn't they have some grandfathered status on the portion of the batching plant that would be on the I-5.

Ms. Johnson-Quinn stated she was not sure of the answer to the question.

Mr. Hammack asked what was staff's interpretation of the word substantially. Mr. Hammack read from the Ordinance and also from the State Code and asked what did substantial mean.

Chairman DiGiulian stated he did not believe the Board would be changing anything. He believed the zoning line should follow the lot line.

Ms. Johnson-Quinn stated staff's position would be a change in the zoning district boundary could occur if it was substantial in context to whether or not there was an uncertainty. It was staff's position, by the adoption of the map that clearly depicted the boundary line where it currently was, there was no uncertainty.

Mr. Hammack asked if it was in effect the policy of the County to enforce split district zoning changes.

Ms. Johnson-Quinn stated the County did not encourage split zoning, however, there were a number of split zoned properties that existed. Whether they occurred by the 1978 action or they were done when the County was initially zoned, they were encountered from time to time, however, the County did not encourage new applications to do this.

Mr. Hammack asked if staff considered a 50 foot change to align this to what it was previously aligned to be substantial.

Ms. Johnson-Quinn replied yes.

Mr. Hammack asked even if it was zoned that before.

Ms. Johnson-Quinn replied yes.

Mr. Pammel stated, historically, not being sure if the County's Ordinance provided such language, most Ordinances always had the language in the general regulations that stated zoning lines shall follow property lines wherever practical. Here the situation is a conflict, however, he asked staff if the conflict was cast in concrete.

Ms. Johnson-Quinn stated yes, but only because of the Board's action in 1978. If the error had been discovered prior to any action on the map by the Board, staff could have adjusted this.

Mr. Pammel asked if the Board could perpetuate errors in perpetuity.

Ms. Gibb stated it was the staff's position that there was no uncertainty in the location. She asked staff when would there be uncertainty, if the Board was allowed to interpret uncertainties.

Ms. Johnson-Quinn stated an example would be when looking at the zoning map, looking at the line that designates one zoning from another was unclear on a small property and it was hard to determine if it was on a boundary or a distance over, staff might interpret it to be the property line or a certain designation. She stated it was difficult to visualize all the possible uncertainties.

Ms. Gibb stated that if you were looking on the tax map and could not determine where the line was would be the only time there would be uncertainty.

Mr. Hammack asked how this could happen that one could not determine where the line was. He asked staff if there were areas in the County where one could not determine where the zoning district line was.

Ms. Johnson-Quinn stated it did not happen very often, however, she could imagine where there might be a time where it would be very close or hard to tell where to distinguish where one ends and the other begins.

Mr. Hammack stated, as noted in the staff report, because metes and bounds descriptions changed property sizes and everything a little bit, that this probably would not give staff a problem if the district line followed a new more accurate boundary. He stated staff had stated 50 feet was too much to be considered not substantial, what would be considered not substantial. How far did staff believe the Board had the right to move a boundary line and still be in compliance with the County Ordinance and the State Code.

Ms. Johnson-Quinn stated what staff based their decisions on locating the boundary lines on or the previous actions of the Board, but once the Board took another action in 1978, regardless of what errors may have occurred and were existing on the zoning maps, and they checked very carefully, however, this was long standing error, now staff was bound by the most recent action by the Board of Supervisors and it was clearly in this location.

Mr. Hammack stated the Ordinance stated the Board had the power to not change things substantially, how far could the Board go. He stated they all knew where the district boundary line was supposed to be, or at least where it was before the 1978 map change, and the Ordinance had not been changed since 1978, the Board was allowed to do things that would not rezone or substantially change the location.

Mr. Shoup stated it was a hard question to answer because staff was being asked where did the line get drawn. It would depend on circumstances, several feet would not be substantial, however, you would have to look at it in the context of why there was some uncertainty to where the zoning line was drawn.

Mr. Hammack asked why the zoning line was drawn into the lot to make it a split lot. Why was this an appropriate legislative function.

Mr. Shoup stated it occurred in 1969 and it had something to do with the subdivision of the property and how it ended up getting mapped.

Mr. Hammack asked was it the intent of the County to make the parcel a split parcel.

Mr. Shoup replied no, it was an error made in 1969 and if someone had brought it to staff's attention in 1972 or 1976, most likely the Zoning Administrator, at that time, would have corrected the error. However, once

the Board took their action in 1978, it was out of the Zoning Administrator's hands.

Mr. Hammack stated the Board of Zoning Appeals still did not have the authority to correct a minor change such as this according to the Zoning Administrator.

Mr. Pammel asked if there was a pending rezoning application with respect to this property.

Mr. Shoup stated there was.

Mr. Pammel asked how long this application had been on file.

Ms. Johnson-Quinn replied approximately 4 or 5 years.

Mr. Pammel asked why had it not been acted on.

Ms. Johnson-Quinn stated it had been indefinitely deferred due to some technical problems with it.

Mr. Pammel asked what were the technical problems.

Ms. Johnson-Quinn stated she believed there were issues related to the outlet road and the ownership being a separate ownership of the outlet road and their participation in the action because the outlet road was used by both the tenant of the property as well as the owner of the property behind them.

Mr. Pammel asked if this type of situation would normally be resolved by a Boards' own motion.

Ms. Johnson-Quinn stated Boards' own motions had occurred to correct these sorts of issues.

Randy Minchew, Hazel & Thomas, came to the podium as the agent to the appellant. He stated the property was owned by Centreville Land Corporation with a long term lease to the Tarmac Corporation which ran a ready mix concrete operation. Tarmac, as a holder of the long term lease, filed the rezoning application. Tarmac had a number of issues related to their ready mix operation, with the owners consent, and after the application was "tangled up in the system" the owner, to look after his property values, got involved and uncovered the error in mapping. Mr. Minchew stated it was not the appellant who owned the property that filed the rezoning application, it was Tarmac as the long term tenant running a ready mix operation.

Mr. Minchew stated the application was unusual because it brought to the Board of Zoning Appeals a request that the Board consider use of its jurisdiction to consider an appeal from the Zoning Administrator and also as another form of remedy to use its original jurisdiction. The Board had jurisdiction to interpret zoning boundary lines where uncertainties existed. There were no disputes. He stated County staff had done an honest job in looking at the facts. He commended Ms. Johnson-Quinn and Mr. Shoup for researching County history to give a very good synopsis of zoning history. He stated the appellant and staff agreed there was an error of mapping which occurred in 1969 through the administrative preparation of the 1969 zoning map. This error was not picked up by staff or the appellant for a period of close to 29 years. In 1966, in application B-553, a diagonal zoning line was created between what became Lot 6 and the rest of the subject property which in those days was a zoning line between I-L which became I-5 and I-G which became I-6 as a part of the 1978 Comprehensive remapping. He noted the surveyor, Mr. Howard Greenstreet of McLean, prepared a zoning plat that showed, by metes and bounds, future properties which had not yet been subdivided showing the diagonal line. The application was approved and 2 years later Mr. Greenstreet was called upon to prepare a subdivision plat, he used the base line date used on the zoning plat. The zoning plat became the subdivision plat with the only exception being that one lot was found to be able to be made into two lots. Therefore, Lot 4 as shown on the zoning plat, became two lots in the actual subdivision plat, Lots 4 and 5A.

He stated the Zoning Administrator's position was simple. There was an error, which could be determined an administrative downzoning. The error was not caught in good faith by virtue of the 1978 Countywide remapping. By virtue of the Countywide remapping the error became law. Therefore, because the error became law, that error could only be corrected by new law in the form of a rezoning application. Since this

subdivision took place, there had been no subdivision activity that changed the subdivision lines or any zoning action which changed the zoning line. The error was one that could be remedied administratively and also there was a clear uncertainty as to the zoning line. He stated he did not have any idea how far over the property line the zoning line was.

Mr. Minchew stated the 1978 remapping was basically a redo of the entire Zoning Ordinance of Fairfax County. Every parcel of ground was rezoned when the Ordinance became effective. As a part of that remapping, there were not any certified letters or property postings sent out. The County, as a courtesy, sent out a series of landowner letters. He referred to Attachment 12, a dear landowner letter, from Leonard Whorton, County Executive, dated April 22, 1977. He stated the appellant had reviewed their files to determine if they had received the letter and could not locate it, however, he respects if the County stated they sent it that it was done. He noted the letter was to inform landowners of the Countywide rezoning. He referred to the 3rd and the 4th paragraphs of the letter. The 3rd paragraph stating the new zoning classification would be assigned to the one most comparable to the present zoning classification, the 4th paragraph stating the remapping program was limited to those actions to implement the new Zoning Ordinance and there was no intent to either alter the intensity of land use under the present zoning or planned land use for potential future development.

He stated I-6 was the only zoning district in Fairfax County where a landowner had the right to seek a heavy industrial special exception. This area was probably the most heavy industrial area of the County. By virtue of having I-6 mapped land, you could come before the Board and request an application to implement the Comprehensive Plan by having a heavy industrial use. You were barred from seeking this in the I-5 district. While I-5 to I-6 may not seem a lot to some, to this land owner it was a substantial drop in his land and bars him subsequent to being able to provide a use that conforms with the predominant nature of the area as recommended in the Comprehensive Plan.

Mr. Minchew summarized by stating there was an error. The owner had suffered a down zoning by virtue of the administrative error. No one knew where the line was. It was not substantial to slide the line over to match the property line and did not cross the barrier of being substantial. He believed the Board had a choice of remedies either by using its appellant jurisdiction to reverse the Zoning Administrator or use its original jurisdiction to interpret this ambiguity as to the zoning line and bring it to where the Board legislatively decided it should be, which was to the property line.

Mr. Hammack asked if he was aware of any language in the zoning map that would be curative that would say that districts were to follow lot lines.

Mr. Minchew stated he would first review Article 2. He stated it was very standard Ordinance language, however, whether or not it was in the Fairfax County Zoning Ordinance he was unsure.

Mr. Hammack stated if that were adopted along with district lines, it would give the Board legislative authority that the County did not seem to think the Board had.

Mr. Minchew stated the law of Virginia stated on matters of zoning the Board of Zoning Appeals did not have true legislative power, however, its interpretative to resolve uncertainties or correct mistakes.

Mr. Shoup put on the overhead projector the Provisions of the General Regulations set forth in Section 2-204 of the Zoning Ordinance to provide some comment on zoning district boundaries. He referred to paragraph 2 which discussed zoning district boundaries following the lines of lots and paragraph 3 recognized that zoning district boundaries may divide a parcel. He stated nothing said zoning district boundaries had to follow lot lines. There were a number of parcels throughout the County where this was not the case.

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

Mr. Pammel stated this case was interesting and historically, looking through the record at what transpired, the motion he would make would accurately reflect the history involved in the case. He would not move to overrule the Zoning Administrator through the appeal process but rather through Section 2-204, Number 5 of the Zoning Ordinance under the interpretative section. His way of thinking was this request was not

substantial. This could not be determined as substantial. Looking at the record, clearly the property line was established as the zoning line. An error occurred and the error was not detected, however, what was very significant was the letter that was sent out when the County was rezoned in 1978, the property owner was clearly, through that letter, advised there was no change, that he had the rights that he had before. Now the Board was in effect saying, no he did not because an error was made. The right thing to do was to make the interpretation that the zoning boundary does coincide with the property line. This was historically found in most Zoning Ordinances and it was a predominant language throughout zoning codes in the State of Virginia, Fairfax County's code may be slightly different, however, historically speaking this was how Virginia treated zoning boundaries and property lines. They should coincide wherever practical. This was certainly a case where it was practical and there was no denial that an error was made. Through interpretation the Board was correcting a long standing error, therefore, Mr. Pammel moved under Section 2-204 of the Zoning Ordinance Number 5 that the Board of Zoning Appeals interpret the zoning line to be that separates Lot 6 with Lots 1, 2 and 3.

Mr. Ribble asked Mr. Pammel what section he had quoted.

Mr. Pammel stated Section 2-204 (5).

Ms. Gibb stated that was the appeal of the Zoning Administrator.

Mr. Pammel stated he was referring to the section that was presented in Mr. Minchew's letter dated May 8, 1998. He wanted the motion to be under the provision of the Ordinance of the State statutes that would allow the Board the right to make these interpretations. Mr. Pammel stated he was not convinced to overrule the Zoning Administrator but just simply make a direct interpretation that these were the facts and was the way the line should be interpreted.

Mr. Dively seconded the motion.

Mr. Kelley asked Mr. Pammel if he believed the Zoning Administrator should be overruled otherwise. Mr. Pammel stated he would address this.

Mr. Kelley asked what was wrong with doing both if that was the way the Board felt. Mr. Pammel stated he had no problem with this.

Chairman DiGiulian stated it could be another motion.

The motion carried by a vote of 6-1. Mr. Hammack opposed the motion.

Mr. Kelley deferred to Mr. Pammel to make the motion to overrule the Zoning Administrator.

Mr. Pammel moved with respect to Appeal A 1998-SU-022 to overrule the Zoning Administrator with respect to the interpretation to the Board.

Mr. Dively seconded the motion.

Mr. Hammack opposed the motion stating he believed the result the Board was attempting to accomplish was the right result. He had read the statute as stating to decide applications for interpretation where there was any uncertainty as to the location. Mr. Hammack put additional weight on the uncertainty stating even if the appellant had been denied some right, he was unsure if the Board had the authority to correct that grievance. He also noted in the Ordinance language that allowed adjustments within 10 feet of a property line, 50 feet was not really substantial, however, his own opposition revolved around the qualification of uncertainty and even though the result was a bad result, he believed the Board was getting into the legislative area where something should be corrected however the County Board of Supervisors should do this.

Mr. Pammel noted Mr. Minchew's testimony that he did not know where the line was and agreed whether it was 50 feet or 10 feet, no one knew. Staff had admitted that much, it was drawn but no one knows where that line is. This effort was to accomplish where the line is and the Board had had more than an adequate

period of time to address this situation and to bring it to a closure and it had not been done.

Chairman DiGiulian stated he supported the motion because there was no question that the zoning line was between Lots 1 and 2 and the easterly line of Lot 6. It had always been there and someone had made a mistake drafting the map, which had been compounded, however, he believed the line was there in 1967 and was there today.

The motion carried by a vote of 6-1. Mr. Hammack opposed the motion.

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Page 082, September 29, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RANDALL A. AND PATRICIA E. PARIS, SP 98-Y-033 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit construction of deck 9.8 ft. from side lot line. Located at 15553 Eagle Tavern Ln. on approx. 15,635 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4))(1) 7.

Susan Langdon, Chief, Special Permit and Variance Branch, stated staff had called the applicant however there was no answer at their home. She asked the Board if they would like to defer the hearing.

Mr. Pammel asked if it would require a readvertisement.

Ms. Langdon stated if it were held within 30 days it did not have to be readvertised.

Mr. Kelley asked if staff could notify the applicant and settle on a date within the 30 day window.

Mr. Pammel asked if the Board had to take an action which set a date.

Ms. Langdon stated it would need to be deferred. Ms. Langdon said that as a part of the motion it could state to make the date agreeable by the applicant.

Mr. Hammack moved to defer the application to October 6, 1998 at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 082, September 29, 1998, (Tape 1), After Agenda Item:

Approval of April 7, 1998 Minutes

Mr. Pammel stated there was a correction on page 15 of the minutes. In the third paragraph was a reference to a CM district which should have been CN and asked staff to review and make the appropriate correction.

Mr. Pammel moved to approve the April 7, 1998 Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 082, September 29, 1998, (Tapes 1 and 2), After Agenda Item:

Request for Intent to Defer Appeal Application A 96-P-049
Clifton Paul Craven and Nancy Craven

Mr. William Shoup, Deputy Zoning Administrator, stated the deferral was being requested because the

appellants, Clifton Paul Craven and Nancy Craven, wanted additional time to finalize their special exception application. He referred to his September 21, 1998, memorandum, in which it was noted that they had filed for an application for a special exception on May 21, 1998, and were notified of some deficiencies in early June. No immediate action was taken to correct the deficiencies, however, a meeting was held with Mr. Craven on September 17, 1998, and staff subsequently spoke with his engineer. Most of the deficiencies were plat related. Mr. Craven had indicated he would diligently follow through and get the application finalized so it could be accepted. Mr. Shoup stated he was not happy with the lack of progress with the special exception application, but, given the fact everyone agreed the special exception was the appropriate way to resolve the issues, staff would support a deferral. Mr. Craven had requested the deferral to June of 1999. Staff suggested deferral to the evening meeting of December 15, 1998 which would give Mr. Craven plenty of time to finalize the special exception application and get public hearings scheduled.

Mr. Pammel stated it would not have had Board of Supervisors action by the December 15, 1998 date.

Mr. Shoup stated that even if the application was finalized the following week, it could not get through the Planning Commission or Board by that date.

Mr. Pammel asked if it would be appropriate to have staff provide a status report within 6 weeks to the Board. He stated he would rather have items coming before the Board which required action, that action would be taken. He stated he did not want the agenda time taken up by an appeal that would not be heard.

Mr. Kelley agreed with Mr. Pammel that the Board would be scheduling a date that would be deferred again. He suggested a progress report in 6 weeks should be given to the Board. If the Board did not like the progress the applicant was making, at that point, the Board could set a date.

Mr. Pammel moved to defer Appeal A 96-P-049 indefinitely and directed staff to provide the Board with a status report with respect to the special exception application process within 6 weeks. Mr. Kelley seconded the motion.

Mr. Hammack stated he believed the Board should set a hearing date and hold the appellant to the hearing date.

Chairman DiGiulian stated the letter requesting the deferral from Mr. Craven had indicated the sign posted on the property had an adverse effect on the business. He believed this should not happen until the appeal would be heard.

Mr. Hammack stated the sign was there due to the fact the appellant was in violation.

Mr. Pammel stated the 6 weeks would be a clear understanding. The appellant had 6 weeks to respond or get everything in order or the Board would set a public hearing. A public hearing should not be set and have speakers come out only to have the application deferred. Mr. Pammel stated the Board was not creating a good relationship with the citizens of Fairfax County when the Board operated on this basis.

Mr. Hammack stated the Board was not creating a good relationship with the citizens when they allow indefinite deferrals.

The motion carried by a vote of 7-0.

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Page 083, September 29, 1998, (Tape 2), After Agenda Item:

Approval of September 22, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Minutes by: Deborah Hedrick

Approved on: December 22, 1998

Regina Thorn, 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 Tuesday, October 6, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; James Pammel; and, John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:08 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 085, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BRENDA LUWIS & SATYENDRA SHRIVASTAVA, VC 98-D-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and an outlot, proposed lots 7, 8 and 12 having a lot width of 5.33 ft. Located at 962 Towlston Rd. on approx. 7.33 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 12 and 19-2 ((4)) B. (Deferred from 4/14/98, 5/19/98 and 7/21/98 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. Brian Luwis, 1018 Towlston Road, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of 2 lots into 3 lots and an outlot with proposed Lot 7, 8, and 12 having a lot width of 5.33 feet each. A minimum lot width of 200 feet is required. Staff believed that the application had not met all the variance standards, specifically the provisions of standards 3, 4, 5, 6, 8 and 9. The Department of Public Works and Environmental Services (DPW&ES) indicated that the proposed subdivision did not meet the Public Facilities Manual (PFM) standards for a 3 lot subdivision. Staff encouraged the applicant to discuss their proposal with DPW&ES. Ms. Langdon noted that the applicant had not provided staff with a revised plat depicting Lot 12.

Mr. Luwis, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to control the development of the subject property which was a reason he was requesting the variance. Mr. Luwis stated that the granting of the variance would relieve issues with neighbors regarding the current ingress/egress easement to Towlston Road.

Mr. Pammel asked whether the applicant currently owned the property. Mr. Luwis explained that his mother, the applicant, purchased the property 3 months prior to this public hearing.

Chairman DiGiulian called for speakers.

Joe Gibson, Lot 5, came forward to speak in support of the application. He said the proposed parcel would offer advantages pertaining to the ingress/egress for Towlston Road.

Robert Duff, Attorney representing the owners of Lot 7, came forward to speak in support of the application. He said his clients requested adequate buffering and to be allowed to purchase a strip of the subject property to plant vegetation.

Uni Kim, 964 Towlston Road, came forward to speak, stating that the subject lot would be too crowded with more than one house.

Mr. Luwis stated in his rebuttal that the applicant would try to work with the neighbors.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the Board did not usually approve these types of variances because most were for the convenience of the applicant. He said the applicant had clearly shown other examples of this type of development in the neighborhood and that the character of the neighborhood had already been established.

Mr. Pammel moved to approve VC 98-D-008 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRENDA LUWIS & SATYENDRA SHRIVASTAVA, VC 98-D-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and an outlot, proposed lots 7, 8 and 12 having a lot width of 5.33 ft. Located at 962 Towlston Rd. on approx. 7.33 ac. of land zoned R-E. Dranesville District. Tax Map 19-2 ((1)) 12 and 19-2 ((4)) B. (Deferred from 4/14/98, 5/19/98 and 7/21/98 for notices). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The lot is irregularly shaped.
4. The applicant clearly demonstrated that the outlot designation is two 25 foot easements and does not meet the standards for an outlot road; therefore, the property could not be subdivided under the normal subdivision standards of 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of lots 12 and B as shown on the plat prepared by Dan Judson Hotek dated October 27, 1997, revised through April 1998. 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 each of these lots.

2. Right-of-way to 26 feet from existing centerline of Towlston Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of subdivision plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

3. A note shall be placed on the final subdivision plat and included in the land records which states that "the driveways shall be privately owned and privately maintained by the lot owner".

4. The lots shall meet the requirements of the Tree Cover Ordinance as set forth in Article 13 of the Zoning Ordinance. The minimal amount of clearing possible shall be allowed for construction of the driveways and the dwellings and septic systems, as determined by the Urban Forestry Branch, DPW&ES during review of the overlot grading plans.

5. The applicant shall work with DPW&ES to determine the most appropriate means of stormwater management for the proposed subdivision.

6. If Outlot B is to be used for pasture, a Water Quality Management Plan outlining best management practices for the pasture shall be developed and implemented prior to approval of a Residential Use Permit (RUP) for the dwellings on Lots 7 and 8, in coordination with the Northern Virginia Soil and Water Conservation District. The Plan shall include pasture management, animal waste management, composting and nutrient management.

7. The driveways to the proposed dwelling units shall be constructed in accordance with the Public Facilities Manual.

8. A deed of easement shall be executed by the applicant running to the benefit of the properties to whom this outlet road serves (Lots 11A, 11B, 11C, 12A) to assure that perpetual access is provided to these properties and said easement shall be recorded in the land records of the County of Fairfax, Virginia, for each subdivided lot (Lots 7, 8 and 12), and said easement shall be in a form approved by the County Attorney. Outlot B shall remain as open space only.

Pursuant 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 October 14, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN A. GERIG, VC 98-V-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.23 ft. from rear lot line. Located at 7909 Wellington Rd. on approx. 11,018 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2))(17) 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. John Gerig, 7909 Wellington Road, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 13.23 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 11.77 feet was requested.

Mr. Gerig presented the variance request as outlined in the statement of justification submitted with the application. He said due to the exceptional shape of the rear yard, he would not be able to attach the proposed addition without a variance. Mr. Gerig stated that the addition would not be detrimental to the neighborhood and would not change its character. He said he was informed about a letter submitted in opposition and was willing to resolve any issues with the neighbor. Mr. Gerig stated that he could build a detached addition without a variance for less than the cost of the attached addition, but that a detached addition would restrict his use of space.

Mr. Ribble asked staff if the applicant could build a detached addition without a variance. Ms. Schilling replied provided that the detached addition's height did not exceed the height limitation and it met the yard requirements.

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

Mr. Dively moved to deny VC 98-V-080 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN A. GERIG, VC 98-V-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.23 ft. from rear lot line. Located at 7909 Wellington Rd. on approx. 11,018 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2))(17) 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 October 6, 1998; and

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

1. The applicant is the owner of the land.
2. The variance requests seem to be excessive because of the way the bulk of the construction in the backyard follows the entire side lot line.
3. The hardship requirement had not been met.

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

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

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 October 14, 1998.

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Page 089 October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GLENN H. GINNAVAN, VC 98-V-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 10.0 ft. from front lot line. Located at 8936 Lorton Rd. on approx. 1.24 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Glenn Ginnavan, 8936 Lorton Road, Lorton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure 10 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a variance of 30 feet was requested.

Michael McKue, 2000 North 14th Street, Arlington, Virginia, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was a completely internal lot that was very hilly throughout most of the lot requiring significant cut and fill if the applicants were to construct elsewhere. Mr. McKue said there was fence completely blocking the edge of the property. He said there was also a sensitive wetland area in the form of a stream as well as severe swells. Mr. McKue indicated that there was a sanitary sewer easement across the back side of the

property. He stated that the property was acquired in good faith.

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

Mr. Ribble moved to approve VC 98-V-091 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GLENN H. GINNAVAN, VC 98-V-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 10.0 ft. from front lot line. Located at 8936 Lorton Rd. on approx. 1.24 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((1)) 36. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. This lot is internal with an unusual condition of the easement making the back into what is technically a front yard.
4. The topography, the easement, and the wetland area in the rear of the property causes this to be the only location for the accessory structure

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

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

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

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

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

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

1. This variance is approved for the location of a detached garage shown on the plat prepared by Kenneth W. White, dated July 7, 1998, 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. Dively and Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 October 14, 1998. This date shall be deemed to be the final approval date of this variance.

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Page _____, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. REGINALD E. AND MILDRED S. DURHAM, VCA 78-L-229 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.4 ft. from street line of a corner lot. Located at 5902 Montell Dr. on approx. 11,348 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((13)) 22.

Susan Langdon, Chief, Special Permit and Variance Branch indicated that the notices were not correct. She said the applicant and staff concurred with a deferral date of October 27, 1998.

Mr. Pammel moved to defer the application to October 27, 1998, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Hammack were not present for the vote. Mr. Kelley was absent from the meeting.

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Page _____, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARK M. VASTOLA, VC 98-L-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in the front yard. Located at 6319 Windsor Ave. on approx. 23,950 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 29.

Susan Langdon, Chief, Special Permit and Variance Branch indicated the notices were not in order.

Mr. Ribble moved to defer the subject application to December 8, 1998, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Hammack were not present for the vote. Mr. Kelley was absent from the meeting. The Board moved that there would not be any subsequent deferrals granted for this application.

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Page 092, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ADNAN ADIYEH, SP 98-S-035 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 4.9 ft. from side lot line and accessory structure to remain 0.2 ft. from side lot line. Located at 8107 Northumberland Rd. on approx. 12,696 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 31A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Adnan Adiyeh, 2701 Park Center Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on error in building location to permit an addition to remain 4.9 feet from the side lot line and an accessory structure to remain 0.2 feet from the side lot line. A minimum side yard of 8 feet is required; therefore, the amount of error was 3.1 feet for the addition and 7.8 feet for the accessory structure.

Jerry Bartlett, who represented Mr. Adnan in the sale of his house, presented the special permit request as outlined in the statement of justification submitted with the application. He said there was a fence several feet outside the property line of the house near a heavily wooded area and a school. Mr. Bartlett indicated that staff recommended that the fence be removed. He said Mr. Berke was the new purchaser of the home and 3 days prior to settlement was when the deficiencies were discovered. He stated the purchase of the house was based on the fact that the fence was there to help provide safety for Mr. Berke's children. Mr. Bartlett stated that the applicant was not aware of the deficiencies prior to selling his house.

Ms. Gibb asked if the shed was there when the applicant purchased the property. Mr. Bartlett replied that the shed was there when Mr. Adnan purchased the property.

Mr. Dively said the only thing the Board could do about the fence was to remove the development condition. He said they could not make someone accept the fence because it was on someone else property.

Steven J. Berke, 8107 Northumberland Street came forward to speak. He reiterated Mr. Bartlett's comments.

Chairman DiGiulian called for speakers.

Thomas Madden, 7809 Braemar Way, came forward to speak in opposition. He stated that the shed was in a remote location for the subject property, but was in full view from his property. Mr. Madden said he had no problem with the fence or the garage but requested that the shed be moved to the opposite corner of the lot.

Mr. Dively asked what was the date the shed was constructed. Mr. Adnan replied the shed was there when he purchased the property in 1993.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve-in-part SP 98-D-035 for the reasons noted in the Resolution. She moved to deny the accessory structure (the shed).

Mr. Pammel said this was a case where the shed had been there and the former owner purchased the property with it there, but 0.2 feet did not permit maintenance. He said the Board had never approved an

application of that type.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ADNAN ADIYEH, SP 98-S-035 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 4.9 ft. from side lot line and accessory structure to remain 0.2 ft. from side lot line. **(THE ACCESSORY STRUCTURE WAS DENIED).** Located at 8107 Northumberland Rd. on approx. 12,696 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 31A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1998; 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 **APPROVED-IN-PART**, with the following development conditions:

1. This Special Permit is approved for the location of an addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated April 10, 1998, revised through June 26, 1998, 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. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote and 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 October 14, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 094, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY J. AND PATRICIA A. WOOD, SP 98-P-038 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 10.3 ft. from side lot line. Located at 2407 Sagarmal Ct. on approx. 13,223 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((39)) 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. Gregory Wood, 2407 Sagarmal Court, Dunn Loring Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on error in building location to permit an addition to remain 10.3 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, the amount of error was 1.7 feet.

Mr. Wood presented the special permit request as outlined in the statement of justification submitted with the application. He said the screened porch was constructed as an integral part of their dwelling and when they purchased the home they were not aware that a proper permit had not been obtained by the builder or that it intruded into the required setback. Mr. Wood said the builder did not act in good faith. He said the porch did not affect the neighbors.

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

Mr. Hammack moved to approve SP 98-P-038 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY J. AND PATRICIA A. WOOD, SP 98-P-038 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 10.3 ft. from side lot line. Located at 2407 Sagarmal Ct. on approx. 13,223 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((39)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition shown on the plat prepared by Charles E. Powell, Land Surveyor, dated June 17, 1997 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. 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 October 14, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 095, October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RANDALL A. AND PATRICIA E. PARIS, SP 98-Y-033 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit construction of deck 9.8 ft. from side lot line. Located at 15553 Eagle Tavern Ln. on approx. 15,635 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4))(1) 7. (Def. from 9/29/98)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Henry Paris, 2345 Old Trail, Drive, Reston, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit modification to minimum yard requirements for an R-C lot to permit construction of a deck 9.8 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 10.2 feet was requested.

Mr. Paris, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He stated the deck would follow the side line of the house. Mr. Paris said the house was built with doors but with no access to the yard. He presented photographs of the subject property. He said the deck would be as close to the side yard as the house.

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

Mr. Pammel moved to approve SP 98-Y-033 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RANDALL A. AND PATRICIA E. PARIS, SP 98-Y-033 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit construction of deck 9.8 ft. from side lot line. Located at 15553 Eagle Tavern Ln. on approx. 15,635 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4))(1) 7. (Def. from 9/29/98) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 1998; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. 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.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard 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 **APPROVED** with the following conditions:

1. This special permit is approved for the location of a deck shown on the plat prepared by Don Hamilton of Rice Associates, P.C., dated December 7, 1995, and revised by Henry Paris, Jr., dated

Page 097 October 6, 1998, (Tape 1), RANDALL A. AND PATRICIA E. PARIS, SP 98-Y-033, continued from Page 096

June 8, 1998 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 shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 8- 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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. Hamack 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 October 14, 1998.

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Page _____ , October 6, 1998, (Tape 1), Scheduled case of:

9:00 A.M. APOLONIA G. FUENTES-PASTOR, SP 98-P-037 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a child care center. Located at 8315 Cottage St. on approx. 10,500 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(E) 6.

Susan Langdon, Chief, Special Permit and Variance Branch indicated that the applicant had submitted a request for withdrawal, but since the application had been advertised the Board would have to take action to accept the withdrawal.

Mr. Hammack moved to approve the withdrawal of the subject application. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 097 , October 6, 1998, (Tape 1), Scheduled case of:

9:30 A.M. KINGSTON CONSTRUCTORS INC., A 1998-MA-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is allowing property in the C-3 District for residential purposes as well as for the operation of a commercial cleaning business, the parking of a trailer and the storage of several inoperable motor vehicles on the property, all in violation of Zoning Ordinance provisions. Located at 7222 Poplar St. on approx. 10,227 sq. ft. of land zoned C-3. Mason District. Tax Map 60-3 ((16)) 93.

Chairman DiGiulian noted that the Board had issued an Intent to Defer on September 22, 1998. Mr. Pammel moved to defer the appeal to December 1, 1998. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 097 , October 6, 1998, (Tape 1), Scheduled case of:

9:30 A.M. HAPPY HOMES CARPET CLEANING AND MAINTENANCE, A 1998-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is using property in the C-3 District for residential purposes as well as operating a commercial cleaning business,

Page 098, October 6, 1998, (Tape 1), HAPPY HOMES CARPET CLEANING AND MAINTENANCE, A 1998-MA-023, continued from Page 097

parking a trailer and storing several inoperable motor vehicles on the property, all in violation of Zoning Ordinance provisions. Located at 7222 Poplar St. on approx. 10,227 sq. ft. of land zoned C-3. Mason District. Tax Map 60-3 ((16)) 93.

Chairman DiGiulian noted that the Board had issued an Intent to Defer on September 22, 1998. Mr. Pammel moved to defer the appeal to December 1, 1998. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 098, October 6, 1998, (Tape 1), After Agenda Item:

Approval of May 5, 1998, May 26, 1998, and June 16, 1998 Minutes

Mr. Dively moved to approve the Minutes. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from meeting.

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Page 098, October 6, 1998, (Tape 1), After Agenda Item:

Letter from Citizen requesting a response
pertaining to the Mustafa Center Special Permit

The Board had no response to this item.

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Page 098, October 6, 1998, (Tape 1), After Agenda Item:

Approval of September 29, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. 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 098, October 6, 1998, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Dorothea Teipel, VC 98-D-115

Mr. Dively moved to deny the request for an Out of Turn hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0. 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 10:37 a.m.

Minutes by: Regina Thorn

Approved on: February 9, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, October 13, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page [illegible], October 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. KENNETH D. AND HARRIETT H. KEENE, VC 98-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6418 15th St. on approx. 9,937 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (9) 27.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth D. Keene, 6418 15th Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 8.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.0 feet was requested.

Mr. Keene presented the variance request as outlined in the statement of justification submitted with the application. Mr. Keene stated he would like to build a two car garage addition to the side of his home.

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

Mr. Hammack moved to approve VC 98-V-084 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 6, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH D. AND HARRIETT H. KEENE, VC 98-V-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6418 15th St. on approx. 9,937 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (9) 27. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony before the Board indicating compliance with variance standards.
3. The lot was exceptionally narrow at the effective date of the Ordinance. The consolidation of the three lots predates the Zoning Ordinance. Even with the consolidation, the lot is still very narrow.

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

continued from Page 099

Zoning Ordinance:

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by W. Ross Dickerson, dated July 8, 1998, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 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 October 21, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 101, October 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DEVINDERJIT S. NAJAR, VC 98-Y-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 12714 Sabastian Dr. on approx. 43,175 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((6)) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Devinderjit Najar, 12714 Sabastian Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 4.0 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 16.0 feet was requested.

Mr. Najar presented the variance request as outlined in the statement of justification submitted with the application. Mr. Najar stated he was an independent consultant and traveled a lot out of town and would like to keep his vehicles in a garage so they could not get damaged by theft or vandalism and also that he leaves early in the mornings and comes home late in the evenings, therefore, an attached garage would provide personal security as well.

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

Mr. Dively moved to approve VC 98-Y-085 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 6, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEVINDERJIT S. NAJAR, VC 98-Y-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line. Located at 12714 Sabastian Dr. on approx. 43,175 sq. ft. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((6)) 23. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicant is the owner of the land.
2. The siting of the house, due to the slopes and drainage field, require the need for a variance.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by John L. Marshall, dated July 14, 1998, 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.

4. The wood shed proposed to be relocated shall not be located in any minimum required yard or in a front yard.

Pursuant to Sect. 18-407 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. 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 October 21, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOAN P. SMITH, VC 98-D-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 38.4 ft. from front lot line. Located at 626 Walker Rd. on approx. 2.26 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((6)) 1-A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marlene Shaffer, Agent, 3832 Beech Down Drive, Chantilly, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a dwelling to remain 38.4 feet from the front lot line. A front yard requirement of 50 feet is required; therefore, a variance of 11.6 feet was requested. In the past, the applicant had obtained several by-right subdivisions of this property. In consideration of these subdivisions, the applicant dedicated right-of-way along Walker Road frontage which had resulted in the dwelling being too close to the front lot line.

Ms. Shaffer, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. Ms. Shaffer stated that her two aunts and her mother had inherited the property one year ago when her grandmother passed away. She stated, as the owners of Parcel 1-A1, Ms. Smith was requesting a variance to waive 11.6 feet of the front yard setback. She said the setback was an extreme hardship. Ms. Shaffer explained the history of the property, since the family purchased the land in 1937, to the Board.

Mr. Ribble asked if some of the frontage was dedicated on Walker Road.

Ms. Shaffer replied that it was, which had encroached on the home and was now a hardship therefore the need for the variance. She stated Ms. Smith was approached by a buyer to refurbish the home. Ms. Shaffer said when Ms. Smith went to settlement in July, she was unable to sell her home due to the fact the lawyers had not discovered the setback problems. Currently, the setback goes through the middle of the home, therefore, a variance was needed to proceed on the sale of the home, in good faith, to sell to the new buyer.

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

Mr. Ribble moved to approve VC 98-D-092 for the reasons noted in the Resolution subject to the revised Development Conditions contained in the staff report dated October 6, 1998.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOAN P. SMITH, VC 98-D-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing dwelling to remain 38.4 ft. from front lot line. Located at 626 Walker Rd. on approx. 2.26 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((6)) 1-A1. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with variance standards.
3. The siting of the house on the lot causes a hardship which requires 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling shown on the plat prepared by Richard D. Townsend, dated August 5, 1998, 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. Kelley seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the eight day waiting period. Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 13, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 104, October 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT F. AND EILEEN M.C. DALEY, VC 98-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 7976 Bolling Dr. on approx. 13,817 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 180.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott and Eileen Daley, 7976 Bolling Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing fence varying in heights from 4.4 feet to 7.6 feet to remain in the front yard areas of a corner lot. Portions of the fence at the maximum height of 7.6 feet represent a variance of 3.6 feet.

Mr. Daley presented the variance request as outlined in the statement of justification submitted with the application. Mr. Daley stated they had 25 support letters from adjacent neighbors, of which, 22 of the letters were within one block on either Bolling Drive or Wellington Road. The other 3 letters were households of people who frequently walked by their home and admired the fence. Mr. Daley read support letters from adjacent homeowners. Mr. Daley stated he had also done research on the Fairfax County web page regarding construction of his fence.

Mr. Hammack asked if when Mr. Daley looked on the web page if it had stated there was exception for double front yards.

Mr. Daley stated the web page said there was an exception to maximum height restrictions, but it did not address whether it was a double front yard. He understood it would be any front yard. He agreed they had two front yards, but the exception applied to any front yard.

Mr. Hammack asked what was the exception.

Mr. Daley stated one exception was along a major thoroughfare, which they had assumed Wellington Road was due to the traffic and high speed vehicles. The other exception applied to double frontage lots, which did not apply to their property.

Mr. Hammack asked if the web page had informed him to get a variance or a special permit .

Mr. Daley stated that information was not on the web page. He believed it might have said the variance would be required if the general guidelines weren't met. Mr. Daley stated after long consideration they believed they had fallen within those guidelines.

Mr. Hammack asked staff if they had reviewed the web site to determine who had prepared it and who would give information stating a variance was not required if the general guidelines were met.

Ms. Wilson replied she was not familiar with the web site as it related to fences, however, she stated, the Ordinance did allow for exception of a front yard that borders a major thoroughfare. She stated the problem was due to the Ordinance not defining which roads were defined as major thoroughfares. It was a VDOT definition which was not readily defined in the Ordinance. Ms. Wilson stated what might logically be assumed to be a major thoroughfare because it was heavily traveled did not necessarily make it a VDOT defined major thoroughfare.

Mr. Ribble questioned Mr. Daley about who he had talked to on the County staff regarding the fence requirements and asked if he had taken any names of those individuals.

Mr. Daley stated that during the planning and design stages, they had made phone calls to County staff. He stated they felt they had met the guidelines until a neighbor had complained and one of the inspectors reviewed the fence. He stated that Ms. Rebecca Goodyear had suggested they contact VDOT to determine what the definition of major thoroughfare was. Upon contacting VDOT, he had been informed that they did not use the term.

Ms. Wilson stated that VDOT's definition was a major arterial. She stated where major thoroughfare was not defined in the Ordinance, the definition was in the Comprehensive Plan.

Mr. Kelley asked who had built the fence.

Mr. Daley stated he had built the fence with the help of a handy man.

Ms. Gibb asked if the neighbor who had complained had a basis for the complaint, such as a danger due to site distance being impaired on the road or aesthetics.

Mr. Daley stated the neighbor lived behind them and upon delivering their letter to her to inform her of the fence construction, she had replied she was concerned with her vision upon backing out of her driveway. Mr. Daley stated they had taken this into consideration and allowed a couple extra feet, approximately 18 feet 4 inches, to allow her vehicle to back out of her driveway.

There were no speakers to speak in support of the application.

Ms. Janice Pickering, 8111 Wellington Road, Alexandria, came to the podium to speak in opposition of the application. She stated she was opposed to the height of the fence which created a dangerous situation for her when backing out of her driveway. She stated she had spoken to Mr. Daley prior to the construction of the fence and he had told her he would take into consideration her concerns. She stated she had asked him if he had received a variance from the County, to which he had replied that the fence was within the law. Ms. Pickering stated she had called the County to review the fence height to see if it did meet the Code requirements. She stated the County had informed her the fence did not meet Code and that Mr. Daley must alter the fence. She said Mr. Daley had waited 90 days prior to filing for the variance. She said she was only asking for safety and security in her home in which she had lived in for 12 years. She stated a 4 foot fence was adequate for safety. Ms. Pickering provided pictures to the Board of how difficult it was to back out of her driveway.

Mr. Hammack stated, from looking at the photographs, that it appeared her vehicle could back out of the driveway and her visibility was not impaired by the fence.

Ms. Pickering stated it was very unnerving to back out of her driveway onto Wellington Road. She said the fence also blocked a stop sign.

Mr. Thomas Steadman, 8112 Wellington Road, Alexandria, came to the podium to speak in opposition of the application. He stated he had been a resident on Wellington Road for 23 years. He said that ever since these two families had moved in they have had a disagreement. He stated it would be helpful if the Daley's would drop the end of the fence down so that Ms. Pickering could see out of her driveway.

Mr. Daley came to the podium to rebut the opposition and stated they had delivered letters to their neighbors prior to the construction and after the design was completed to inform them of their intent. Mr. Daley read his letter to the Board. He believed that over 18 feet was more than adequate for Ms. Pickering to back out of her driveway.

Ms. Gibb asked if the 7 foot height was only on the corner of the lot.

Mr. Daley stated the fence was 7 feet across the back of the property, however, part of the back of the property was considered front yard and transitioned down to 4 feet along Wellington Road.

Mr. Ribble asked if it was 4 feet all along Wellington Road and noted that the fence also went up to 7.6 feet. Mr. Daley agreed.

Mr. Daley provided additional pictures to the Board for their review.

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

Ms. Gibb moved to deny VC 98-V-086 for the reasons noted in the Resolution.

Mr. Kelley moved to waive the one-year waiting period for the applicant to refile a new variance application within 90 days. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT F. AND EILEEN M.C. DALEY, VC 98-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 7976 Bolling Dr. on approx. 13,817 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 180. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have not met the nine required standards for the granting of a variance.

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 1998.

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Page 108, October 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT W. AND MARY D. GRAMLING, VC 98-D-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. from rear lot line. Located at 12179 Holly Knoll Cir. on approx. 28,401 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 6-1 ((7)) 46.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Gramling, 12179 Holly Knoll Circle, Great Falls, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition 17.9 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 7.1 feet was requested. The subject rear yard adjoins private subdivision open space.

Mr. Gramling presented the variance request as outlined in the statement of justification submitted with the application. Mr. Gramling stated he would like continue to live in his house during his retirement and that the house was a one and one-half story home with a split level to include a 14 x 20 foot family room. The house, as currently constructed, did not meet their needs for the family as well as the extended family. The addition was also planned as a sunroom. The location of the addition was the only place on the lot that would naturally accommodate the addition, which is a 15 x 16, one story addition. He stated his lot was very narrow, and given the odd shape of the lot, the builder positioned the house at the back corner of the lot and to the southern boundary. It would be a natural addition off the family room and was in harmony with the existing structure. He stated he had submitted 2 letters from adjacent homeowners who had no objection to the planned addition.

Mr. Hammack asked how far away were the owners of Lot 44 and Lot 45 from the property line.

Mr. Gramling replied that Lot 44 was on the southern boundary and was 20 feet away. Mr. Gramling said that Lot 45 was at least 100 feet away with a natural stand of trees between the two lots. The house was not visible.

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

Mr. Kelley moved to approve VC 98-D-087 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 6, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT W. AND MARY D. GRAMLING, VC 98-D-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. from rear lot line. Located at 12179 Holly Knoll Cir. on approx. 28,401 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 6-1 ((7)) 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;

continued from Page 108

and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony before the Board indicating compliance with variance standards.
3. The exceptional shape of the lot and the effective date of the Ordinance require the need for a variance.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated July 6, 1998 as revised through September 3, 1998, 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 October 21, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 110, October 13, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD P. AND LINDA H. COLLINS, SP 98-D-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 9.5 ft. from side lot line and addition to remain 14.9 ft. from rear lot line. Located at 1130 Riva Ridge Dr. on approx. 26,078 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-3 ((5)) 52.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard P. Collins, 1130 Riva Ridge Drive, Great Falls, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of this special permit to allow modification to minimum yard requirements based on an error in building location to permit the dwelling/structure to remain 9.5 feet from the side lot line. A minimum side yard of 20 feet is required, presenting a 52% error, and to permit an existing sunroom to remain 14.9 feet from the rear lot line. A minimum rear yard of 25 feet is required, presenting a 40% error.

Mr. Collins presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Collins stated he believed the distance between the sunroom addition and the nearest residences were large enough because the sunroom faced a common area. He stated the homeowners association had agreed to the sunroom addition. He further stated that the closest neighbor to see the addition lived approximately 80 feet away and, they were satisfied with the quality of construction and thought the sunroom should remain. He stated the situation of the house location had existed for over 14 years, when he had purchased the home with the attached garage.

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

Mr. Hammack moved to approve SP 98-D-039 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 6, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD P. AND LINDA H. COLLINS, SP 98-D-039 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 9.5 ft. from side lot line and addition to remain 14.9 ft. from rear lot line. Located at 1130 Riva Ridge Dr. on approx. 26,078 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-3 ((5)) 52.
Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of the dwelling and for the addition shown on the plat prepared by Huntley Nyce and Associates, LTD., dated January 12, 1998, 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. 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 October 21, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. KENT GARDENS RECREATION CLUB, INC., SPA 79-D-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend SP 79-D-066 for community swim and tennis club to permit site modifications and reduction in land area. Located at 1906 Westmoreland St. on approx. 4.73 ac. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 35A, 43A, 44A; 40-2 ((35)) A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Rush, Agent, 6708 Lumsden Street, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of reduction in land area by removing approximately 1.34 acres of land and relocation of tennis courts on the site. Ms. Schilling reviewed the revised development conditions, dated October 12, 1998, with the Board.

Mr. Pammel questioned the FAR designation of 0.012. With the applicant reducing the amount of area of the property by over 1 acre, he questioned if the FAR would still be correct.

Ms. Schilling stated the FAR was correct and was based on the 3.39 acre reduced area.

Mr. Rush presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Rush stated the club was in need of extra income to meet their maintenance needs and therefore had determined to sell adjoining property on Poole Lane to a developer for the construction of several homes to use the money to meet their future maintenance needs and also create a reserve fund for the club to remain on solid footing. He also requested moving the tennis courts to a location which was compatible with the existing neighborhood. Mr. Rush thanked the staff for the revised proposed development conditions and stated the applicant accepted the conditions as revised.

There were no speakers to speak in support of the application.

Mrs. Susan Young, 1930 Poole Lane, owner of Lot 32, came to the podium to speak in opposition of the application. Ms. Young stated her home was located directly south and west of the club and that her home was purchased in July. She stated that around the tennis courts were woods which defined the neighborhood and surrounding community. She stated the wooded area would be removed along with the tennis courts and additional trees would be removed when the tennis courts were rebuilt next to the little league fields. She stated that the swim club had made an effort to keep the woods natural with leaf covered trails throughout and understood the club needed additional funds to operate; however, she suggested they should raise their fees or look for other ways. She was also concerned about the placement of 4 houses on the 1 1/3 acre area next to her home.

Mr. Chris Freedlander, 1843 Westmoreland Street, came to the podium to speak in opposition of the application. Mr. Freedlander stated he lived directly across the street from the entranceway off of Westmoreland Street. He stated the woods which were located directly across the street, acted as a buffer between their home and the recreation club. He asked what type of activity would occur on Westmoreland Street to eliminate the woods and what that would do to their site lines. He said he was unclear as to what effect the changes would have to the frontage on Westmoreland Street. He stated his speaking before the Board was more to have questions answered than it was to oppose the application.

Mr. Rush replied the only impact on the entranceway would be conditions imposed by the County for the widening of the entranceway to comport with modern day Ordinance requirements in terms of the width of the entranceway. He also stated that additional right-of-way for Westmoreland Street would have to be dedicated to remain consistent with the State plans. He stated the woods around the entranceway would not be impacted other than to widen the entranceway. He stated it would have to be a 30 foot increase to the entranceway.

Mr. Rush, in response to Ms. Young's opposition, stated before they had embarked on the project they had met with the neighborhood and also contacted the association to explain their plans. He stated they were also concerned about the trees and they had a contract with a developer and the trees were addressed in

the contract. From the community perspective, if the club was not put on better financial footing, the whole club could go under, and therefore the entire facility would be developed and all the woods would go. He stated as many trees as possible would be preserved.

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

Mr. Pammel moved to approve SPA 79-D-066 for the reasons noted in the Resolution subject to the revised Development Conditions dated October 12, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENT GARDENS RECREATION CLUB, INC., SPA 79-D-066 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-D-066 for community swim and tennis club to permit site modifications and reduction in land area. Located at 1906 Westmoreland St. on approx. 4.73 ac. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 35A, 43A, 44A; 40-2 ((35)) A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance for special permit uses.
3. Staff has recommended approval of the special permit amendment as filed.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1906 Westmoreland Street (reduction from 4.73 acres to 3.39 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles F. Dunlap, Land Surveyor dated June 7, 1998, as revised through August 28, 1998, 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 Public Works and Environmental Services (DPW&ES). Any plan

submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of family memberships shall be 325.

6. The maximum number of employees shall be 4 on-site at any one time.

7. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance in the locations shown on the approved special permit plat. All parking shall be on-site.

8. The maximum hours of operation for the pool facilities shall be from 2:00 p.m. to 9:00 p.m. 7 days a week, from September 15 to May 15, and from 8:00 a.m. to 9:30 p.m., weekdays and 8:00 a.m. to 9:30 p.m., weekends from May 15 to September 15. The maximum hours of operation for the tennis courts shall be from dawn until 10:00 p.m., year round.

9. 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
   - Shall not extend beyond 12:00 midnight.
   - A written request at lest ten days in advance and receipt of prior permission from the Zoning Administrator for each individual party or activity.
   - Requests shall be approved for only one such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.
   - Each party shall comply in all respects with the Fairfax County Noise Ordinance and noise from such parties shall be controlled to prevent any adverse impact upon the contiguous properties.

10. All lighting on the property shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed the existing 20 (twenty) feet.
    - The lights shall focus directly on the subject property.
    - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.
    - Lights associated with the tennis courts shall be equipped with an automatic shut-off switch.

    If the existing light standards are replaced for any reason, the replacement light standards shall not exceed 12 feet in height.

11. All barrier requirements shall be waived in favor of that shown on the plat. Prior to the issuance of a Non-Residential Use Permit, the existing tennis courts shall be removed and the ground restored to a natural condition as determined by the Urban Forestry Branch of DPW & ES. The existing vegetation shown on the approved special permit plat shall be deemed to satisfy the requirement for Transitional Screening Type 1, with the exception that supplemental landscaping using evergreen plant materials shall be provided along the southern property boundary within the cleared area and adjacent to the existing parking lot, subject to the review and approval of the Urban Forestry Branch of DPW & ES, in order to provide a visual screen to shield the view of the parking lot from adjacent properties.

12. All signs on the property shall comply with Article 12 of the Zoning Ordinance.

13. The developer of the property, 1.33 acres, to be deleted from this permit shall utilize selective clearing practices to preserve as much of the existing vegetation as possible.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be

responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 115, October 13, 1998, (Tape 2), Scheduled case of:

9:00 A.M. WOODY'S GOLF RANGE, INC. A VIRGINIA CORPORATION, SPA 79-D-176-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for a golf driving range, baseball hitting cages and miniature golf course to permit modification to development conditions and site. Located at 11801 Leesburg Pi. on approx. 29.02 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 6-3 ((1)) 33 and 33A. (MOVED FROM 7/21/98).

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 Hanes, Agent, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Mr. Hanes submitted a copy of the applicant's revised development conditions to the Board.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. On October 21, 1997, the Board of Zoning Appeals approved SPA 79-D-176-2 for a golf driving range and batting cages to allow a miniature golf course ancillary to the golf driving range, subject to development conditions. The applicant now requested development condition and site modifications. These included relocating the existing pro-shop building to a location approximately 151 feet from the western lot line, rather than remove it with construction of the new pro-shop building; remove the modified transitional screening along the northern property boundary that was approved with SPA 79-D-176-2; retain the gravel road and turnaround adjacent to the baseball hitting cages as a paved access driveway and parking area rather than remove them; relocate the sand volleyball court from the EQC to an area adjacent to the basketball court; add a picnic area on the south side of the relocated sand volleyball court; relocate lighting in the vicinity of the southern end of the tee area, increase lighting on the site, and add light poles to the basketball court and volleyball court; add a putting green, sand bunker, and enlarged practice green at the southern end of the tee area which had not been previously shown on the approved SP plat; modify the development conditions to extend the time for obtaining a Non-RUP for the existing miniature golf course; and extend the hours of operation from 8:00 a.m. to 9:30 p.m. year round to 8:00 to 10:00 p.m. for the golf driving range and to 11:00 p.m. for the miniature golf course. In staff's evaluation, most of the requested modifications could be accommodated without the potential for impacts to surrounding residences, with the exception of the request to remove transitional screening on the north side of the site, extend the hours of operation, and increase the lighting. With respect to the transitional screening, staff believed that the transitional screening on the north side was already a modified version that was appropriate to provide a visual buffer and create a less commercial appearance. Staff believed that the present hours of operation imposed by the BZA were appropriate and was in keeping with other golf driving ranges that were also surrounded by residential uses.

Ms. Schilling addressed the applicant's proposed revised development conditions. Staff supported the proposal by the applicant in Condition #11 to not install any increased lights on the site until the revisions to

the lighting study were submitted and reviewed for staff's approval demonstrating they met the Performance Standards of the Zoning Ordinance. Staff did not support Condition #6, which proposed to extend the hours of operation. Also, with Condition #11, where it stated lighting could stay on during the extended hours, staff did not support this part of the Condition as well as Condition #12 regarding transitional screening.

Mr. Dively asked if staff agreed with the changes to Condition #11 with the exception of the hours of operation. Ms. Schilling agreed.

Mr. Hanes presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Hanes stated that on page 5 in the staff report, he had concerns that staff implied improvements had been made to the golf range. Mr. Hanes said Mr. Fitzhugh denied these improvements and that there was a disagreement on this issue. Mr. Hanes gave the Board 2 aerial photographs taken in January, 1998, which showed what staff contended was a new putting green and a new sand trap. Mr. Hanes stated, that according to Mr. Fitzhugh, those had been there since the 1980s. The misunderstanding, according to Mr. Hanes, could have been from a revised plat submitted in 1995 which did not show the putting green and sand trap. He further stated that staff had a disagreement with the addition of picnic tables. Mr. Hanes said the picnic tables had been taken from the EQC and relocated. Mr. Hanes said they had met with the community and went to several Boards such as the Architectural Review Board and the Great Falls Citizens Association of which neither group had taken any opposition opposing the changes. Regarding the hours of operation, Mr. Hanes asked for some compromise of what currently existed. He said no precedent would be set by this application. According to Mr. Hanes, the citizens did not object to the change in the hours of operation. Mr. Hanes referred to Condition #11 regarding lighting, and stated they were in agreement with staff and the only change would be if they were granted the hours of operation changes. Mr. Hanes distributed to the Board photographs of the property in response to the staff report concerning transitional screening. He stated he did not know why screening would be required along Route 7 and all other surrounding properties as well. He stated they were at odds with staff over hours of operation, which was justified by the location of the property and community support, and also with respect to transitional screening waiver to the north.

Ms. Brenda Lindholm, 1358 Icy Brook Drive, Herndon, Virginia, came to the podium to speak in support of the application. Ms. Lindholm stated she came before the Board as the President of the Herndon High School PTSA and asked the Board to extend the hours of operation for the golf range. Ms. Lindholm stated the facility was an asset to the community which offered supervised, safe, fun activities for the whole family. Ms. Lindholm referred to the staff report which stated the plan was not in harmony with the surrounding neighbors due to the late hours affecting the neighborhood. Ms. Lindholm submitted copies of letters from those neighborhoods in support of this application.

Mr. Brian DuPlessis, 991 Crestview Drive, Herndon, Virginia, came to the podium to speak in support of the application. Mr. DuPlessis stated that as a parent, a coach and a commissioner of the Herndon Optimists Youth Programs, he supported the golf course extended hours and also to retain a gravel parking lot adjacent to the batting cages on the golf range property. He stated part of the golf range was in a historic district of which the County authorized the rental of Dranesville Tavern until midnight, and questioned why Woody's would be required to close at 9:30 p.m.

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

Mr. Dively moved to approve SPA 79-D-176-3 for the reasons noted in the Resolution subject to the revised Development Conditions submitted by the applicant dated October 6, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WOODY'S GOLF RANGE, INC. A VIRGINIA CORPORATION, SPA 79-D-176-03 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-D-176 for a golf driving range, baseball hitting cages and miniature golf course to permit modification to development conditions and site. Located at 11801

Leesburg Pi. on approx. 29.02 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 6-3 ((1)) 33 and 33A. (DEFERRED FROM 7/21/98). Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 13, 1998; and

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

1. The applicant is the owner of the land.
2. The outpouring of community support was impressive.
3. The special permit amendment request was a reasonable request.

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 11801 Leesburg Pike, (29.02 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Kal Kamel, P.E. dated June 17, 1998, revised through August 24, 1998, 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 Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of employees on the site at any one time shall be eighteen (18).

6. The hours of operation shall be limited to 8:00 a.m. to 9:30 p.m. daily, September through April. Extended seasonal hours during May through August for the golf driving range shall be 8:00 a.m. to 10:00 p.m., daily, and for the miniature golf, 8:00 a.m. to 11:00 p.m. daily.

7. There shall be no more than 162 parking spaces as depicted on the special permit plat. The portion of the gravel parking lot located within the EQC shall be removed and restored in accordance with development condition 9. There shall be no further expansion or relocation of any other area of the parking lot. The gravel parking lot and road adjacent to the batting cages shall be paved and parking spaces striped in accordance with PFM standards.

8. The tees on the driving range shall be limited to 55 grass tees and 86 concrete tees, for a total of not more than 141 tees on the site. Of these tees, the following shall be included in the locations

shown on the approved plat:

- 44 within the 2-story covered tee area adjacent to the pro shop building
- 20 covered concrete tees
- 10 open concrete tees covered with a portable canopy
- 12 grass tees covered with a rolling canopy
- 43 open grass tees
- 12 open concrete tees

9. A tree preservation, planting and restoration plan shall be submitted to the Urban Forestry Branch, Department of Public Works and Environmental Services (DPW & ES) for review and approval at the time of site plan review and shall be implemented as required by DPW & ES. The plan shall depict the limits of clearing as delineated on the special permit plat. The planting plan shall include parking lot landscaping as required by Article 13 of the Zoning Ordinance. The restoration plan shall be developed to revegetate and restore the portion of the EQC to the west of the entrance driveway, between the driveway and picnic area. In addition, a portion of the existing gravel driveway that is within the limits of the EQC and is to the west of the drive aisle shall be reclaimed and restored to the EQC. The area of the sand volleyball court formerly located within the EQC shall be restored to vegetation, and the volleyball court relocated to the area indicated on the approved special permit plat. Restoration shall include a mixture of native plants. The plant materials need not be to PFM standards, but shall include a mixture of shrubs, saplings and whips as may be determined appropriate by the Urban Forestry Branch.

10. No temporary or permanent building, structure, driving range feature (to include putting greens, sand traps and tee areas used either routinely or occasionally), 18 hole miniature golf course, batting cage feature or apparatus, court, or any other feature shown on the approved special permit plat shall be expanded or relocated except if such is determined to be in substantial conformance with the Special Permit, as determined by the Zoning Administrator, without prior approval of an amendment to SPA 79-D-176-3 by the Board of Zoning Appeals, subject to the provisions of Article 8 of the Zoning Ordinance.

11. Lighting on the site shall be limited to the following:

- 5 building mounted lights attached to the second story tees,
- 3 pole lights with a height not to exceed 30 feet in the height on the east side of the covered tees on the south side of the second story tees and pro shop
- 9 batting cage lights, with a height not to exceed 20 feet
- The existing two lights located on the existing booth at the batting cages,
- 5 miniature golf course lights with heights not to exceed 30 feet plus the accent lighting within the course itself,
- Existing lighting at the entry sign and at the bulletin board at the end of the sidewalk,
- Light poles within the parking lot, located between the entrance drive and the pro-shop, with a combined height for light standards and fixtures not to exceed 12 feet. There shall be no lighting of the parking lot adjacent to the batting cages.

The following lights depicted on the approved plat are **not** permitted and shall not be installed:

- 2 recessed in ground 1800 watt mercury vapor flood lighting at the southern end of the concrete tees,
- 4 light poles with a height of 20 feet around the basketball court,
- 4 light poles with a height of 20 feet around the sand volleyball court,

All pole lights must be equipped with glare control hardware. The maximum number of allowable light fixtures on each driving range, miniature golf course and batting cage light pole shall be two (2), except for the one miniature golf course light located in the course itself which shall be allowed to retain the existing four (4) fixtures. The maximum number of allowable light fixtures on each parking lot light pole shall be one (1).

Ground level security lighting may be provided for the pro shop, the drive into the parking lot, at the entrance to the range and along the pedestrian sidewalks and pathways.

No other lighting beside that outlined above may be provided on site.

Additionally, all lighting shall be in accordance with the following:

- The lights shall be of a design which focuses the light directly onto the subject property and does not create glare or a nuisance off the property.
- Shields shall be installed, if necessary, to prevent light and/or glare from projecting beyond the facility.

Notwithstanding the above, upon the review and approval of the revised lighting study by the Department of Planning and Zoning staff, then the following lights, as depicted on the special permit plat, may be permitted:

- In lieu of the 3 pole lights to the east of the covered tees, maintain the 30 foot pole light existing between the batting cages and the tee, relocate the 24 foot in height pole light at the practice green, and relocate the 24 foot in height pole between the batting cages and the tees.

- Provide two recessed in ground 1800 watt mercury vapor flood lights at the southern end of the concrete tees.
- Provide 4 light poles with a height of 20 feet around the basketball court.
- Provide 4 light poles with a height of 20 feet around the sand volleyball court.
- Provide 3 light fixtures on each driving range, miniature golf and batting cage light poles, except for the one miniature golf course light located in the course itself which shall be allowed to retain the existing four (4) fixtures.

All lights except the pro shop and parking lot lights shall be turned off by 9:30 p.m. daily, September through April. The pro shop and parking lot lights shall be turned off by 10:00 p.m. daily, September through April. During the extended seasonal hours during May through August, all lights except the pro shop, miniature golf and parking lot lights shall be turned off by 10:00 p.m. The pro shop, miniature golf and parking lot lights shall be turned off by 11:30 p.m.

12. Existing vegetation and proposed landscaping as depicted on the special permit plat shall be used to meet the transitional screening requirements along the northern, eastern and western lot lines.

    Two rows of evergreen trees shall be provided along the southern lot line to supplement existing vegetation. This vegetation shall be planted to the south of the existing concrete tees in an area where no existing vegetation is depicted on the special permit plat.

    The existing cedar trees along the western side of the batting cages shall be maintained. Two rows of evergreen trees shall be planted around the southern western perimeter of the batting cages. These evergreen trees shall measure six (6) feet in height at planting, and shall be located in the open grass area between the proposed balloon game pads and the existing practice green shown on the Special Permit Plat. The number and type of plant species used shall be as determined by the Urban Forestry Branch, DPW & ES. All screening and vegetation shall be maintained and dead or dying plant materials shall be replaced.

    The barrier requirement and the transitional screening along the northern property boundary shall be waived.

13. There shall be no use of loudspeakers on the property; except for emergency situations, such as medical emergencies, electrical storms, and similar occurrences.

14. The accessory activities and operations in the pro shop facility shall be limited to the following: golf, basketball and batting cages equipment rental, administrative office use, maintenance of equipment directly related to the driving range, miniature golf course, basketball and batting cage facilities, the sale of vending machine and snack bar concessions, a grill room occupying a maximum of 1,500 square feet of space, the sale or golf related accessories, golf training including computer simulation exercises, recreational play room for children and community outings and birthday party use.

15. There shall be no arcade games, video games, or juke box operations or present on the property.

16. The site may be used for activities directly related to the miniature golf course, golf driving range and baseball hitting cages only.

17. Ancillary easements for the future widening of Route 7 and Sugarland Road shall be provided as determined by DPW & ES at the time of site plan approval.

18. Right and left turn lanes shall be provided at the site entrance to meet design standards as required by the Virginia Department of Transportation (VDOT). A site plan or minor site plan, as may be determined by the Director, DPW & ES, shall be submitted within twenty-four (24) months of the final date of approval of this special permit depicting these turn lanes as approved by DPW & ES. These turn lanes shall be constructed prior to any Non-Residential Use Permit being issued for the expanded clubhouse and the 141 tees approved with this special permit.

19. The applicant shall demonstrate to the Health Department that the septic system and well can adequately serve the use prior to the issuance of a Non-Residential Use Permit for the expanded clubhouse and additional tees, and the well cap should be adequately secure at all times. If this cannot be demonstrated, then this special permit is null and void.

    The applicant shall address the subsurface drainage problems with the appropriate drainage and engineering designs as approved by DPW & ES prior to site plan approval. Drainage from the batting cages discharge pump and surface water runoff shall be designed to drain into a vegetated swale consisting of appropriate infiltration soils to prevent water quality impacts downstream from the batting cages.

20. An integrated fertilizer, herbicide and pest management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the watershed shall be implemented for use. This program and plan shall be provided for periodic monitoring and adjustment that demonstrates an intent to reduce the amount of nutrient , phosphate, and pesticide applied to the property over time. The design of this program and all monitored parameters shall be reviewed and approved by the Northern Virginia Soil and Water Conservation District of the Department of Extension and Continuing Education, the State Water Quality Control Board, the Department of Planning and Zoning (DPZ), and DPW & ES prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept, shall be made available to county staff on demand and shall be reviewed annually by DPZ.

21. The existing emergency access to Sugarland Road shall not be expanded.

22. A sign permit shall be obtained for any proposed or existing signs on this site.

23. A Non-Residential Use Permit shall be obtained for the existing miniature golf course, basketball court and existing tees, within 6 months of the final date of approval of this special permit amendment.

These development conditions incorporate and supersede all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this

Page 121, October 13, 1998, (Tape 2), WOODY'S GOLF RANGE, INC. A VIRGINIA CORPORATION, SPA 79-D-176-03, continued from Page 120

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 21, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 121, October 13, 1998, (Tape 2), Scheduled case of:

9:30 A.M. STEPHEN L. CLEMENT, A 1998-PR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining a junkyard in the R-1 District and has erected a fence exceeding 4 ft. in height in the front yard and 7 ft. in the side yard, all in violation of Zoning Ordinance provisions. Located at 2952 Fairlee Dr. on approx. 20,000 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((7)) 25. (DEF. FROM 8/18/98).

Royce Spence, Agent, came to the podium and stated there was a request from the appellant to defer the appeal application. He stated the application was basically in compliance with the exception of a 7.6 high fence. Mr. Spence stated the appellant desired to make a decision as to whether he would ask for a variance or bring the fence into compliance. Mr. Spence stated Mr. Clement requested a deferral until December 15, 1998, at which time he would either file a variance or bring the fence into compliance.

Maggie Stehman, Zoning Administration Division, stated staff supported a deferral until December 15, 1998, with the understanding that a variance application would be filed by that date or another remedy would be pursued and would resolve the fence situation. She stated that on October 8, 1998, another inspection was conducted which revealed the junk yard situation on the property had been cleaned up by the appellant and that violation had been cleared.

Mr. Ribble moved to defer the appeal application to December 15, 1998 at 8:00 p.m. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 121, October 13, 1998, (Tape 1), Scheduled case of:

9:30 A.M. WOLFE BROTHERS, JAMES WOLFE, RAYMOND L. WOLFE, A-1998-DR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a contractor's office and shop, storage yard, and parking commercial vehicles in the R-2 district, all in violation of Zoning Ordinance provisions. Located at 1894 Virginia Ave. on approx. 0.36 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 15A.

Chris Swynford, Agent for appellant, came to the podium and stated through a County administrative oversight, he had not received a copy of the staff report until October 12, 1998, and requested a continuance of the appeal application to October 27, 1998. He stated the appellant had additional information to provide to the Board members and wished an opportunity to rebut the staff report in writing.

Jack Reale, Zoning Administration Division, stated staff supported the request for deferral to October 27, 1998 at 9:30 a.m.

Ms. Susanne Neiss, 1839 MacArthur Drive, came to the podium to ask if the case would be deferred would the neighbors be informed of the new date to speak on the issue.

Mr. Pammel asked staff how much similarity there was in this appeal and the appeal application that was in litigation.

Mr. Reale stated there were considerable similarities. He stated essentially the issues were very similar. He stated in the original notice it had only mentioned one of the lots, Lot 15, this lot, Lot 15A, was immediately adjacent and behind Lot 15. Mr. Reale stated the vehicles in question were the same vehicles which were shifted onto Lot 15A.

Mr. Pammel stated he had concerns regarding hearing the case until the pending litigation was decided upon. Mr. Pammel requested the input of the County Attorney on this matter.

Mr. Swynford replied that he had spoken with the County Attorney and stated they had both agreed it was an administrative oversight that the two appeals were not heard originally together. Mr. Swynford stated the County Attorney did not wish to proceed until this appeal was determined at the administrative level. He stated depending on what the Board decided, the County Attorney, at that point would make a decision of whether to move forward on the Judicial aspect or whether to join them together.

Mr. Hammack asked staff what the status of the appeal was.

Mr. Swynford stated the appeal had been scheduled for a hearing for the latter part of November, however, both he and the County Attorney believed it would be postponed until the Board of Zoning Appeals took action on Parcel 15A.

Ms. Gibb questioned if the issue on Lot 15 was an issue of running a shop. Mr. Swynford stated it was the parking of alleged commercial vehicles.

Ms. Gibb asked if this appeal was only limited to the parking. Mr. Swynford stated that was correct and that everything else had been cleared.

Mr. Ribble moved to defer the appeal application to October 27, 1998, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 122, October 13, 1998, (Tape 2), After Agenda Item:

Approval of March 10, 1998; July 7, 1998 and August 11, 1998 Minutes.

Mr. Dively moved to approve the Minutes. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 122, October 13, 1998, (Tape 2), After Agenda Item:

Request for a Determination on Acceptance for Application of Appeal, Emanuel Stikas

Michael Congleton, Deputy Zoning Administrator, Zoning Permit Review Branch, stated the issue before the Board was the acceptance of an appeal application filed by Emanuel Stikas. It was the County's opinion that the appellant did not have standing as an aggrieved party to file the appeal. Mr. Congleton stated the basis for the opinion was set forth in a memorandum to the Board from William Shoup dated October 5, 1998. At issue was the approval of a Non-RUP for a Dry Clean Depot facility on Route 50. As set forth in the memorandum, it had been demonstrated under Virginia Law, that in order to be an aggrieved party, one must demonstrate to either be denied a right available to the general public or that a condition had been imposed on them not applicable to the general public. Mr. Congleton stated that the appellant maintained that a competing dry cleaning establishment located 1 ½ miles from his business on Graham Road may

affect him, and due to the County not allegedly treating him in a similar fashion in the past, he was aggrieved. Mr. Congleton stated the County had no direct knowledge of this occurrence, however, if it had happened Mr. Stikas should have appealed the decision at that time. The County could not deny a legitimate request for a Non-RUP. The issuance of a Non-RUP to Dry Clean Depot was done in accordance with the Zoning Ordinance. Mr. Congleton said the issuance of the Non-RUP in no way denied Mr. Stikas any right to establish a business and had Mr. Stikas requested a Non-RUP for the Dry Clean Depot location, he would have been issued one. No condition had been placed on Mr. Stikas' operation that would affect him in any way. For these reasons, Mr. Congleton requested the Board not accept Mr. Emanuel Stikas appeal application.

Chairman DiGiulian asked what the significance was of the 3,000 square feet for a dry cleaning plant.

Mr. Congleton replied if there was a dry cleaning establishment which processing area was less than 3,000 square feet, it would be deemed a business service and supply establishment. He stated the rest of the area was not included in the calculation, only the cleaning and processing plant.

Chairman DiGiulian asked if there was any verification on the processing area on the former Kinney Shoe Store.

Mr. Congleton stated that Senior Zoning Inspector, Paul McAdams, went to the site and reinspected it approximately one week prior and found the cleaning and processing area was under 3,000 square feet.

Chairman DiGiulian asked if the future garment storage area was separated from the processing area by a wall. Mr. Congleton replied it was not separated.

Chairman DiGiulian asked if the storage area were included, would it have exceeded the 3,000 square feet. Mr. Congleton replied it probably would.

Mr. Pammel asked if the Kinney Shoe Retail Store was a use permitted in the C-5 District. Mr. Congleton replied that it was a permitted use.

Mr. Pammel asked why was the conclusion reached that it was grandfathered. Mr. Congleton stated at issue was a use limitation in the C-5 District that stated except for grocery stores, drug stores or a store of general merchandise, one could not have a single use greater than 6,000 square feet. No stand alone use that was greater than 6,000 square feet in the C-5 District.

Mr. Pammel asked if Kinney Shoes met that requirement. Mr. Congleton stated that Kinney Shoes was constructed in the 1970s, prior to the adoption of the current Ordinance, which at that time there was no such restrictions.

Ms. Jane Kelsey, Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, agent for the appellant stated she represented Mr. Stikas in his appeal in the Zoning Administrator's determination to issue a Non-Residential Use Permit for Dry Clean Depot. Ms. Kelsey stated she believed Mr. Stikas was an aggrieved party and was entitled to make this appeal as was set forth in her memorandum dated October 5, 1998, which was previously distributed to the Board. Ms. Kelsey gave her presentation to the Board based on this memorandum.

Ms. Kelsey requested a deferral until mid-November so the appellant could obtain case law research.

Mr. Kelley stated the customer area seemed rather large for a cleaning establishment. Ms. Kelsey stated her client was not the operator of Dry Clean Depot, however, she believed it was large.

Mr. Emanuel Stikas, 6140 Sun Patterns Trail, Fairfax Station, Virginia, came to the podium to state the amended plan, which was amended from the original filings with the County, to conform with the 3,000 foot requirement, did not reflect the installation as it was presently installed or as it was installed when it was approved by the County. He stated the customer service area was considerably smaller than what appeared on the plan, and stated the future garment storage area was an integral part of production in that it was the part of production to inspect, assemble and package clothing to get the right garments back to the

customer. He stated the future garment storage area was devoted exclusively to this. In addition, he said the plan that Zoning approved would be acceptable except that the installation did not conform with the plan. He said that was his contention from the beginning. He had requested inspections and was not aware any were made. He said, prior to 1978, prior to C-5 it was C-N zoning and there was not a square footage requirement for personal service, there was only a restriction on the amount of equipment that could be installed. He stated the County had made a compromise at that time that a square footage requirement was more equitable. He stated his contention in this matter was the plan that Zoning approved was not the plan that was installed at this location. His zoning consultants had informed him in order for him to use this property, when it became available in 1997, he would have to subdivide the space and use only 6,000 square feet and would be restricted to the 3,000 feet of production. The cost in subdividing the space, to include providing additional bathrooms and other facilities, to utilize the additional 2,000 square feet made it cost prohibitive and therefore he had to walk away from the sale of the property.

Mr. Frank Stearns, agent for Dry Clean Depot, came to the podium and stated his client was at the hearing to determine whether the appeal should be accepted and not the merits of the appeal. He stated Mr. Stikas did not qualify as an aggrieved party under the statute that can bring an appeal to the Board. He stated the complaints were common to all dry cleaners that his competitor was taking advantage of. He said it was not unique to Mr. Stikas. Mr. Stearns said, by Mr. Stikas' own statement, his zoning consultants, and not the County, informed him the property could not be used, therefore, he did not have a grievance with the County that should be appealed to the Board. The County had inspected the site and found it to be in compliance with the Ordinance. Mr. Stearns asked the Board to uphold the Zoning Administrator's determination that this appeal did not qualify as an aggrieved party or a proper appeal of the Board.

Mr. Kelley asked when Mr. Stikas was told it was not a permissible use for him to be at that site and now Dry Clean Depot was there, he believed that did qualify as an aggrieved party.

Mr. Stearns stated that apparently Mr. Stikas' consultants had informed him of this and did not know why they had informed him of that, however, he stated if Mr. Stikas had sat down with the County staff and asked how one could make an old building that was not in use productive and do it in compliance with the Ordinance, Mr. Stearns believed the County would have told Mr. Stikas that it would have to be segregated into a certain part of the building and not use the full available space, which is what Dry Clean Depot had done.

Chairman DiGiulian asked how the processing area was segregated from the rest of the building.

Mr. Stearns stated it was not used for processing or dry cleaning and that is why the Zoning Inspector went to the site to ensure it was in accordance with the Ordinance. He stated it was excess space that was not being used, however, the rest of the space was made productive.

Mr. Pammel stated it was represented in a document that County staff had informed Mr. Stikas the property could not be used. He stated there was a clear indication in the letter from County staff that did state it did not meet the standards and could not be used.

Mr. Stearns stated he had believed it was Mr. Stikas' zoning consultants that had given him incorrect information and further stated Mr. Stikas still would not qualify as an aggrieved party. He stated it was merely an advisory opinion, which he could not appeal. If Mr. Stikas had requested it in writing he would have had something to appeal and then been an aggrieved party; however, having not done this, it did not make him an aggrieved party today because another individual went in and found a way to make the building productive where Mr. Stikas could not. He stated if the inquiry was there, it was common place to all dry cleaners in the County and was not unique to him.

Mr. Congleton stated the issue before the Board was to make a determination whether Mr. Stikas was an aggrieved party and not any of the merits of the appeal. As set forth in Mr. Shoup's memorandum dated October 9, 1998, he stated County staff did not believe, based on Virginia Case Law, that Mr. Stikas was an aggrieved party because there was no decision made which deprived him of any right not available to anyone else, there was no decision made which put additional burden on him that was applicable to anyone in the County and he was physically removed a mile and a half; therefore, there was no direct impact. These were the only issues facing the Board, not the square footage of the processing area. Mr. Congleton

referred to Ms. Kelsey's memorandum where Mr. Stikas had stated he was refused occupancy by some unnamed zoning official. Mr. Congleton stated the County had no record of this and he had spoken to Mr. Stikas who could not name anyone. Mr. Congleton informed Mr. Stikas if he had applied for a Non-Residential Use Permit for this location for a dry cleaning plant, meeting the 3,000 square feet, he would have been issued the permit. The issue was Mr. Stikas' standing as an appellant and not the merits of his appeal.

Ms. Gibb asked what could have Mr. Stikas done and was there any other remedy that he had for himself at this time.

Mr. Congleton stated if he had been denied occupancy of the site, as he alleges, he could have filed an appeal at that time, but at this stage County staff did not believe he was an aggrieved party because there had been no action taken against him through the issuance of a Non-Residential Use Permit for Dry Clean Depot.

Ms. Gibb asked if this type of situation had come to the Board before.

Mr. Congleton stated he was not aware of any specific case in the County, however, based the argument on Virginia Case Law where they had dealt with who had standing as an aggrieved party.

Chairman DiGiulian stated there had been several cases of aggrieved parties within the County, such as a tile company and a furniture store, and stated the Board did hear these types of cases.

Ms. Gibb stated she believed it was a legal issue as to who was an aggrieved party which was the determination the Board would have to make and believed the appellant was at a disadvantage without an attorney present.

Mr. Dively stated this was a situation where the legal definition was contrary to what a gut feeling of what was fair and felt the Board was bound by the definition and did not see how it could be argued that Mr. Stikas was an aggrieved party under the statute.

Mr. Hammack stated Mr. Stikas had not had the opportunity to respond to the issue because he did not have an attorney present and the Board should give him the opportunity to respond which would require the determination be deferred so Mr. Stikas could obtain counsel. Mr. Hammack asked Ms. Kelsey if she had an opportunity to review the issue of being an aggrieved party.

Ms. Kelsey stated she had reviewed the information; however, since she was not an attorney she preferred not to comment on the issue however she did believe he was an aggrieved party.

Mr. Hammack asked if Mr. Stikas or his representative contacted the County.

Ms. Kelsey stated Mr. Stikas had contacted the County and it was a long standing position the County had and Mr. Stikas did not appeal the decision because he agreed with it because it was a C-5 District and not industrial.

Mr. Hammack asked if he had suffered pecuniary loss.

Ms. Kelsey stated she believed he had because it was operating in a bigger and broader volume than a neighborhood dry cleaners would operate and as he operated, therefore, he had been restricted and Dry Clean Depot was not. She stated he had been restricted but could now add an addition onto his building.

Chairman DiGiulian stated it would be appropriate to defer decision on the case until Mr. Stikas had an opportunity to obtain legal representation.

Mr. Hammack asked if the County did not accept the application as a valid appeal initially. Mr. Congleton stated it was timely filed however did not believe he had standing as an aggrieved party.

Ms. Kelsey asked for a deferral to November 10, 1998, to give the appellant time to obtain an attorney.

Chairman DiGiulian stated it would only be a determination as to whether the appeal should be accepted or not.

Ms. Gibb made the motion to defer the determination to accept the appeal application to November 10, 1998. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 126 October 13, 1998, (Tape 2), After Agenda Item:

Request for an Intent to Defer Appeal Application A 1998-MV-017, Richard and Karen Fields.

Ms. Eileen McLane, Deputy Zoning Administrator, Ordinance Administration Branch, stated the appellant had filed for a variance for fence height, therefore, time was required for the variance to be considered. Ms. McLane recommended deferral until March 30, 1999, at 9:30 a.m.

Mr. Dively moved to defer the appeal application to March 30, 1999, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 126, October 13, 1998, (Tape 2), After Agenda Item:

Approval of October 6, 1998 Resolutions.

Mr. Pammel moved to approve the October 6, 1998 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 126, October 13, 1998, (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-Y-122, Michael & Cynthia Fox.

Mr. Pammel asked what was the earliest date to hear the variance application.

Ms. Langdon stated the December 8, 1998, date was the earliest date. It would have normally been scheduled for January 5, 1999, but was moved up as far as possible on the agenda.

Mr. Pammel moved to deny the request. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Mr. Pammel requested the Boards' concurrence in directing staff to revamp the Boards policy for notices not in order, to the effect that, unless there was a clear showing of a hardship, that when an applicant did not appear due to notices not being in order, the case automatically be dismissed. He stated he believed the applicants had clear direction from County staff as to what was required on notifications.

Chairman DiGiulian stated that an action to dismiss should be taken by the Board and not by staff and would be opposed to the motion.

Mr. Pammel stated the Board should be stronger in its actions because there were too many applications being carried over.

Chairman DiGiulian stated there was a lot of those types of cases, however, there were also a lot which had extenuating circumstances that the Board might see and staff didn't, particularly in appeals.

Mr. Dively stated it would be a major change in policy because the Board almost always granted a

continuance on the first request.

Mr. Pammel stated it was too often that it was used as an excuse to retain more time.

Mr. Hammack asked staff if there was anything in the instructions that was not clear regarding what was required.

Ms. Langdon stated she would supply the Board with a copy of the form and said it repeated things about three times and also gave the applicants phone numbers and messages which state if there were any questions or concerns to contact the Clerk. Most people go through this process with no problems.

Ms. Gibb stated having done notices in the past, she believed with so many people with English as a second language, mistakes could be made.

The motion failed due to a lack of a second.

Mr. Pammel stated there had been a continuing addition/activity in his community association, Lake Vale Community Association, in his neighborhood and requested staff investigate the situation to determine if they were exceeding their conditions of their permit that was before the Board two or three years ago. He stated they were now in the process of building a soccer field. Mr. Ribble seconded the motion which carried by a vote of 6-1. Mr. Kelley opposed the motion.

Mr. Kelley stated he did not believe it was appropriate for the Board to do these types of things. He stated he believed if any member of the Board or any citizen had a complaint they should follow normal channels. He opposed the motion because it was not appropriate.

As there was no other business to come before the Board, the meeting was adjourned at 11:32 a.m.

Minutes by: Deborah Hedrick

Approved on: February 16, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, October 20, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the After Agenda Items.

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Page 129, October 20, 1998, (Tape 1), After Agenda Item:

Approval of May 12, June 2, June 9, June 30,
July 14 and July 28, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote 7-0.

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Page 129, October 20, 1998, (Tape 1), After Agenda Item:

Request for Intent to Defer
James L. Blevins, A 1997-SU-026

Mr. Pammel moved to approve the request for intent to defer. Mr. Dively seconded the motion which carried by a vote of 7-0. The appeal was deferred to January 26, 1999 at 9:30 a.m.

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Page 129, October 20, 1998, (Tape 1), After Agenda Item:

Request for Reconsideration
Scott and Eileen Daley, VC 98-V-086

Mr. Kelley moved to deny the request for reconsideration. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 129, October 20, 1998, (Tape 1), After Agenda Item:

Approval of October 13, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 129, October 20, 1998, (Tape 1), After Agenda Item:

Request for Intent to Defer
Woodruff G. Fitzhugh, Appeal 95-D-058

Mr. Kelley moved to approve the request for intent to defer. Mr. Hammack seconded the motion which carried by a vote of 7-0. The appeal was deferred to May 25, 1999.

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Page 130, October 20, 1998, (Tape 1), After Agenda Item:

Request for Intent to Defer
William Meeker, A 1998-MV-015, A 1998-MV-016

Mr. Pammel moved to approve the request for Intent to Defer. Mr. Hammack seconded the motion which carried by a vote of 7-0. The appeals were deferred to January 12, 1999.

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Chairman DiGiulian called for the first scheduled case.

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Page 130, October 20, 1998, (Tape 1), Scheduled case of:

8:00 P.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10/28/97. DEF. FROM 4/21/98).

Chairman DiGiulian noted that the Board of Zoning Appeals had issued an Intent to Defer on September 29, 1998.

William Shoup, Deputy Zoning Administrator, concurred with the Chairman stating that at that time the BZA had asked for staff to come back in six weeks with an update on the status of the special exception application. He said staff would come before the BZA on this matter on November 10, 1998. Mr. Shoup said the special exception had not yet been accepted but the appellant had been working with his engineer to correct the plat deficiencies.

Mr. Shoup said the BZA had indefinitely deferred the appeal awaiting the status update and then on November 10, 1998, depending on the status, the BZA may or may not decide to schedule an appeal.

The BZA members concurred that they did not need to take action on the subject appeal at this time.

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Page 130, October 20, 1998, (Tape 1), Scheduled case of:

8:00 P.M. JOHN S. SORRELL, A 1998-SU-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected a 6.0 ft. tall fence in the front yard, is parking two commercial vehicles on the property, and has erected an accessory storage structure in the front yard of a lot which is less than 36,000 sq. ft., all in violation of Zoning Ordinance provisions. Located at 5419 Sasher Ln. on approx. 0.5 ac. of land zoned R-C. Sully District. Tax Map 67-1 ((1)) 8. (Concurrent with A 1998-SU-007). (Deferred From 6/30/98; BZA Def. From 8/25/98).

8:00 P.M. JOHN S. SORRELL, A 1998-SU-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected two accessory storage structures and a 6.0 ft. tall fence on the property, all in violation of Zoning Ordinance provisions. Located at 12224 Braddock Rd. on approx. 0.49 ac. of land zoned R-C. Sully District. Tax Map 67-1 ((1)) 5. (Concurrent with A 1998-SU-006). (Deferred From 6/30/98; BZA Def. From 8/25/98).

Stephen Armstrong, agent for the appellant, came forward indicating that the appellant had not done what they were supposed to have done. He said the appellant had previously promised that they would make a whole hearted effort to accomplish the task, but that it was not completed. Mr. Armstrong said that his client

had removed 43 vehicles, 2 roll boxes of trash, and 56 truckloads. He said he had about 50 truckloads left. Mr. Armstrong said they had not lived up to their obligations. He requested a deferral of 60 days to complete the task.

William Shoup, Deputy Zoning Administrator, said staff objected to deferring the appeal any further. He said this appeal came before the Board on June 30, 1998 and had been deferred on two occasions. Mr. Shoup said that staff believed the appellant had made some progress, staff estimated that the hadn't come half-way in resolving the problems and there was still a considerable amount to be done. He presented photographs of the subject property to the Board members. Mr. Shoup said staff would object to a deferral and asked to proceed with the appeal. He noted that if the BZA took action and upheld the decision of the Zoning Administrator, it would put staff in a position where they could initiate legal action and perhaps, through a consent decree, get this problem resolved on both properties.

Mr. Kelley said the appellant was promising to continue to clean up the property and had done a considerable amount of work and wouldn't a consent decree only allow them to continue what they were doing.

Mr. Shoup said it would be a court order with some definite time frames and penalties to help ensure that the appellant met the time frames. He said staff did not agree there had been a real substantial effort to clean up the property. Mr. Shoup said the properties were in really bad shape and the appellant had removed some junk vehicles off the property, but staff's point was that there had not been substantial progress since March, when the Notice was issued. He said staff had no confidence that it would ever get totally resolved.

Mr. Dively asked Mr. Shoup to characterize the progress on a 1-100 percentage scale. Mr. Shoup said that Darryl Varney, Zoning Administration Division, had visited the property so he deferred the question to him. Mr. Varney said he would characterize the progress at 30-40% because the junk vehicles had been removed and what was left there had been consolidated into piles to make it appear that there was more open space on the property.

Mr. Armstrong stated that some of the materials had been consolidated. He said the appellant did not have the money to face the penalties. Mr. Armstrong said the appellant was making his best effort to accomplish this task and had done the work all by himself. He said the County was correct in making the citation.

Ms. Gibb asked Mr. Armstrong, was he contending that the property could be grandfathered. Mr. Armstrong replied that they were previously contending grandfathering rights, but that grandfathered or not, the property needed to be cleaned up.

Ms. Gibb asked about the fence. Mr. Armstrong stated that the appellant would make his best effort to bring the fence into conformance.

Mr. Kelley said the BZA should give the appellant a break and let him get the property cleaned up.

Mr. Dively said monitoring might help the appellant get the property cleaned up.

Mr. Pammel moved to defer the appeal to January 26, 1999. Mr. Dively seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 8:22 p.m.

Minutes by: Regina Thorn

Approved on: November 10, 1998

Regina Thorn

Regina Thorn, 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 Tuesday, October 27, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 133 October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM L. AND GAIL H. PURVIS, VC 98-V-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 8511 Hitching Post Ln. on approx. 11,589 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(5) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Purvis, 8511 Hitching Post Lane, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a garage addition 3.5 feet from the side lot line. A minimum total side yard of 12 feet is required; therefore, a variance of 8.5 feet was requested.

Mr. Ribble asked staff if this application was a previous request that was scaled down. Mr. Bernal replied that was correct.

Mr. Purvis presented the variance request as outlined in the statement of justification submitted with the application. He submitted a letter from his neighbor who supported the request. Mr. Purvis stated a variance was the only way to put a garage on the property due to the size of the lot and the narrowness, and the general area precluded anything else and asked for the Board's approval.

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

Mr. Ribble moved to approve VC 98-V-095 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM L. AND GAIL H. PURVIS, VC 98-V-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.5 ft. from side lot line. Located at 8511 Hitching Post Ln. on approx. 11,589 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(5) 5.
Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant has met the nine required standards for the granting of a variance.
3. The exceptional narrowness of the lot requires the need for a variance.

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated May 30, 1996 and revised by Robert C. Byrnes, dated August 3, 1998, 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. Kelley and Mr. Dively seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 135, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. EXXON CORPORATION, VC 98-M-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking space to remain less than 10.0 ft. from front lot line. Located at 6162 Arlington Blvd. on approx. 21,058 sq. ft. of land zoned C-7 and SC. Mason District. Tax Map 51-3 ((1)) 24C.

Chairman DiGiulian called the applicants 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 Lubeley, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Greg Russ, Rezoning and Special Exception Branch, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit one parking space to remain 3.8 feet from the front property line of Patrick Henry Drive. The Zoning Ordinance requires a 10 foot separation of parking from any front lot line. Mr. Russ stated that on October 19, 1998, the Board of Supervisors approved a special exception amendment to permit modifications to the application property.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Martin stated the application was a housekeeping application to permit an existing condition to remain which became a nonconforming use requiring a variance once the new canopy and pumps were installed.

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

Mr. Hammack moved to approve VC 98-M-056 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 23, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EXXON CORPORATION, VC 98-M-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking space to remain less than 10.0 ft. from front lot line. Located at 6162 Arlington Blvd. on approx. 21,058 sq. ft. of land zoned C-7 and SC. Mason District. Tax Map 51-3 ((1)) 24C.
Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance.
3. The parking space is an existing parking space.

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

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

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

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

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

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

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

1. This variance is approved for the location of the parking space #1 shown on the plat entitled "Special Exception Amendment Case # SE 97-M-014 and Variance Plat, Exxon Station 2-2940", prepared by The Plan Source and dated April 1, 1998, as revised through September 10, 1998, 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 the activity has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence the activity if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 136, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JOANN BANDI COLBERT, VC 98-Y-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.0 ft. from side lot line such that side yards total 21.4 ft. Located at 11519 Vale Rd. on approx. 26,966 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((6)) 37A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joann Bandi Colbert, 11519 Vale Road, Oakton, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Wilson

stated Fairfax County park land adjoins the property on the south lot line. The applicant requested a variance to permit the construction of a deck 3.0 feet from the south side lot line such that both yards total 21.4 feet. A minimum total side yard of 12 feet is required with a minimum total side yard required of 40 feet; therefore, the amount of error is 9.0 feet for the minimum side yard requirement and 18.6 feet for the minimum total side yard requirement.

Ms. Colbert presented the variance request as outlined in the statement of justification submitted with the application. Ms. Colbert stated the variance was needed due to the narrowness of the lot and the design of the house which required encroachment on the lot line.

Mr. Hammack asked Ms. Colbert if she had reviewed the letter in opposition filed by the Fairfax County Park Authority.

Ms. Colbert stated she had not received the letter; however, Ms. Wilson had informed her of their concerns and she stated she would be willing to remove the articles which encroached on the park land. Mr. Hammack gave Ms. Colbert the letter for her review.

Ms. Colbert replied the Park Authority was concerned with the invisible fence. She stated the fence was non operational and was not in use and that it was a cable under the ground and they would remove it on the south side of the house. She commented on the wood pile and stated it had been there since the prior owners. She stated she would move the wood pile off of the park land and also the metal trash cans. There was also concern regarding hooks in the trees which were there for a hammock, Ms. Colbert stated she would also remove these items.

Ms. Gibb asked how the Park Authority knew there was an invisible fence.

Ms. Colbert stated there were flags which indicated where the fence was located for training their dog. However, she stated they had not trained the dog because the fence never operated correctly but the flags remained.

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

Mr. Pammel moved to approve VC 98-Y-088 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOANN BANDI COLBERT, VC 98-Y-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.0 ft. from side lot line such that side yards total 21.4 ft. Located at 11519 Vale Rd. on approx. 26,966 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-4 ((6)) 37A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant provided testimony to the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The narrowness of the lot requires the need for a variance.

4. Due to the siting of the house on the lot, taking into consideration septic fields on the north and east side of the lot, there was no other location for such an addition.

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

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

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

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

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

1. This variance is approved for the location of the deck shown on the plat prepared by Alexandria Surveys, Inc., dated July 10, 1998, 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. Applicant shall remove all items that presently extend into Park Authority 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. Dively seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Hammack and Mr. Ribble voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 139, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. PAUL F. KANE, VC 98-P-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line and total side yards of 13.0 ft. Located at 7815 Freehollow Dr. on approx. 13,391 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-2 ((21)) 56.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Kane, 7815 Freehollow Drive, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 2.0 feet from the side lot line such that both side yards total 13.0 feet. A minimum side yard of 8.0 feet is required with a minimum total side yard requirement of 20.0 feet. The amount of error is 6.0 feet for the minimum side yard requirement and 7.0 feet for the minimum total side yard requirement.

Mr. Kane presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kane stated they were unaware of the lot line issues until they were half way through the process.

Mr. Hammack asked if there was enough room to the rear of the property to increase storage area or to put a room on for the children. Mr. Hammack stated he was concerned about allowing a variance 2.0 feet from the lot line.

Mr. Kane stated there was a screened porch to the rear of the garage and on the rear of the living space on the first floor was a deck. The reason for the addition to be located on the side of the garage was to facilitate children's access to play equipment storage.

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

Mr. Dively moved to approve VC 98-P-090 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL F. KANE, VC 98-P-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line and total side yards of 13.0 ft. Located at 7815 Freehollow Dr. on approx. 13,391 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 59-2 ((21)) 56. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicant is the owner of the land.

2. The applicant has met the nine required standards for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Rice Associates, P.C., dated July 7, 1998 (Office) and signed July 20, 1998, 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 5-2. Mr. Hammack and Mr. Pammel opposed the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 141, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NORMA HILLER, SP 98-D-041 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 10.9 ft. from rear lot line. Located at 12162 Holly Knoll Cir. on approx. 20,615 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 53.

Ms. Hiller was not present for the public hearing; therefore, Chairman DiGiulian stated the application would be moved to the end of the agenda.

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Page 141, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CRAIG A. CARINCI, SP 98-Y-040 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of additions 10.1 ft. from side lot line and 14.0 ft. from other side lot line. Located at 15223 Sovereign Pl. on approx. 10,560 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 447.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Carinci, 15223 Sovereign Place, Chantilly, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. At the time of construction, the minimum side yard requirement was 8.0 feet with a combined side yard of 24.0 feet. The minimum side yard in the R-C District is 20.0 feet; therefore, the applicant requested a modification to the minimum yard requirements to permit construction of a room and a deck addition 10.1 feet from the side lot line and 14.0 feet for the screen porch. A minimum side yard of 20.0 was required; therefore, modifications of 9.9 feet and 6.0 feet were requested respectively.

Mr. Carinci presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Carinci stated he would like to propose the addition to his home to be consistent with the Zoning requirements which were in place when his house was originally constructed. The addition was comprised of a family room, a two car garage, a screened porch and a deck on the existing house.

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

Ms. Gibb moved to approve SP 98-Y-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG A. CARINCI, SP 98-Y-040 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of additions 10.1 ft. from side lot line and 14.0 ft. from other side lot line. Located at 15223 Sovereign Pl. on approx. 10,560 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 447. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. 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.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard 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 **APPROVED** with the following limitations:

1. This special permit is approved for the locations of a deck/screened porch addition and a room addition shown on the plat prepared by Craig A. Carinci, dated July 16, 1998, 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. 8- 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to 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 and Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998.

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Page 142, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DR. AND MRS. D. GORDON RYE, VC 98-S-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 14.5 ft. from side lot line. Located at 5940 Fairview Woods Dr. on approx. 52,846 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((10)) 9A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donna Rye, 5940 Fairview Woods Drive, Fairfax Station, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck 14.5 feet from the side lot line. A minimum total side yard of 20.0 feet is required; therefore, a variance of 5.5 feet was requested.

Ms. Rye presented the variance request as outlined in the statement of justification submitted with the application. Ms. Rye stated the deck was to be connected to an existing patio which would allow access from the rear of the home to the deck and the patio which would then have access to the driveway. Ms. Rye stated the lot was very narrow and the house was situated on the lot so the back of the house was very

the patio and stated there were trees which would screen the deck area from the adjacent property.

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

Mr. Kelley moved to approve VC 98-S-093 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DR. AND MRS. D. GORDON RYE, VC 98-S-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 14.5 ft. from side lot line. Located at 5940 Fairview Woods Dr. on approx. 52,846 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((10)) 9A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for the granting of a variance.
3. The variance is needed due to the exceptional narrowness of the lot and topographical concerns.

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

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

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

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

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

1. This variance is approved for the location of the deck shown on the plat prepared by BC Consultants (Andre T. Banks, Architect), dated August 30, 1998, 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 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 and Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 144, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WESTLAND GOLF INC. AND ROSE DEVELOPMENT, LLC, SPA 92-Y-017-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 92-Y-017 for commercial golf course and golf driving range to permit change of permittee, modification to development conditions, building additions and site modifications. Located at 12908 Lee Jackson Mem. Hwy. on approx. 31.18 ac. of land zoned R-1, WS and HC. Sully District. Tax Map 45-2 ((1)) 1A. (RESCHEDULED FROM 10/14/97, 11/25/97, 3/10/98, 4/14/98, AND 5/26/98; MOVED FROM 7/28/98 AND 9/22/98).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark G. Jenkins, 2071 Chain Bridge Road, Suite 400, Vienna, Virginia, Attorney and Agent, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The application property was developed as a commercial golf course and driving range. The applicant requested to amend the special permit for a commercial golf course and driving range in order to change the permittee from Anthony E. Westrick and Timothy E. Landers to Westland Golf Inc. and Rose Development LLC. The applicant requested an increase in the hours of operation between April and November from 7:00 a.m. to 9:30 p.m. which was in their current conditions of approval to 7:00 a.m. to 11:00 p.m. The requested site modifications included adding a second tier of tees over the existing tees by expanding the number of tees from 58 to 116 tees; adding three additional light fixtures within two bunkers on the driving range; filling in approximately .32 of an acre of wetlands located in the driving range area; and enclosing a deck attached to the clubhouse to become an addition, and the addition of accessory structures such as a starter shed, two teaching aide sheds, netting for the driving range, an outdoor storage yard and above ground fuel tanks. In staff's evaluation, all environmental and transportation issues were addressed with the proposed revised development conditions dated October 26, 1998. Staff supported all requests in the conditions except the

hours of operation since the driving range was located in close proximity to existing and proposed single-family dwellings. Ms. Schilling stated that the current hours of operation were also consistent with other driving ranges with special permits in the County. Ms. Schilling stated the applicant had submitted a lighting study for the proposed increase in lights; however, the revisions to the lighting study had not been evaluated due to the late date of the submission. Staff recommended approval of the application subject to the revised development conditions. Ms. Schilling stated the applicant had also submitted revised proposed development conditions and stated the differences were in Condition 5, the extended hours of operation which staff did not support; Condition 28 and Condition 29, which include proposed transitional screening and fencing along the western property boundary.

Mr. Hammack asked since the wetlands were required to be protected in the original application, why were they being allowed to be removed.

Ms. Schilling stated the area within wetlands were not a part of an RPA District; therefore, and when the applicant requested the deletion of the wetlands area, they had already requested and received approval by the Army Corps of Engineers for the reduction in the wetland area. Since it was not in the RPA area, staff believed the request could be accommodated.

Mr. Kelley asked what were the number of tees allowed.

Ms. Schilling stated the total number of tees would be 116 tees. Currently the applicant had 58 tees on site. They were originally permitted for the previously approved special permit, 60 tees, but only 58 tees were developed. With the approval of the application, the applicant would have 116 tees, which would include second story tiers. Mr. Kelley asked if this included the 30 grass tees. Ms. Schilling stated it did include the grass tees.

Mark Jenkins, agent, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Jenkins gave the Board photographs to review. Mr. Jenkins stated the hours of operations was the only disagreement with staff. He explained the lighting study to the Board concerning proposed additional berm lights. There was no proposed change to the existing lights on poles, only ground lighting. Mr. Jenkins stated the screening area provided an excellent buffer and stated the buffer was 50 feet as opposed to the 25 foot requirement. Mr. Jenkins stated that the lighting study showed that at no point did the lighting exceed the maximum allowed. Mr. Jenkins displayed a chart of the meter readings provided through the lighting study.

Mr. Jenkins stated the facility had operated for four years with no complaints and the applicant would provide another row of screening trees and a six foot fence along the property line to further block any lighting or noise from the parking area. The hours of operation were requested to be consistent with similar uses. Mr. Jenkins asked for the Board's approval subject to the applicant's revised development conditions.

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

Mr. Hammack moved to approve SPA 92-Y-017-2 for the reasons noted in the Resolution subject to the revised Development Conditions submitted by the applicant dated October 26, 1998 with a change in the hours of operation in Condition 5 to change from 9:00 a.m. to 10:00 p.m.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WESTLAND GOLF INC. AND ROSE DEVELOPMENT, LLC, SPA 92-Y-017-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 92-Y-017 for commercial golf course and golf driving range to permit change of permittee, modification to development conditions, building additions and site modifications. Located at 12908 Lee Jackson Mem. Hwy. on approx. 31.18 ac. of land zoned R-1, WS and HC. Sully District. Tax Map 45-2 ((1)) 1A. (RESCHEDULED FROM 10/14/97, 11/25/97, 3/10/98, 4/14/98, 5/26/98; 7/28/1998 and 9/22/98). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with the prescribed criteria.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 12908 Lee Jackson Memorial Highway (31.18 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles P. Johnson and Associates (Paul B. Johnson, P.E.) dated July 7, 1997, as revised through October 8, 1998, 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 Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The hours of operation (including the lighting and the use of the driving range) shall be limited to 7:00 a.m. to 11:00 p.m., seven days a week, for the period between the second Saturday in April to the last Saturday in November. For all other periods, the hours of operations (including the lighting and the use of the driving range) shall be limited to 7:00 a.m. to 9:30 p.m., seven days a week, except that: (i) there shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering prior to 9:00 a.m. or after 9:30 p.m.; and (ii) there shall be no lighting of the driving range before 9:00 a.m.

6. There shall be no more than ten (10) employees on site at any one time.

7. There shall be 136 parking spaces provided as shown on the special permit plat. All parking for this use shall be on-site. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

8. Right-of-way shall be provided to 140 feet from the centerline of Lee Jackson Memorial Highway as shown on the special permit plat. This right-of-way shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary access easements shall be provided to facilitate the road improvements as determined by the Department of Public Works &

Environmental Services (DPW & ES).

9. A contribution toward the installation of a future traffic signal at the entrance to the site shall be provided if determined necessary by DPW & ES and VDOT at the time of site plan review.

10. A service drive shall be provided along the site's frontage and shall be designed and constructed to a standard determined by DPW & ES unless the provision of a service drive is waived by VDOT.

11. There shall be no illumination of the nine-hole golf course or the putting green. There shall be no more than eight (8) lights provided on the driving range; each no more than thirty (30) feet in height. The three in-ground bunker lights shall **not** be installed in the locations shown on the plat (with 1,000 watt halide lights within the fixtures), unless a completed lighting study has been reviewed and approved by the Department of Planning and Zoning which demonstrates that the additional bunker lighting will not adversely affect surrounding properties . The driving range lights and bunker lights shall be shielded and directed so as to minimize glare impacts on the adjoining properties. There shall be no more than twenty (20) parking lot lights; each no more than twelve (12) feet in height. Parking lot lighting shall be shielded and directed downward so as to minimize glare impacts on the adjoining properties. There shall be no more than seven (7) driveway lights; each no more than twelve (12) feet in height. The driveway lights shall be directed and/or shielded so as to minimize glare impacts on adjoining properties.

12. The maximum number of tees provided on the driving range shall not exceed 116. The size of the tee area shall be no larger than that shown on the special permit plat.

13. If it is determined by the Fairfax County Health Department that neither of the two proposed septic fields can adequately serve the use, this special permit shall be considered null and void unless alternate septic field locations can be found that do not disturb screening, landscaping, wetlands, berming., parking or structures as shown on the plat or unless a connection to public sewer is made. Should public sewer be provided, the areas shown as proposed septic fields shall remain as grassed areas as shown on the plat.

14. Transitional screening, barriers and landscaping shall be provided as follows and as approved by the Urban Forestry Branch of DPW & ES:

    - Plantings equivalent to Transitional Screening 2 shall continue to be provided and maintained within a fifty (50) foot wide screening yard along the western and northwestern lot lines, with the exception of the following areas: between golf course holes 1 and 2 where the stream and pond are shown on the plat; between golf course holes 3 and 4 where the stream and pond are shown on the plat; and along the northwestern property boundary where existing vegetation has been supplemented with evergreen plant materials. The existing vegetation in the areas where Transitional Screening 2 cannot be provided shall be preserved and maintained as supplemented with evergreen trees to a level as close to Transitional Screening 2 as possible. All tees, greens, fairways and the putting green shall be located outside of this fifty foot wide screening area.

    - Plantings equivalent to Transitional Screening 2 within a fifty (50) foot wide screening yard shall be provided (and/or maintained) along the eastern lot line with the exception of the area between golf course holes 8 and 9 shown on the plat as a wetlands preservation area. The walkway over the wetlands area can be located as shown on the special permit plat. All tees, greens and fairways shall be located outside of this fifty foot screening area.

    - Along the southern lot line, in lieu of Transitional screening 1 and 2, plantings shall be provided and maintained as shown on the special permit plat. Existing vegetation around the existing dwelling as shown on the special permit plat shall be preserved.

    - The six (6) berms shown between the golf course and the driving range shall be provided, landscaped and maintained as shown on the special permit plat. All parking lot landscaping, driving range landscaping, landscaping around the clubhouse and maintenance building, and landscaping on the south side of the parking lot and driveway

shall be maintained as shown on the special permit plat. The area of tree preservation shown in the southern corner of the site and along the western lot line shall continue to be provided and maintained.

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

15. In order to prevent groundwater contamination, all surfaces used for chemicals, machines, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants as determined by DPW & ES. A written maintenance plan for the system shall be developed. The catchment system design and the maintenance plan for this system shall be subject to approval by DPW & ES and shall be implemented as approved. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be subject to review and approval by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

16. A Integrated Pest Management Plan (IPM) shall be developed in accordance with the Virginia Cooperative Extension Service Pest Management Guide (PMG) and a copy provided to DPW & ES prior to site plan approval and implemented, as required by DPW & ES, so that adverse impacts to water quality from increased levels of fertilizers, herbicides, and pesticides can be prevented to the maximum extent feasible. This Plan shall include an ongoing monitoring and written reporting method. 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 to the Department of Planning and Zoning (DPZ) if requested.

17. In order to mitigate impacts to existing wetlands, all wetland areas to be preserved within the limits of clearing and grading shall be shown on the site plan as wetlands preservation areas. These areas shall be designed and maintained to preserve the wetlands within hazard areas (features of the golf course designed to challenge play but not to include tees, greens or manicured fairways) of the golf course and driving range. Prior to the issuance of a Non-Residential Use Permit (Non-Rup) for the increase in tees, the written wetland habitat conservation plan shall be reviewed and approved by DPW & ES and DPZ to ensure that the plan continues to specifically address the golf course/driving range operational management of these areas so that they function as natural wetlands within the golf course/driving range and will remain as Wetland Preservation Areas for the life of the golf course.

18. Stormwater Management Best Management Practices (BMPs) shall be provided in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual to the satisfaction of the Director, DPW & ES and as shown on the special permit plat. The BMP wet pond and the BMP dry pond located in the northen and western boundaries of the site shall continue to be designed to contain a shallow marsh bench. The shallow marsh bench within the perimeter of these ponds shall contain a grade that forms a 10 to 20 foot wide shallow bench designed to enhance the growth of emergent aquatic vegetation, to provide an area for sediment deposits near the inflow channel and to allow the establishment of a shallow marsh area. The design of the ponds and a list of plant species to be replanted in the wetlands areas disturbed by stormwater management facilities shall be in accordance with the Landscaping Guide for Stormwater Management Areas, Table 9.2, Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs and/or the Maryland Department of Natural Resources document entitled Guidelines for Constructing Wetland Stormwater Basins or with other methods approved by DPW & ESand shall be subject to the review and approval of the Urban Forestry Branch of DPW & ES at the time of site plan review.

19. Approval from the Army Corps of Engineers shall be obtained, if necessary, for impacts to the wetlands areas on-site.

20. The roughs and peripheral fairways of the golf course and driving range shall continue to be maintained as a herbaceous grass meadow. Existing vegetation shall continue to be preserved to the greatest extent possible.

21. The development may be phase, provided all parking, transitional screening, landscaping, berming, stormwater management for the entire development, right-of-way dedication, and other road improvements are provided in conjunction with the first phase of development.

22. Any sales activity on the site shall be limited to the ancillary selling of beverages and food at the snack bar and golf related accessories. The sale of alcohol shall not be permitted on the premises without prior approval of the BZA.

23. All storage tanks utilized for the storage of petroleum products or other hazardous materials shall be subject to the review and approval of the Fairfax County Fire and Rescue Services, and are subject to the regulations of the Environmental Protection Agency, (EPA), and all other applicable state and local regulations.

24. Public water shall be provided to the site for this use.

25. A minor relocation of the entrance gate may be permitted at the discretion of the Department of Transportation.

26. There shall be no external changes to the existing dwelling which would alter its residential character.

27. Additional landscaping consisting of evergreen plant materials shall be provided around the perimeter of the above ground storage tanks, trash dumpster, and outdoor storage yard, to be reviewed and approved by the Urban Forestry Branch of DPW & ES, to provide a visual screen shielding the view of the storage tanks, outdoor storage and trash enclosure from surrounding properties and Route 50.

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

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. Establishment of Phase 1 shall establish the use as approved pursuant to 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. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 149, October 27, 1998, (Tape 1), Scheduled case of:

9:00 A.M. REGINALD E. AND MILDRED S. DURHAM, VCA 78-L-229 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.4 ft. from street line of a corner lot. Located at 5902 Montell Dr. on approx. 11,348 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((13)) 22. (Def. from 10/6/98 for notices).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Reginald Durham, 5902 Montell Drive, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. A variance to permit a carport 23.4 feet from the front lot line was approved on November 7, 1978. The applicant requested an amendment to the variance to permit a garage to remain 23.4 feet from the front lot line and to permit the construction of a second story addition over the garage also 23.4 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 6.6 feet was requested.

Mr. Durham presented the variance request as outlined in the statement of justification submitted with the application. Mr. Durham stated the reasons for the request were to improve his property and his quality of life. Mr. Durham stated the addition was necessary to create a room with larger doors and a larger bathroom entry due to a handicap. The bedroom addition would be 4.0 feet shorter than the currently approved variance. This request was the most cost effective and would also improve the looks of the home.

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

Mr. Pammel moved to approve VCA 78-L-229 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 20, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

REGINALD E. AND MILDRED S. DURHAM, VCA 78-L-229 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 23.4 ft. from street line of a corner lot. Located at 5902 Montell Dr. on approx. 11,348 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((13)) 22. (Def. from 10/6/98 for notices). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony to the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The second story addition would be to an existing garage and there would be no additional encroachment into adjoining 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

Page 151, October 27, 1998, (Tape 1), REGINALD E. AND MILDRED S. DURHAM, VCA 78-L-229, continued from Page 150

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a garage and second story addition over a garage shown on the plat prepared by Jeffrey H. Wolford, Land Surveyor, dated August 25, 1978, as revised by Gary M. Zickafoose, Land Surveyor, dated June 25, 1998, 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 second 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. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 151, October 27, 1998, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD AND KAREN FIELDS, A 1998-MV-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a fence in the front yard of the property exceeding 4.0 ft. in height and added a metal frame atop a stone wall on the side yard exceeding 7.0 ft. in height, all in violation of Zoning Ordinance provisions. Located at 816 Arcturus on the Potomac on approx. 0.95 ac. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38. (MOVED FROM 9/15/98).

Chairman DiGiulian stated the Board had issued an intent to defer to March 30, 1999. Mr. Ribble moved to defer the appeal application to March 30, 1999. Mr. Dively and Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 152, October 27, 1998, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. WOLFE BROTHERS, JAMES WOLFE, RAYMOND L. WOLFE, A-1998-DR-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a contractor's office and shop, storage yard, and parking commercial vehicles in the R- 2 district, all in violation of Zoning Ordinance provisions. Located at 1894 Virginia Ave. on approx. 0.36 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 15A. (DEFERRED FROM 10/13/98).

William Shoup, Deputy Zoning Administrator, stated the property was undeveloped with the exception of a portion with a detached garage. The appellant also owned the adjoining lot 15 which was the subject of a previous appeal for similar issues as parking of vehicles and stated the decision was upheld and was currently pending in Fairfax County Circuit Court. At issue with this appeal was the parking of 2 dump trucks, 1 flat bed roll off truck, and a trailer with a combination backhoe front end loader on it, construction type vehicles and equipment on the property. Mr. Shoup distributed photos to the Board which were taken in August of 1997 and June of 1998 which reflected the vehicles in questions. Mr. Shoup stated the vehicles and equipment stored on the property satisfied the definition of a storage yard. Mr. Shoup stated the parking of the vehicles was not in dispute, however, the appellants were claiming a grandfathered right to such parking. He indicated that there was no nonconforming right to a storage yard use on the property to park the number and types of vehicles that were being parking there. Mr. Shoup stated there was question regarding the parking of one commercial vehicle on a lot. Mr. Shoup stated since 1959, the Zoning Ordinance restricted the parking of commercial vehicles to one commercial vehicle on a lot but only as an accessory use to a principal use. Mr. Shoup noted this lot had no principal use on the property, therefore, the parking of one commercial vehicle on this lot could not have been permitted as an accessory use. Mr. Shoup stated that there was a nonconforming right that the one commercial vehicle that could be parked on lot 15 could be a dump truck or the flat bed trailer but not both.

Chairman DiGiulian asked if a building permit could be issued for lot 15A and questioned if it was a buildable lot. Mr. Shoup replied he believed it was.

Ms. Gibb questioned what "cleared" meant on the report by the zoning inspector, Mr. Leigh. Mr. Shoup stated when a violation was cleared was when the violator complied with what they were told to do. Mr. Shoup stated the violation notices clearly cited the appellants for the parking of a dump truck and construction equipment on the property. The appellant would had to have removed the dump truck and the construction equipment from the property in order for the inspector to have marked the violation cleared.

Ms. Gibb asked if the items were on 15 or 15A when the violations were cited. Mr. Shoup stated the notices of violation were on lot 15 and stated there were not any case reports on investigations at that time.

Mr. Dively asked if one commercial vehicle was an allowed use. Mr. Shoup replied it was. Mr. Dively asked if any other use, in order to be lawful, would have to be continuous since 1941. Mr. Shoup stated that it would have to be since prior to September 1959 because that was the first limitation on the parking of commercial vehicles.

Chris Swynford, Agent, stated the appellants had parked the vehicles on the lot since 1969. The majority of them had been parked on 15A, the citations were on lot 15. Mr. Swynford commended the County on their effort and stated the 1959 Ordinance did not contain any definition of a commercial vehicle. Mr. Swynford referred to his letters dated October 22, 1998 and October 26, 1998 and reviewed their contents with the Board. Mr. Swynford stated the Senior Zoning Inspector, Douglas Leigh, had been to the property on three different occasions, twice in 1979 and 1984. He stated the citation was for construction equipment only and not a dump truck or vehicles in general.

Mr. Dively asked where the appellant and the County differed in opinion. Mr. Swynford stated the County citations were under the 1978 Zoning Ordinance and the appellant believes the opinion should be under the

1959 Ordinance since the appellants have been parking their vehicles on this property since 1969. Mr. Swynford stated the vehicles had always been parked on the lot and were never secretly hidden from the County.

Raymond Wolfe came to the podium and stated he had received a violation in 1979 and was told what was needed to rectify the violations. Mr. Wolfe stated there was never any mention of the vehicles only construction equipment. He stated the two 1979 violations were both cleared after the violations were corrected. In the 1984 violation, Mr. Wolfe stated the vehicles were not mentioned again. Mr. Wolfe stated up until the 1997 violation there had never been any mention of the vehicles except after the 1978 Ordinance came into effect, Mr. Wolfe stated Mr. Leigh had written in his notice of violation a statement regarding parking of a dump truck and construction equipment in a residential area. Mr. Wolfe stated the trucks had never been hidden and have been on lot 15A since 1969. Mr. Wolfe stated he believed Mr. Leigh grandfathered the dump truck, trailer and back hoe in the 1979 violation and did not consider the smaller vehicles to be commercial vehicles.

Ms. Gibb questioned the gate in the front of the driveway. Mr. Wolfe stated Mr. Leigh had told him to install the gate. Ms. Gibb asked when that was. Mr. Wolfe stated he was unsure if it was the 1979 or the 1984 violation, however, the gate had been there a long time. Ms. Gibb asked if Mr. Leigh had informed Mr. Wolfe of why the gate was necessary. Mr. Wolfe stated Mr. Leigh had informed him if he had put a gate with a no trespassing sign no one could come onto his property.

Mr. Wolfe stated Mr. Leigh had informed him that the dump truck, trailer and back hoe, as long as they were hooked together and on the truck, they were considered one vehicle, therefore, they have always been hooked together.

Ms. Gibb asked if the trailer was connected to the truck and the back hoe was on the trailer, which took care of three of the vehicles, and then asked about the two dump trucks. Mr. Wolfe replied that was correct and they were one ton.

James Min, President of the Franklin Area Citizens Association, the association covering the streets surrounding the subject property, came to the podium to speak in support of the appeal application. Mr. Min stated they were aware of an appeal that occurred and had met with Mr. Wolfe in which the Association agreed unanimously to support Mr. Wolfe in his request. Mr. Min referred to a letter he had previously submitted to the Board. Mr. Min stated the trucks were used daily as part of Mr. Wolfe's livelihood and stated if it were a storage yard to store junk he would feel differently.

David Stuart, 1837 MacArthur Drive, came to the podium to speak in opposition of the appeal application. Mr. Stuart stated his property abuts the back of lot 15A and stated from anywhere on his property the first thing one could see was the yellow back hoe which is on a trailer. Mr. Stuart stated he had talked to Mr. Wolfe and asked if he could move the vehicle so that it could not be seen and Mr. Wolfe had informed him it could not be done and he did not have to do this. Mr. Stuart stated due to the concrete and debris on the hill, there was no way to plant a tree buffer or screen area to block the view. Mr. Stuart stated his home was built 5 years prior and for most neighbors the items probably could not be seen, however, Mr. Stuart stated for his property and the neighbors on either side of his property, it was something they could see everyday. Mr. Stuart stated he did not wish to interfere with Mr. Wolfe's livelihood. He stated the violation was filed 19 months prior and asked the Board for a resolution.

Ms. Gibb stated she went to the site and stated that what she could observe from the street, Mr. Wolfe's property was high on a hill, and asked Mr. Stuart if he looked into the side of a hill when he looked out the rear of his property. She stated she could not see the trucks from the street.

Mr. Stuart stated that on the main level of the house is a deck and the top of the hill was above eye level. He further stated in the winter it was very visible and at other times it was not as apparent.

Ms. Suzanne Neiss, 1839 MacArthur Drive, came to the podium to speak in opposition of the appeal application. Ms. Neiss stated her home was built in 1979 and prior to that there were no houses built to the rear of Mr. Wolfe's property. Ms. Neiss stated the back hoe was visible from the rear of her lot. She provided the Board with pictures of the Wolfe property for their review. Ms. Neiss stated if Mr. Wolfe had shown any consideration to the people who lived behind him and made some effort to move the trucks back from the edge of the hill, or to provide screening, no one would have complained.

Mr. Shoup stated he did not believe the investigation of Mr. Leigh was relevant to the issue and stated Mr. Wolfe had said Mr. Leigh had never had any question about vehicles, yet two of the notices mentioned dump trucks and construction equipment. Mr. Shoup also noted all the notices of violation issued by Mr. Leigh were after there was a definition in place. He stated he was unclear about the representation of the one ton vehicles on the property. Mr. Shoup displayed on the projector information received from the Department of Motor Vehicles regarding the size of the vehicles and reviewed this with the Board. Mr. Shoup stated the fact that the 1959 Ordinance did not contain any definition did not mean that the limitation was not enforced. Inspectors at that time took into consideration the use of the vehicle. If it was used for commercial purposes, they considered it a commercial vehicle. Mr. Shoup stated between 1959 and 1978 the inspectors had successfully resolved numerous violations using this manner of administration. The trailer and dump truck are separately tagged, therefore, they are separate commercial vehicles. Mr. Shoup reiterated there was only allowed one commercial vehicle on the lot as an accessory use to a principal use. Mr. Shoup stated there was no principal use on lot 15A.

Ms. Gibb asked if a house was built on 15A, would one truck be allowed on each lot.

Mr. Shoup stated if there was a principal use, one truck would be allowed, however, it would have to be used by the occupant of that dwelling. The garage was partly on lot 15A, but was supposed to be on lot 15. Mr. Shoup referred to a variance which was approved by the Board of Zoning Appeals for the garage from a side lot line which was represented it would be on lot 15, however was built on the lot line. Ms. Gibb asked when the variance was approved. Mr. Shoup stated it was approved in 1956.

Mr. Swynford stated it was obvious to the appellant that Mr. Leigh did not consider the vehicles in question to be commercial vehicles. Mr. Swynford stated the Wolfes' were not unreasonable neighbors and were willing to park the vehicles in any order that was the least unattractive from the rear. The vehicles were parked the way they were to keep them as far away from Virginia Avenue. Mr. Swynford stated the Wolfes' also had no objection to the planting of a screen at the rear lot line as well.

Chairman DiGiulian closed the public hearing.

Mr. Dively stated the use was not a permitted use and stated the County has applied the definition in a reasonable fashion. He stated there were no equitable defenses which would apply to the State or the County. Mr. Dively moved to uphold the Zoning Administrator. Mr. Pammel seconded the motion.

Mr. Pammel observed maybe there was difficulty in defining what the term commercial vehicle meant, however, it was clear to him that a commercial vehicle was a vehicle which was used in the pursuit of occupation.

Chairman DiGiulian stated that definition was not true under today's Ordinance, it would have to be over a ton and a half.

The motion failed for the lack of 4 votes. Chairman DiGiulian, Ms. Gibb, Mr. Kelley and Mr. Ribble opposed the motion.

Ms. Gibb stated she was vague on a commercial vehicle and believed there had been testimony that Mr. Wolfe had relied on the inspector and therefore made a motion to overrule the Zoning Administrator. Mr. Kelley seconded the motion.

Mr. Kelley stated Mr. Wolfe's testimony was very honest and forthright and relied on this information. Mr. Hammack stated he had sympathy for Mr. Wolfe's situation, however, the County was not bound by what a zoning inspector did or did not represent. Mr. Hammack stated the term and the usage was clear enough in the Ordinance and did not believe the ruling should be made based upon what the Board thought a zoning inspector may have done. Mr. Hammack also stated it was inconsistent to uphold the Zoning Administrator in the first appeal on lot 15 and then overrule the Zoning Administrator on lot 15A. Mr. Hammack stated they were the same vehicles on the same two contiguous properties.

Mr. Ribble stated it was a different Board and also a different Zoning Administrator.

Mr. Kelley stated he had heard every member of the Board state the citizens of the County had the right to rely upon statements made by Fairfax County officials and stated he believed that as well.

Page 155, October 27, 1998, (Tapes 1 and 2), WOLFE BROTHERS, JAMES WOLFE, RAYMOND L. WOLFE, A-1998-DR-025, continued from Page 154

The motion carried by a vote of 4-3 to overrule the Zoning Administrator's decision. Mr. Dively, Mr. Hammack and Mr. Pammel opposed the motion.

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Page 155 October 27, 1998, (Tape 2), Scheduled case of:

9:00 A.M. NORMA HILLER, SP 98-D-041 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 10.9 ft. from rear lot line. Located at 12162 Holly Knoll Cir. on approx. 20,615 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 53.

Chairman DiGiulian asked if the applicant was present.

Ms. Langdon stated she was unable to contact the applicant, however, Ms. Wilson had spoken with them prior to the hearing and they had planned on being at the public hearing. Ms. Langdon asked the Board if they would like to defer the hearing. Ms. Langdon stated that the only date available was November 3, 1998, at 9:00 a.m.

Mr. Ribble made a motion to defer the application to November 3, 1998. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 155 October 27, 1998, (Tape 2), After Agenda Item:

Discussion Pertaining to the 1999 Night Meetings

Susan Langdon informed the Chairman that the Board had asked her to check into the hearing dates for 1999 to determine the dates currently scheduled for night meetings and whether those dates were available for 9:00 a.m. meetings. Ms. Langdon stated those time were available.

Mr. Pammel moved that commencing with the month of January, to hold all meetings during the daytime, which would be Tuesdays at 9:00 a.m.

Ms. Langdon noted the By-Laws stated the Board would have a night meeting and asked the Board if additional language should be provided for the By-Laws.

Chairman DiGiulian stated a motion should be made to amend the By-Laws to meet every Tuesday morning.

Mr. Pammel stated he would make a follow up motion to include, "at such other times as the Board may determine".

Mr. Kelley stated one of the reasons he was in favor of the motion was due to the fact the hearings were televised and while someone might not be able to testify they could see the hearing. He stated the audience since television has gone down.

Chairman DiGiulian stated in addition to this, the Board rarely had controversial cases on the night meetings and stated it seemed they all fell during the day meetings.

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

Mr. Pammel made a motion to modify the By-Laws to note that all meetings would be held during the daytime hours or at such time as the Board determines. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 150, October 27, 1998, (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request, SP 98-D-053, Kamlesh Puri

Mr. Dively asked what was the earliest date available.

Ms. Langdon stated the January 12, 1999, date was the first available date.

Mr. Dively moved to deny the request. Mr. Pammel seconded the motion.

Ms. Gibb questioned that when the applicant stated the application was made in April, they did not refer to the date when it was accepted.

Ms. Langdon replied that was the date when the paperwork was first submitted and stated it was accepted two weeks ago.

The motion carried by a vote of 7-0.

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Page 150, October 27, 1998, (Tape 2), After Agenda Item:

Additional Time to Commence Construction Approved by Special Permit SP 94-D-058, Stump Dump Inc., Utterback Store Road, 7-3 ((1)) 1, 8, 15A, 15C, Dranesville District

Mr. Kelley referred to the staff recommendation of a six month extension and asked why staffed reduced the request to six months if the applicant had requested a one year extension.

Ms. Schilling stated the additional six months would allow enough time for the applicant to obtain approval of their minor site plan. She stated they had already obtained approval of their landfill closure plan, which was a grading plan, through the County and had obtained approval of their landfill closure plan through the State. Ms. Schilling stated they were originally granted a special permit with 12 months in which to establish the use of the zoological park, therefore, it was staff's belief that six months was sufficient rather than the year that was originally requested since some of the plans in question had already been reviewed by DPWES. In addition, Ms. Schilling stated their special permit expired 5 years from the final date of approval, with the final date of approval being March 1995; therefore, it would expire in the year 2000. If six months of additional time was given to establish the use, they would have a year before the permit expired in which to prepare their special permit amendment.

Mr. Kelley made a motion to give the applicant the one year extension they had requested. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:08 a.m.

Minutes by: Deborah Hedrick

Approved on: February 2, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, November 3, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

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

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Page 157, November 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. GARY AND PEGGY CAMPBELL, VC 98-H-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 2912 Oak Shadow Dr. on approx. 10,005 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 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. Gary Campbell, 2912 Oak Shadow Drive, Oak Hill, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 16 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 9 feet was requested.

Mr. Campbell presented the variance request as outlined in the statement of justification submitted with the application. He said the proposed sunroom addition was requested for personal enjoyment and because he was allergic to bug bites. Mr. Campbell stated that the application met all the required standards for a variance.

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

Mr. Dively moved to approve VC 98-H-096 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GARY AND PEGGY CAMPBELL, VC 98-H-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.0 ft. from rear lot line. Located at 2912 Oak Shadow Dr. on approx. 10,005 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 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 November 3, 1998; and

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

1. The applicants are the owners of the land.
2. The property is narrow
3. The variance request is modest and the rear yard abuts open space.

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

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

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

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

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

1. This variance is approved for the location of a sunroom addition shown on the plat prepared by Stephen L. Moore Land Surveyor, dated August 22, 1997, and recertified on July 29, 1998 by Frederick Neal, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Hammack were not present for the vote and 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 November 11, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 159, November 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. PIRIUS, VC 98-V-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structures in a front yard on a lot containing less than 36,000 sq. ft. Located at 7910 West Boulevard Dr. on approx. 25,705 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 63.

Chairman DiGiulian indicated there was a request for deferral. Ms. Langdon stated that the applicant decided to revise his application and add some other requests and was not able to do that in time to complete the notices; consequently, he requested a deferral.

Mr. Ribble moved to defer the subject application to January 26, 1999. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 159, November 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. CHURCH DIOCESE OF NEWTON FOR THE MELKITES IN THE UNITED STATES OF AMERICA, INC., SPA 80-D-069-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-069 for church and related facilities to permit addition and site modification. Located at 8501 Lewinsville Rd. on approx. 4.41 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 21A. (Moved from 9/15/98).

Chairman DiGiulian indicated that the notices were not in order. Ms. Langdon concurred with the Chairman reiterating that the notices were not in order. Staff suggested a deferral date of January 26, 1999. Ms. Langdon noted that the applicant was present to speak to the deferral and request an earlier hearing date.

Russell Smith, Adtek Engineers, came forward to speak to the deferral. He stated that the applicant had worked extensively with the citizens of McLean and with the staff and he felt that the application was very much in order with the exception of the notices. Mr. Smith said that the applicant's time before the Board would be approximately 5 minutes and hoped that he could squeeze in an earlier hearing date than January 26, 1999.

Ms. Gibb moved to defer the subject application to December 15, 1998. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and Mr. Pammel was absent from the meeting.

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Page 159, November 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DONALD M. AND KATHARINE S. STOWELL, SP 98-D-044 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 16.0 ft. from side lot line. Located at 729 Miller Ave. on approx. 23,333 sq. ft. of land zoned R-1. Dranesville District. Tax Map 7-4 ((5)) 25. (Concurrent with VC 98-D-97).

9:00 A.M. DONALD M. AND KATHARINE S. STOWELL, VC 98-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from side lot line. Located at 729 Miller Ave. on approx. 23,333 sq. ft. of land zoned R-1. Dranesville District. Tax Map 7-4 ((5)) 25. (Concurrent with SP 98-D-044).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert C. Burgess, 3631 Embassy Lane, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

requested a special permit to permit the reduction to minimum yard requirements based on error in building location to permit a dwelling to remain 16 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, the amount of error was 4 feet or 20%. The applicant also requested a variance to permit the construction of a deck 10 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 10 feet was requested.

Mr. Burgess, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. The error in building location occurred when the house was built in 1957. He said a variance was needed to build a deck because of the exceptional narrowness of the lot when the house was built. Mr. Burgess noted a letter in support submitted from the adjacent neighbor most impacted by the application.

Mr. Dively asked why the deck could not be built on the other side of the dwelling. Mr. Burgess replied that the northern side of the house would cause the deck would to come out of the master bedroom and it would not be compatible for a recreational sundeck to come out of the master bedroom.

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

Mr. Ribble moved to approve SP 98-D-044 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD M. AND KATHARINE S. STOWELL, SP 98-D-044 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 16.0 ft. from side lot line. Located at 729 Miller Ave. on approx. 23,333 sq. ft. of land zoned R-1. Dranesville District. Tax Map 7-4 ((5)) 25. (Concurrent with VC 98-D-97).
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 3, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by John D. Jarrett, Land Surveyor, dated March 17, 1998 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 5-0. Mr. Hammack was not present for the vote and 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 November 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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Mr. Ribble moved to approve VC 98-D-097 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD M. AND KATHARINE S. STOWELL, VC 98-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 10.0 ft. from side lot line. Located at 729 Miller Ave. on approx. 23,333 sq. ft. of land zoned R-1. Dranesville District. Tax Map 7-4 ((5)) 25. (Concurrent with SP 98-D-044). 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 3, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of a deck shown on the plat prepared by John D. Jarrett, Land Surveyor, dated March 17, 1998 submitted with this application and is not transferable to other land.

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 November 11, 1998. This date shall be deemed to be the final approval date of this variance.

9:00 A.M. BA VAN LE, SP 98-M-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.9 ft. from side lot line and accessory structure to remain 0.5 ft. from side lot line and 2.5 ft. from rear lot line. Located at 6100 Knollwood Dr. on approx. 12,448 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((15)) 20. (Continued from 9/8/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ba Van Le, 6100 Knollwood Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, noted that this was a continued hearing from September 8, 1998. The hearing was continued to give Mr. Le time to obtain a representative to speak for him. She said some of the issues that were questions at the time the hearing ended on September 8, 1998 were; what was the status of the proposed special permit for error in building location for the addition, and whether the addition was insulated and whether there was interior access to it.

Mr. John Ba Pham, the applicant's representative, presented the request as outlined in the statement of justification submitted with the application. Mr. Pham stated that the addition was 24 feet wide. He stated that the reason they wanted to attach it to the existing structure was because they had already installed the electrical wires without a permit, they were hoping to retain an electrical permit to complete the addition.

Chairman DiGiulian asked what they were going to use the addition for. Mr. Pham replied that the house had too many people living there and the addition would be give them more room. He also stated that they would be building a kitchen in the addition.

Chairman DiGiulian asked for confirmation that there would be a kitchen in the addition and reminded Mr. Pham that at the last hearing Mr. Le stated that the addition would be for storage only.

Mr. Dively asked staff the rule on the number of families allowed to occupy one dwelling. Staff replied that the applicant's extended family resided within the dwelling, the applicant and his brother, who are the owners of the home. The Zoning Ordinance states that you can have up to four unrelated individuals in a house.

Ms. Gibb asked questions of staff as to how it came about that the applicant was cited for a building code violation and which permit would you need to obtain first, building or electrical.

Staff responded to questions by stating that the applicant had applied for a building permit for a shed and an addition was built instead. During the review process it is standard for the Zoning Permit Review Branch to check the minimum required yards. At that time the applicant was cited by the building inspector. When the applicant came to get the required permits he found that a special permit for error in building location was needed, because what he had actually constructed on the site was not what the building permit was originally obtained for.

Ms. Gibb asked staff why was the rear shed cited. Staff replied because the shed was on the plat and it exceeded the height limitations.

Mr. Dively asked when the shed was erected and if it was put up by the current homeowner. Mr. Le replied that his brother built the shed.

Ms. Gibb asked if Mr. Le had talked to the neighbors behind him. Mr. Le replied that he sent them a letter.

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

Ms. Gibb moved to approve in part SP 98-M-029 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BA VAN LE, SP 98-M-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 3.9 ft. from side lot line and accessory structure to remain 0.5 ft. from side lot line and 2.5 ft. from rear lot line. **(THE ACCESSORY STRUCTURE WAS DENIED)** Located at 6100 Knollwood Dr. on approx. 12,448 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((15)) 20. (Continued from 9/8/98). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 1998; 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 **APPROVED-IN-PART**, with the following development conditions:

1. This Special Permit is approved for the location of the addition on the plat prepared by Robert J. Simpson, Land Surveyor, dated April 8, 1998 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. Ribble seconded the motion which carried by a vote of 4-1 with Mr. Dively voting nay. Mr. Hammack was not present for the vote and 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 November 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 165 November 3, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NORMA HILLER, SP 98-D-041 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 10.9 ft. from rear lot line. Located at 12162 Holly Knoll Cir. on approx. 20,615 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 53. (Deferred from 10/27/98)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Norma Hiller, 12162 Holly Knoll Circle, Great Falls, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 10.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, the amount of error is 14.1 feet or 56%.

Ms. Hiller presented the variance request as outlined in the statement of justification submitted with the application. Ms. Hiller stated that the deck was already attached when they purchased the house. The house is located towards the rear of the lot because of the proximity to the flood plain and this is the only area that it can be located.

Chairman DiGiulian asked how they found out that it was in violation. Ms. Hiller replied they found out when they had a survey done and that obtaining the special permit for the deck was part of their closing agreement.

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

Mr. Kelley moved to approve VC 98-D-077 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORMA HILLER, SP 98-D-041 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 10.9 ft. from rear lot line. Located at 12162 Holly Knoll Cir. on approx. 20,615 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 53. (Deferred from 10/27/98) Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition (roofed deck with screening) shown on the plat prepared by Alexandria Surveys, Inc., dated January 23, 1998, as revised through June 29, 1998, 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 November 11, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 160, November 3, 1998, (Tape 1), Scheduled case of:

9:30 A.M. MAX PIZZA, INC., MEHMET A. CETINBAS, A 1998-SU-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected a prohibited sign in violation of Par. 2 Sect. 12-104 and Par. 9 Sect. 2-302 of the Zoning Ordinance. Located at 3065-T Centreville Rd. on approx. 1,100 sq. ft. of land zoned C-6. Sully District. Tax Map 25-3 ((13)) 4 and 24-4 ((5)) 1 (formerly 25-3 ((1)) 23A).

Maggie Stehman, Zoning Administration Division, presented the staff's position as set forth in the memorandum dated, November 3, 1998. The appellant was in violation of the Zoning Ordinance for displaying a portable sign. The portable sign was described as a red trailer with yellow lettering advertising the appellant's business. Staff circulated photographs of the portable sign. Staff noted that as of October 15, 1998, the trailer had been moved from the location, but at the time of the hearing it had been returned to the site.

Mr. Dively asked if the trailer would be in violation if it had no markings on the side and stated that it was clear that the appellant was using the trailer for dual use. Staff replied that as a dual use it was still a sign.

Chairman DiGiulian stated that trailers and trucks with business names were parked on the roads all over the County and asked if all of those businesses would be issued violations. Staff replied that if there were complaints they would follow up.

Mr. Hammack asked how the County dealt with U-Haul trucks that were parked in the business parking lots and whether or not they were in violation of the Ordinance. Mr. Hammack stated that staff's enforcement of the sign was based on subjective criteria.

William Shoup, Deputy Zoning Administrator, responded that the U-Haul trucks would have to be reviewed on a case by case basis of whether or not they were being parked in one spot for the purpose of attracting attention and serving as a sign and how long of a period of time the vehicle was parked without being used.

Mr. Dively asked how long was too long. Mr. Shoup replied that several weeks would indicate the purpose of it being used as a sign.

Mr. Hammack asked if staff's opinion would change if the trailer had flat tires. Mr. Shoup replied that it would bolster the opinion that it was being used for the purpose as a sign.

Mr. Dively asked if size was a factor. Mr. Shoup stated that size was not a factor. He said when a logo was placed on a vehicle small enough to fit on the door then it was being used as an advertisement for that company while they were on the road to and from business sites, not as a sign.

Mr. Dively asked why this couldn't be argued with this case due to the fact that it was a functional trailer and that it was primarily for giving signage notice while on the road.

Ms. Stehman stated that this vehicle may enter the road catering to events but there still was a pattern of being continuously parked in a highly visible location, such that it becomes a prohibited portable sign.

Mr. Hammack was concerned about the definition of portable sign not having time qualifications. Ms. Stehman replied that while the sign Ordinance might be unclear, the cases were reviewed on a case-by-case basis.

Chairman DiGiulian brought up the fact that the appellant was concerned about vandalism to the trailer if he was forced to park it in any other place on the lot. Ms. Stehman stated that there were alternative parking locations.

Chairman DiGiulian asked Mr. Bakos, from the Zoning Enforcement Branch, if he had any comments. Mr. Bakos replied that Zoning Enforcement responded to these types of issues on a complaint basis only and it was after monitoring the sites to ensure that the vehicle was predominantly used for advertising purposes that violations would be issued. Usually, these types of problems were associated with smaller businesses whose names did not appear on the permanent freestanding signs that advertise a shopping center. He also noted that this business' visibility from Centreville Road was limited because CVS was on a pad site in front of its location.

Mehmet A. Cetinbas, the appellant, presented the arguments forming the basis for the appeal. The appellant stated that the trailer was purchased on March 17, 1997. It was parked out of public view, behind the business until six months ago. While it was parked behind the business it was vandalized. The appellant tried to park the trailer twice in other locations in the parking lot and each time it was protested.

The appellant asked CVS if they had any objection to the trailer being parked in their parking lot. CVS responded that they had no problem with the trailer.

The appellant stated that he explained all of this to staff and asked for an exception. Staff's response was, in order for the trailer to stay where it was the logo would have to be removed or the trailer would have to be covered with a tarp. The appellant said he had no intention of removing the logo. The truck was then moved to another parking spot that was approved by the County. There was another complaint. Consequently, they moved the truck back to the previous parking space. The appellant stated that he had contacted all of the merchants in the shopping center and asked their opinion on the location of the trailer. All of them agreed that it was okay with them if it stayed where it was currently parked. The appellant provided a list of all of the merchants in the shopping center. He also provided a picture of what the trailer would look like if it was covered with a tarp.

Ms. Gibb asked if there was a freestanding sign that listed all of the businesses. The appellant replied that there was not.

Mr. Hammack asked staff where the appellant could park this truck without a tarp and not be in violation of the Ordinance. Ms. Stehman replied that it could be parked in the shopping center out of the front yard so it would not be visible from Centreville Road or Lawyers Road. She said there was a large interior area of the shopping center and there was also the area behind the shops.

Mr. Hammack asked if the appellant would be in violation if he rented a space to park the trailer across Centreville Road. Ms. Stehman replied that it would still be on the front yard and it would still be a violation because it would be an off-site sign and a portable sign.

Chairman DiGiulian called for speakers.

Ms. Liza Barton, President of Highland Mews Homeowners Association. Ms. Barton has lived in the community for six months and was involved in the birth, growth and construction of the McLearen Square Shopping Center. The concern was repeated attempts by Max Pizza for illegal signage on their community property consisting of a billboard on a 4 foot buffer wall and the trailer. There was a freestanding sign outside of McLearen Square Shopping Center which has a signage for CVS and a bank that is no longer in the shopping center. Ms. Barton asked why Max Pizza could not put their advertising on the freestanding sign, why the homeowners had to look at this trailer and why did they not have to have regular signage that conformed to the Ordinance as the other businesses in the shopping center did. Ms. Barton further stated that she had a conversation with CVS and they related to her that they were only responsible for what is inside their building and they had no control over their parking lot.

Ms. Gibb asked Ms. Barton to repeat what the freestanding sign outside the shopping center looked like. Ms. Gibb referenced the picture of the freestanding sign in the staff report. (Exhibit 7)

Chairman DiGiulian closed the public hearing.

Chairman DiGiulian stated that he was not convinced that it was an illegal sign.

Mr. Kelley stated that up and down Rt. 1 there were trucks with signs parked on the sides of the road and that if they all appealed, the BZA would be in session everyday.

Mr. Dively stated that he thought Mr. Kelley's point was persuasive, that it was a murky situation and he wanted to rule in favor of the appellant.

Mr. Kelley agreed with Mr. Dively and said if Mr. Dively had made a motion he was seconding it.

Mr. Dively stated to consider his previous statement a motion.

Chairman DiGuilian asked for confirmation that Mr. Dively had made a motion to overrule the Zoning Administrator with Mr. Kelley seconding, also asking for discussion. Mr. Dively and Mr. Kelley confirmed.

Page 169, November 3, 1998, (Tape 1), MAX PIZZA, INC., MEHMET A. CETINBAS, A 1998-SU-026, continued from Page 168

Mr. Hammack stated that he believed that it was a very difficult appeal because it was going in the direction of the 1st Amendment and he was concerned that the enforcement of the Ordinance involved a lot of subjectivity.

Mr. Hammack asked if the yellow school buses for the Christian academies would have to remove their signage.

Mr. Shoup replied that they wouldn't have to remove the signs from the school buses, but the same provision could apply if that's how they were parking it on their site.

Chairman DiGiulian asked if they would be required to park them behind the school rather than down in front where they would be visible to the public. Mr. Shoup replied that it would have to be evaluated on a case by case basis.

Mr. Dively stated that the problem with the Ordinance wasn't that it was subjective. The problem was that it was arbitrary. He said it was arbitrary in the way that was written and definitely in the way that it was applied and that it was an arbitrary application.

Mr. Kelley asked staff how many appeals they had on the U-Haul trucks. Mr. Shoup replied that there had been nine U-Haul appeals.

Mr. Hammack asked what staff was going to do about the photographs of other vehicles that the appellant submitted. Mr. Shoup replied that all of those vehicles had been moved and none of them were in violation at that time.

The motion carried by a vote of 4-2 with Ms. Gibb and Mr. Hammack voting nay. Mr. Pammel was absent from the meeting. The Zoning Adminstrator's position was overruled.

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Page 169, November 3, 1998, (Tape 1), After Agenda Item:

Approval of July 21, 1998 Minutes

Mr. Kelley moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 169, November 3, 1998, (Tape 1), After Agenda Item:

Approval of October 27, 1998 Resolutions

Mr. Kelley moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 169, November 3, 1998, (Tape 1), After Agenda Item

Intent to Defer
Ziegler Appeal

William Shoup, Deputy Zoning Administrator, presented an update to the case. He said the appeal was a decision of the Site Review Branch to approve a minor site plan that would allow the Virginia Run Homeowners Association to construct trails on homeowners open space property. A portion abutted the appellant's property.

The deferral request was based in part on a representation that staff did not send the notice package in time for them to mail out the notices and because of some confusion regarding how many property owners had to be notified.

Mr. Shoup noted that staff took exception to that representation based on the fact that staff actually tried to accommodate a special request from the appellant regarding the notice package and had discussions with Mrs. Ziegler and clarified the issue of how many property owners had to be notified. Mr. Shoup stated that staff's actions should not be a basis for the deferral.

Chairman DiGiuilian called for speakers.

Jim Ingall, Council for Virginia Run Community Association came forward to speak. He said a minor site plan had been approved by the Zoning Administrator. The site plan was for the Association to build trails on the Association common area. The area was private property which the Mathesons and the Zieglers had no personal ownership. Mr. Ingall had reason to believe that the appeal was filed solely to trigger a temporary injunction request two weeks beforehand at the Circuit Court. The Judge granted the injunction until the BZA has addressed the appeal. Mr. Ingall further stated that Judge Brown thought the appeal was frivolous in nature and was sure that the BZA would share the same opinion.

Mr. Dively noted that the injunction order said that the injunction was in effect until further order of the BZA. Mr. Ingall stated that he had argued that a specific date be inserted for the expiration of the injunction.

Ms. Gibb asked Mr. Ingall for clarification whether or not the trails could be completed if the hearing was set for November 24, 1998. He replied that it was harmful to have had the injunction issued at all because the construction had already been started. He stated it was hoped that by November 24, 1998 the work would be able to be resumed and completed by January 30, 1999.

Greg Mathieson, 6601 Ashmare Lane, stated that he was a concerned homeowner and he was a party to the injunction that was filed. He took exception to Mr. Ingall's statement that he was using the BZA to stall the construction of the trail. He further stated that they filed the BZA application within the time frame that the application was approved by the County. At that time, the Homeowner's Association started construction of the trail trying to complete it before the BZA hearing.

Mr. Mathieson stated the reasons why the appellant felt they needed a deferral was that the counsel that they originally had retained was not an expert in BZA applications; therefore, they needed time to retain different counsel; they wanted more time to rally more community support; and, Mrs. Ziegler did not receive the notice package until the previous week and they needed time to complete and mail all of the notices.

Chairman DiGuilian stated that the appellants had since August 26, 1998, to prepare for the appeal because that was the date that the appeal was filed and that was enough time to have all of the research completed.

Mr. Kelley moved to deny the request for an Intent to Defer. Mr Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned.

Minutes by: Regina Thorn

Approved on: March 2,1999

Regina Thorn

Regina Thorn, 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 Tuesday, November 10, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 171, November 10, 1998, (Tape 1), After Agenda Item:

Request for an Intent to Defer Appeal A 1997-LE-028
Sheehy Investments One Limited Partnership

Mr. Jack Reale, Zoning Administration Division, stated staff supported four requests for a deferral of the appeal in the past and that staff continues to support another deferral. Mr. Reale stated the reason for the request was due to the engineer working for the appellant was attempting to complete a minor site plan. He stated approval of the minor site plan would cause the violation to go away.

Mr. Robert Lawrence, Agent for the Appellant, apologized for the additional deferral; however, stated when the minor site plan was ready to be approved, the issues would be eliminated; therefore, eliminating the need for the appeal to be considered. Mr. Lawrence stated the engineers had not been as diligent as they should have been and therefore, Mr. Lawrence had advised his client if they did not become diligent, they would have to obtain different engineers.

Chairman DiGiulian asked how much time was needed.

Mr. Lawrence stated the request was for March so that all engineering information could be received and reviewed by County staff.

Mr. Hammack asked how much it would take for the engineer to complete this part of the process.

Mr. Lawrence stated he did not believe it would take more than one month, however, there was stormwater and drainage analysis which needed to be done.

There was no one to speak on the issue.

Mr. Dively moved to defer the appeal to March 9, 1999, at 9:30 a.m. The Board agreed there would be no further deferrals of the application. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 171, November 10, 1998, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request VC 98-D-094
Falls Reach LLC

Mr. Bob Lawrence, Agent for Applicant, stated the request was for a variance under the section of the Code which required a 200 foot setback from a interstate highway to allow homes to be constructed within the setback. Mr. Lawrence stated that originally the case was scheduled later than normal due to a special exception application which staff believed would need to go forward before the variance. Since that time, Mr. Lawrence stated the special exception application had been withdrawn; therefore, there would not be a need for a Planning Commission and Board of Supervisors hearing. Mr. Lawrence asked for an out-of-turn hearing in December to go forward with the variance application.

Ms. Susan Langdon stated there were no hearing dates available in December and stated advertisements were already being prepared for December 22, 1998. The earliest date available would be January 19, 1999. Ms. Langdon stated that a revised plat would be needed from the applicant in order to move forward with the application.

Page 172, November 10, 1998, (Tape 1), After Agenda Item, continued from Page 171

Mr. Dively asked what date was available which did not have many cases.

Ms. Langdon stated the December 15, 1998 meeting had two appeals and one special permit. She stated all other dates had at least ten cases scheduled.

Mr. Dively asked if the December 15, 1998 date was too early due to advertising.

Ms. Langdon stated it would be difficult to get the advertisements done for this date due to the fact that advertisements were already running for December 1, 1998, therefore, everything would need to be completed for the next week newspaper run.

Chairman DiGiulian asked if the first meeting in January was a possibility.

Ms. Langdon stated there were eleven cases scheduled for the January 5, 1999, meeting.

Mr. Kelley made a motion to move the request for one week and asked staff to bring to the Board possible dates for a special meeting.

Mr. Pammel seconded the motion and requested consideration be given for a special meeting to be held on December 29, 1998.

Ms. Langdon stated a hearing was not currently scheduled for December 29, 1998, and stated staff would not be available for a hearing. The motion carried by a vote of 7-0.

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Page 172 November 10, 1998, (Tape 1), Scheduled case of:

9:00 A.M. EARL SHELTON, VC 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20.

Chairman DiGiulian called the applicant to the podium.

Mr. Shelton was not present for the hearing and Chairman DiGiulian moved the case to the end of the agenda.

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Page 172, November 10, 1998, (Tape 1), Scheduled case of:

9:00 A.M. WENDY BROWN, SP 98-D-047 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 2.9 ft. from side lot line. Located at 706 Innsbruck Ave. on approx. 19,949 sq. ft. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 17. (Concurrent with VC 98-D-104).

9:00 A.M. WENDY BROWN, VC 98-D-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.1 ft. and 10.0 ft. from side lot line. Located at 706 Innsbruck Ave. on approx. 19,949 sq. ft. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 17. (Concurrent with SP 98-D-047).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wendy Brown, 706 Innsbruck Avenue, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant

requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure to remain 2.9 feet from the side lot line. The minimum side yard requirement is 20 feet; therefore, a modification of 17.1 feet was requested. The applicant also requested a variance to permit the construction of a two story garage and a room addition 10.0 feet from the side lot line and another room addition to be located 16.1 feet from the same side lot line. A 20 foot minimum side yard is required; therefore, variances of 10.0 feet and 3.9 feet was requested.

Ms. Brown presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Ms. Brown stated the shed was built one year prior and had been told that as long as it was not built on a solid foundation, then the issue of how far from the side lot line a shed could be was not necessary. Ms. Brown that stated while working on the plat for an addition, she found out the shed was too high and therefore needed a variance. She stated the shed was not visible from the other side of her fence and therefore was not intrusive and stated the house was too small to store lawn equipment, therefore the shed was required. Ms. Brown stated the need for the addition was due to working late hours and often returning to the house when it is dark. She said her only entry into the house was through the side door and, from a safety perspective, would feel safer if she could drive into an enclosed garage.

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

Mr. Hammack moved to approve SP 98-D-047 and VC 98-D-104 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WENDY BROWN, VC 98-D-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 16.1 ft. and 10.0 ft. from side lot line. Located at 706 Innsbruck Ave. on approx. 19,949 sq. ft. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 17. (Concurrent with SP 98-D-047). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance.
3. The request was necessary due to the narrowness of the lot at the time of the effective date of the Ordinance.

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

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

F. An extraordinary situation or condition of the subject property, or

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This Variance is approved for the location of a two-story garage and room addition and a one-story room addition shown on the plat prepared by Robert J. Simpson, dated August 5, 1998 and revised August 12, 1998, 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 addition 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 November 18, 1998. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WENDY BROWN, SP 98-D-047 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 2.9 ft. from side lot line. Located at 706 Innsbruck Ave. on approx. 19,949 sq. ft. of land zoned R-E.

Dranesville District. Tax Map 13-1 ((1)) 17. (Concurrent with VC 98-D-104). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure shown on the plat prepared by Robert J. Simpson, dated August 5, 1998 and revised August 12, 1998, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. EILEEN M. AND FRANK J., SOWA, II, VC 98-B-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.86 ft. from side lot line. Located at 4505 Holborn Ave. on approx. 14,032 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 3.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Sowa, 4505 Holborn Avenue, Annandale, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport 2.86 feet from the side lot line. A minimum side yard of 7 feet is required; therefore, a variance of 4.14 feet was requested.

Mr. Sowa presented the variance request as outlined in the statement of justification submitted with the application. Mr. Sowa stated that the property was purchased in good faith, and had a wing on one side of the property comprising the living and dining areas. The variance was requested in order to build a brick carport which would be on the other side of the home, having similar dimensions as the existing wing to create a balanced appearance to the home. Mr. Sowa stated he had an agreement from the neighbors to build the structure.

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

Mr. Pammel moved to approve VC 98-B-100 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EILEEN M. AND FRANK J., SOWA, II, VC 98-B-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.86 ft. from side lot line. Located at 4505 Holborn Ave. on approx. 14,032 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 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 November 10, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant has presented testimony indicating compliance with variance requirements.
3. The carport does not involve significant bulk or mass close to adjoining 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a carport shown on the plat prepared by Richard J. Cronin IV, Land Surveyor, dated July 10, 1998, as revised through August 27, 1998, 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 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. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 177, November 10, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. ANDERSON, VC 98-S-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from rear lot line and 6.0 ft. high fence in front yard. Located at 7864 Bressingham Dr. on approx. 10,501 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 193.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Anderson, 7864 Bressingham Drive, Fairfax Station, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch addition 17.3 feet from the rear lot line and a 6 foot high fence in the front yard adjacent to pipestem lots. Ms. Schilling stated with respect to the screened porch addition, the property was zoned PDH-2 and was most similar to the R-2 District for cluster subdivisions, therefore, in this instance the requirement was 25 feet in the rear yard; therefore, a variance of 7.7 feet was requested. With respect to the fence, the requirement for a fence in a front yard is not to exceed 4 feet in height; therefore, a variance of 2 feet was requested.

Mr. Anderson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Anderson stated the screened porch addition was on an existing deck. He stated the deck was over 4 feet off the ground and therefore the variance was required. Mr. Anderson stated the deck was located in the rear yard as far away from the rear lot line as possible and was still aesthetically pleasing and useful. In regard to the fence, Mr. Anderson stated the front yard being referred to was on the north side of the house, which was the side that was adjacent to the pipestem, was considered a front yard. He stated his interest in fencing the yard with a 6 foot fence was due to having two large dogs who could easily jump a 4 foot fence and therefore, it would not be functional to have a 4 foot fence.

Mr. Pammel asked Mr. Anderson if he was aware of a letter in opposition from a neighbor who was concerned with the dogs.

Mr. Anderson stated he was aware of the letter and he had encouraged them to write to the Board with their concerns. Mr. Anderson said he had discussed the fence issue with the neighbor and had informed them he would not build a fence they were not in agreement with.

Mr. Pammel asked Mr. Anderson if he was aware of the conditions the neighbor had recommended, which he believed was a significant restriction on the fence.

Mr. Anderson stated he was not aware of the conditions. Mr. Pammel gave Mr. Anderson a copy of the letter for his review.

Mr. Anderson stated he had discussed with the neighbor proposed changes to the plat prepared by the engineer and discussed an eight foot extension toward the north lot line and also to not obstruct the approach to their home with a 6 foot high fence. Mr. Anderson stated he would prefer to build the fence closer to the lot line; however, he stated if the Board would approve the request in light of the neighbors concerns, he would consider this when he considered building the fence. He stated the neighbors were encouraging him to build the fence because they were uncomfortable with the dogs, which were friendly but large. Mr. Anderson stated he would do whatever the Board approved, and he would consider the construction of the fence with the limitations. Mr. Anderson stated if he could not come to an agreement where the fence line would be, perhaps he would not build the fence, but asked the Board for approval of the screened porch.

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

Mr. Dively moved to approve VC 98-S-101 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

Mr. Dively stated the screened porch was a modest request and stated the 6 foot fence would be too much to take to the northern boundary line and asked if the Board should move the fence in 14 feet; therefore, Mr. Dively amended the motion that the fence not exceed 14 feet from the northern lot line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT A. ANDERSON, VC 98-S-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.3 ft. from rear lot line and 6.0 ft. high fence in front yard. Located at 7864 Bressingham Dr. on approx. 10,501 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-2 ((8)) 193. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has satisfied the nine required conditions for the granting of a variance application.

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

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

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

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

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

1. This variance is approved for the location of a screened porch addition and 6 foot high fence shown on the plat prepared by Charles E. Powell, Land Surveyor, dated February 1, 1996 as revised through September 1, 1998, submitted with this application and is not transferable to other land.

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

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

4. Irrespective of the fence location shown on the variance plat, the fence shall be place not closer than 14.0 feet from the northern 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 carried by a vote of 7-0. Mr. Hammack made a motion to waive the eight (8) day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 180, November 10, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ALICE O. CHUNN, SP 98-V-046 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 2216 Lida Ct. on approx. 18,514 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((26)) 8. (Concurrent with VC 98-V-103).

9:00 A.M. ALICE O. CHUNN, VC 98-V-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit shed in excess of 200 sq. ft. Located at 2216 Lida Ct. on approx. 18,514 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((26)) 8. (Concurrent with SP 98-V-046).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Cheryl Brock, 2216 Lida Court, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit an existing accessory structure to remain 3.0 feet from the rear lot line. A minimum rear yard of 9.7 feet is required; therefore, the percent of error requested represents a 69% error. A variance is also requested to permit an existing shed in excess of 200 square feet to remain.

Mr. Ribble asked the order of the three sheds.

Ms. Brock stated that the metal garage was constructed first, shed A was second and shed B was third.

Ms. Brock presented the special permit and variance requests as outlined in the statement of justification submitted with the application. She stated the County had cited them for a third violation for allowing a lawn company to store their equipment in the metal garage. Ms. Brock stated that the violation had been resolved and the lawn company had removed their equipment, and the garage was now used to store their vehicle. Ms. Brock stated there were many properties which had sheds in their rear yards. She stated that the sheds were unobtrusive from all sides of the property and she had 5 support letters from neighbors including the closest neighbor to the shed. Ms. Brock stated the sheds were used to store personal belongings for both herself and her mother.

Chairman DiGiulian asked Ms. Brock, referring to a letter received, if there was a lawn mowing business on the lot in 1997 which returned in 1998.

Ms. Brock stated that a lawn company did store their equipment in the metal garage. Chairman DiGiulian stated the letter had indicated there was a business being run from the garage. Ms. Brock stated they only stored their equipment in the garage and noted they were no longer doing so and would not return next spring.

Mr. Dively asked why the metal garage was over the limit for an accessory structure, was the limit 300 square feet. Ms. Wilson stated because the use was a garage and was set back far enough from the property line, it met the requirements, including height requirements. Mr. Dively asked if there was a separate Ordinance for garages as opposed to accessory buildings. Ms. Wilson stated the 200 square foot limit had to do with accessory storage structures and stated this structure was a garage and not a storage shed. It could not cover more than 30% of the yard area, but there was no square footage limitation. After further consideration of the question, the answer was corrected by Susan Langdon to state that a garage was limited to 600 square feet on any lot. The garage on the property was less than 600 square feet and did have an approved building permit.

Mr. Hammack asked if shed A was in compliance with the Ordinance. Ms. Wilson stated shed A did meet the square footage requirements, however, due to the height it was not set back from the lot line far enough. Ms. Wilson stated shed A was 294 square feet, which was limited by the Ordinance to 200 square feet; therefore, they were 94 square feet over the requirements, but did meet the height requirement. Ms. Wilson stated shed B met the square footage requirement but not the height requirement.

Mr. Hammack asked what shed A was used for. Ms. Brock stated it was used to store their personal belongings from their move. Mr. Hammack asked if shed B was also used for personal belongings to be stored. Ms. Brock stated it was.

Mr. Pammel asked about the reference to a mobile home on the site in a letter received. Ms. Brock stated they had a recreational vehicle, a camper. Mr. Pammel asked if it was used for any other purposes. Ms. Brock stated the driveway was extended to park the camper and the truck to remove it from the street.

Mr. Ribble asked how large the camper was. Ms. Brock stated it was 34 feet long.

Ms. Gibb asked if the concrete driveway was an addition. Ms. Brock stated the driveway was asphalt and needed to be replaced, therefore it was replaced with concrete.

Ms. Gibb asked if there was also an indoor garage. Ms. Brock stated there was a single car garage.

Mr. Hammack asked Ms. Brock if she had called the County to inquire whether a building permit was needed for shed A. Ms. Brock stated she had not.

Mr. Kelley asked for the history behind the use of space for the lawn mowing equipment.

Ms. Brock stated that when her mother lived alone, she did not use the metal garage and the lawn company had approached her to store their equipment; therefore, her mother permitted the use of the storage to the lawn company.

Mr. Kelley stated if it wasn't for the use of the storage of the lawn equipment, the garage could have been used for storing their personal belongings. Ms. Brock replied it would have stored some items but not everything. Mr. Kelley said in looking at the size, it appeared it would hold everything. Ms. Brock stated the shed, which was over 200 square feet, was not large enough to accommodate all of their belongings; therefore, they added the smaller shed.

Mr. Ribble referred to a letter which referenced shed B was built after the County had given a violation notice.

Ms. Rebecca Goodyear, Zoning Enforcement Branch, Zoning Administration Division, stated when she had met with Ms. Brock on the property to take measurements, all three structures were already on the property, including the metal garage and the two sheds.

There were no speakers to speak in support of the application.

Mr. Christopher Granger, Mr. Wayne Holtzman, Ms. Dorothy Johnson and Ms. Phyllis Holtzman came to the podium to speak in opposition of the application, as stated in their letters submitted to the Board. The main concerns addressed were in reference to the lawn business in a residential neighborhood and property values.

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

Ms. Brock came to the podium to rebut the opposition. Ms. Brock stated the landscaping company would not resume storing their equipment in the garage in the spring. She said the metal garage held her vehicle. She stated that the property did not look like an industrial park and anyone with two sheds or more would be considered an industrial park if this rationale was applied throughout the County. Ms. Brock stated the two sheds were professionally built and were for personal use. She assured the Board there was no business being carried out from the sheds or their home.

Mr. Pammel asked Ms. Goodyear whether in the summer of 1997, Zoning Enforcement advised Ms. Chunn that the lawn mowing business was in violation.

Ms. Goodyear stated she had met with Ms. Chunn and advised her of the problem and said Ms. Chunn had explained she had worked out a system with the lawn company that they could store their equipment in her garage and in return they would maintain her lawn. Ms. Goodyear said a verbal notice was issued. She stated the business started up again in the Spring of 1998, at which time a written Notice of Violation was written. Ms. Brock contacted Ms. Goodyear and informed her the lawn care business would be out by August.

Mr. Ribble asked how many sheds were on the property in the summer of 1997. Ms. Goodyear stated she was unsure but knew the garage was there and that was where the lawn business was being operated from.

Mr. Ribble moved to approve SP 98-V-046 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

Mr. Ribble moved to deny VC 98-V-103 and stated the application was a hardship of convenience.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALICE O. CHUNN, VC 98-V-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit shed in excess of 200 sq. ft. Located at 2216 Lida Ct. on approx. 18,514 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((26)) 8. (Concurrent with SP 98-V-046). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; and

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

1. The applicant is the owner of the land.

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

the Zoning Ordinance:

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALICE O. CHUNN, SP 98-V-046 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 3.0 ft. from rear lot line. Located at 2216 Lida Ct. on approx. 18,514 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-1 ((26)) 8. (Concurrent with VC 98-V-103). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10,

1998; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure shown on the plat prepared by Alexandria Surveys, Inc., dated July 28, 1998 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. Kelley seconded the motion which carried by a vote of 4-3. Ms. Gibb, Mr. Dively and Mr. Pammel voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JOHN QUEENAN, SP 98-P-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 addition to

remain 6.4 ft. from rear lot line. Located at 8044 Kidwell Town Ct. on approx. 1,992 sq. ft. of land zoned R-12 and HC. Providence District. Tax Map 39-2 ((47)) 11. (Concurrent with VC 98-P-105).

9:00 A.M. JOHN QUEENAN, VC 98-P-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 35.8 ft. in height. Located at 8044 Kidwell Town Ct. on approx. 1,992 sq. ft. of land zoned R-12 and HC. Providence District. Tax Map 39-2 ((47)) 11. (Concurrent with SP 98-P-048).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Queenan, 8044 Kidwell Town Court, Vienna, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reduction to minimum yard requirement to permit an addition to remain 6.4 feet from the rear lot line. The addition consists of a deck with privacy screening exceeding 4 feet in height from the deck floor as limited by the Ordinance. During the variance application process, Ms. Wilson stated it was discovered that the builder of the dwelling had constructed the townhouse 0.8 feet higher than that permitted by the Zoning Ordinance. The applicant requested a variance to permit the dwelling to remain 35.8 feet in height.

Mr. Hammack asked why a screen had been defined as an enclosure. He asked if there was any way to redefine the Ordinance to allow someone to put up screening and not have a violation.

Ms. Langdon stated that she could pass this information unto Zoning Administration; however, she informed the Board that the Zoning Ordinance stated a railing could not be higher than 4 feet in height. If the railing exceeded 4 feet, it would make the screening fall under the definition of an addition.

Mr. Hammack stated the screening was not a railing. Ms. Langdon stated it was part of the deck structure; therefore considered a railing. Mr. Hammack stated it would not pass Code as a railing.

Ms. Gibb asked if it was cited as a complaint by a homeowner.

Ms. Wilson stated it was a result of a complaint from a neighbor.

Mr. Dively asked if the roofs of the entire neighborhood were 0.8 inches too high. Ms. Wilson stated the violation was only on one townhome and the heights of other townhouses had not been investigated.

Mr. Hammack asked how staff determined the home was built too high. Ms. Wilson stated while the survey was being done, which was required for a variance application, the height of all structures on the site had to be shown and certified by a surveyor and in doing so the 0.8 discrepancy was discovered over the maximum height permitted.

Mr. Queenan presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Queenan submitted letters from 7 of 10 adjacent property owner letters who supported the request, and also a copy of the original architectural approval. Mr. Queenan stated he was unsure how to address the variance proposal in reducing the height of his home. Mr. Queenan stated he had thought he had done everything according to the Ordinance and obtained all necessary permits. He said that when he submitted plans to the homeowners association for a deck with screening, the association informed him as long as he received 4 adjacent homeowner approvals, he could build his deck. Mr. Queenan stated he did not know an amendment had to be submitted for the height of the railings and did not know why the builder of the deck did not submit it as an amendment.

Mr. Dively asked if the original builder could have built the deck. Ms. Langdon stated not with the railing as it was or with privacy screening.

Mr. Queenan stated the original builder had built a number of decks with privacy screening.

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

Ms. Gibb moved to approve SP 98-P-048 and VC 98-P-105 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN QUEENAN, VC 98-P-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 35.8 ft. in height. Located at 8044 Kidwell Town Ct. on approx. 1,992 sq. ft. of land zoned R-12 and HC. Providence District. Tax Map 39-2 ((47)) 11. (Concurrent with SP 98-P-048). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has provided testimony indicating compliance with variance requirements.

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

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

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

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

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

1. This Variance is approved for the dwelling height to remain 35.8 feet in height, as shown on the plat prepared by William H. Gordon, Associates, Inc., dated February 26, 1997, as revised through July 2, 1998, 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. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN QUEENAN, SP 98-P-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 addition to remain 6.4 ft. from rear lot line. Located at 8044 Kidwell Town Ct. on approx. 1,992 sq. ft. of land zoned R-12 and HC. Providence District. Tax Map 39-2 ((47)) 11. (Concurrent with VC 98-P-105).
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of the addition (deck with privacy screening) shown on the plat prepared by William H. Gordon Associates, Inc., dated February 26, 1997, as revised through July 2, 1998, 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. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 188, November 10, 1998, (Tape 2), Scheduled case of:

9:30 A.M. JAMES L. BLEVINS, A 1997-SU-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has expanded the nonconforming use of a motor freight terminal, added structures to the property without approval of Building Permits, is maintaining a lumber yard/building material yard and a storage yard, is storing fireworks and is operating a retail sales establishment on the premises, all in violation of Zoning Ordinance provisions. Located at 15900 Lee Hwy. on approx. 12.4857 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 18. (MOVED FROM 11/11/97; RESCHEDULED FROM 1/27/98 AND DEFERRED FROM 4/7/98 AND 7/7/98).

Chairman DiGiulian noted the Board had issued an intent to defer to January 26, 1999 at 9:30 a.m.

Mr. Dively moved to defer the appeal application to January 26, 1999, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 188, November 10, 1998, (Tape 2), Scheduled case of:

9:30 A.M. CHARLES N. AND NANCY L. JENKINS, A 1998-SP-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a firewood processing business in an R-C district, maintaining outdoor storage, and is parking commercial vehicles on the premises all in violation of Zoning Ordinance provisions. Located at 6013 Pocol Dr. on approx. 27,092 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((4)) 12.

Jayne Collins, Zoning Administration Division, made staff's presentation as outlined in the staff report. Ms. Collins indicated that the issue in this appeal application was the appellant's business operation being

conducted on the property. She stated the business in question was advertised as a tree service business. There were more than 40 cords of firewood, a large pile of mulch, a log splitter, three commercial trucks identifying the tree service, a commercial dumpster and a portable toilet on the property. She stated based on the evidence the appellant was operating a contractors office and shop from his home which was not allowed in the R-C District.

Mr. Jeffrey Phillips, Agent for the Appellant, handed out a supplemental document to the appeal application. Mr. Phillips made his presentation as referenced in his hand out. Mr. Phillips stated the Jenkins had owned and operated the business for 28 years and the use was a nonconforming use and stated Mr. Jenkins had a vested right to maintain his business.

Mr. Charles Jenkins, 6013 Pocol Drive, Clifton, Virginia, came to the podium to speak to the appeal application. He stated he had moved to the location 27 years prior and had brought with him 25 cords of wood and had always run his business from his home. He stated he had purchased his home to work out of and run his business. Mr. Jenkins stated there had never been any complaints regarding his business. Mr. Jenkins stated all applications for loans and business licenses were handled by his wife, Mrs. Nancy Jenkins. Mr. Jenkins stated he had obtained building permits over the past 27 years for an addition to the rear of the house and a porch on the front of the house. Mr. Jenkins stated he had also applied for loans from the County and also had inspections on his property. Mr. Jenkins stated he did not process any wood on his property. In addition to the two County permits, Mr. Jenkins stated he had also applied for and received a business license from the County.

Mr. Hammack asked if Mr. Jenkins had ever grown trees on his property and harvested them for firewood. Mr. Jenkins stated he had not.

Mrs. Nancy Jenkins, 6013 Pocol Drive, Clifton, Virginia, came to the podium to speak to the appeal application. Mrs. Jenkins stated she went through her neighborhood and obtained signatures from every neighbor stating they did not have any objection to the appeal application. Mrs. Jenkins stated there had never been a time when the property was not used for the tree service business and stated the business was their livelihood.

Tom Brady, 6005 Pocol Drive, Clifton, Virginia, came to the podium to speak to the appeal application. Mr. Brady stated he had called the County on March 28, 1998, to inquire about the tree service business. He stated it was solely an inquiry and not a complaint on the Jenkins tree service business. He stated it was not the right thing to do to remove a person's business and create a hardship. Mr. Brady also stated he did not believe his property value was at jeopardy due to the Jenkin's business.

Mr. Phillips stated the use was a vested right that Mr. Jenkins had obtained over the number of years for the reasons given in his supplemental handout.

Ms. Collins stated the key point was the wood that Mr. Jenkins was selling from his property was not wood that was grown on his property and that was why it did not meet the definition of agriculture in the 1959 Zoning Ordinance. She stated that when Mr. Jenkins began his activities in 1971, his property was zoned residential, RE-1, which did allow agricultural uses, but not the extent that he was doing. Ms. Collins stated the building permits approved by the County were approved as additions to the building, and the County had no knowledge for what the additions would be used for. Ms. Collins stated they did not believe the additions would be used for business activities and stated no zoning inspections were conducted after the building was constructed, those inspections were performed by building inspectors, not zoning inspectors. Ms. Collins stated the support of the neighbors was not a basis to allow the business activities to continue when they were never lawfully established.

Mr. Kelley asked if staff agreed with Mr. Brady's account of how the complaint process was started.

Mr. Shoup stated the inspector had worked another complaint filed by Mr. Brady and when the inspector had called Mr. Brady to inform him of the findings of his complaint, Mr. Brady had mentioned Mr. Jenkins operation at that point. Mr. Shoup stated that was construed as a complaint. Mr. Shoup stated if zoning was to look into an inquiry it would have to be worked as a complaint, as was done in this case.

Mr. Phillips stated he believed the definition of agricultural uses, other than such as incidental to a residential use, shall be deemed to be agricultural on a commercial scale and Mr. Jenkins was openly doing that. Therefore, Mr. Phillips stated, after 27 years from the day Mr. Jenkins started his business to the present, would certainly give him a vested right, which was defined as a governmental act, substantial upon that and then all the expenses substantial. Mr. Phillips stated the use was nonconforming under the 1959 Ordinance.

Mr. Hammack asked if there were any provisions in the Ordinance in which the appellant could be allowed to continue his business for a period of time.

Mr. Shoup stated not in its current state, however, he could have a home occupation on the property, but that would not allow the processing and storage of the wood. Mr. Shoup stated Mr. Jenkins could essentially have an office, one commercial vehicle and have one non-resident employee Monday through Friday, however, he could not have any storage activity that would suggest the property was being used for anything other than a dwelling.

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

Mr. Kelley stated he would never make a vote to put a person out of their livelihood and stated he would maintain the position and made a motion to overrule the Zoning Administrator's decision. Mr. Kelley stated the use was well established and Mr. Jenkins had been there a long time and was not causing anyone any trouble. Mr. Dively seconded the motion.

Mr. Pammel stated with all the evidence presented, the County would have to do a better job coordinating between zoning and business license staff. He stated the Jenkins' had received a business license from the very beginning and had done everything they were required to do to operate a business and therefore supported the motion.

Mr. Hammack stated he did not believe the use was nonconforming under the Ordinance, and stated he did not want to overrule the Zoning Administrator because technically the Zoning Administrator was correct, however, he stated he was not inclined to put Mr. Jenkins out of business. Mr. Hammack asked staff to give Mr. Jenkins the opportunity to explore the possibility of bringing his business into compliance and made a substitute motion to defer a decision on the appeal application for one year to allow the process to take place. He stated he believed the Zoning Administrator was technically correct and did not wish to vote against the Zoning Administrator.

Mr. Kelley stated he did not want to encourage the Zoning Administrator to do this type of thing and stated he had been asked too many times to put someone out of business and said the Zoning Administrator would never receive his vote.

There was no second to the substitute motion; therefore, the motion failed for lack of a second.

The main motion carried by a vote of 6-0-1 to overrule the Zoning Administrator. Mr. Hammack abstained from the vote.

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Page 190, November 10, 1998, (Tape 2), Scheduled case of:

9:30 A.M. WOODROOF G. FITZHUGH, TR., BY COUNSEL, A 95-D-058 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has established various uses and structures including a miniature golf course that were not previously approved in Special Permit Amendment SPA 79-D-176-1, and which are in violation of Zoning Ordinance provisions. Located at 11801 Leesburg Pk. on approx. 29.01 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 6-3 ((1)) 33 and 33A. (Def. from 6/9/98).

Chairman DiGiulian stated the Board had issued an intent to defer to May 25, 1999. Mr. Pammel moved to defer the appeal application to May 25, 1999. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 191, November 10, 1998, (Tape 2), Scheduled case of:

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage in the R-1 District in violation of Zoning Ordinance provisions. Located at 7615 Bakers Dr. on approx. 1.76 ac. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 43. (Concurrent with A 1998-MV-016). (Def. from 9/8/98).

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage, and is parking a commercial vehicle in an R-1 District, all in violation of Zoning Ordinance provisions. Located at 7611/7619 Pohick Rd. on approx. 119,354 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 45A. (Concurrent with A 1998-MV-015). (Def. from 9/8/98).

Chairman DiGiulian stated the Board had issued an intent to defer to January 12, 1999. Mr. Pammel moved to defer the appeal application to January 12, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 191, November 10, 1998, (Tape 2), Scheduled case of:

9:00 A.M. EARL SHELTON, VC 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Earl Shelton, 2915 Fairhill Road, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a detached garage 4.0 feet from the side lot line. A minimum total side yard of 20 feet is required; therefore, a variance of 16.0 feet was requested.

Mr. Shelton presented the variance request as outlined in the statement of justification submitted with the application. Mr. Shelton stated the lot was too narrow in the back of the property to put the garage any further out to get his car in and out of or to work out of.

There were no speakers in support of the application.

Ms. Marty Carter, Trammel Crow Company came to the podium to speak in opposition of the application. Ms. Carter stated Trammel Crow Company managed the building at 8613 Lee Highway for the owner Devon Partnership. Ms. Carter stated the lawns in the neighborhood of the proposed site were littered with wrecked vehicles. She stated her company was asking the County to look into the commercial use of those residential lots. Ms. Carter also stated they were looking into the use of evergreen trees as proper shielding of the structure to the neighbors such as the Devon building. Ms. Carter stated, other than these two inquiries, the owner of the Devon building did not have any objections to the structure; however, they did not want to have their occupant to have to look at the structure from the back patio of the building. Ms. Carter stated the owner of the building would like the property structure to be used for residential uses only.

Mr. Shelton stated he would only use the structure for residential storage. He stated he had tradesman tools to store only.

Chairman DiGiulian asked if he had operated a business from the site. Mr. Shelton stated he did not, however he was self employed.

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

Mr. Hammack moved to approve VC 98-P-099 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 3, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL SHELTON, VC 98-P-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line. Located at 2915 Fairhill Rd. on approx. 25,947 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 20. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1998; and

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

1. The applicant is the owner of the land.
2. The request was necessary due to the exceptional narrowness of the lot.

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

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

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

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

would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of a detached garage shown on the plat prepared by David H. Richardson, dated October 19, 1996, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 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 November 18, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 193 November 10, 1998, (Tape 2 and 3), After Agenda Item:

Request for Determination on Acceptance of Application for Appeal -
Emanuel Stikas

Mr. William Shoup, Deputy Zoning Administrator, stated the consideration for acceptance was initially discussed at the October 13, 1998 Board hearing. He stated the discussion was deferred to allow time for the appellant to retain counsel. The appellant had retained counsel, Mr. Grayson Hanes. Mr. Shoup stated Mr. Hanes had provided the Board with a memorandum of response.

Mr. Shoup stated his position as set forth in his October 5, 1998 memorandum. Mr. Shoup stated the appellant was not an aggrieved party. Under the law, in order to be an aggrieved party, substantial grievance would have to be shown, such as a denial of personal property right or the imposition of burden that was different from that as suffered by the general public. Mr. Shoup stated the decision must act directly on the persons rights. Mr. Shoup stated the purpose of the appeal involved a decision to issue a Non-Residential Use Permit (Non-RUP) to Dry Clean Depot, located at 6610 Arlington Boulevard. Mr. Shoup stated the appellant operated a dry cleaning business at 3039 Graham Road, approximately 1.4 miles from the Dry Clean Depot site. Mr. Shoup stated the appellant claimed he was aggrieved because he represented that at some point in the past he was denied a similar opportunity by the County. Mr. Shoup stated staff had no knowledge of the past incident and stated the appellant had not provided any details even after he was asked to do so. He indicated that the appellant was challenging the decision based on the belief that a competitor was given an unfair advantage. Mr. Shoup stated that staff did not believe that had occurred and noted under the law there were no rights to having no competition from like businesses. In summary, Mr. Shoup stated staff did not believe the appellant met the criteria for establishing standing as an aggrieved party and noted Mr. Randy Greehan from the County Attorney's office was present and asked that he would have the opportunity to address some of the legal points that had been raised.

Mr. Greehan stated he had received Mr. Hanes' handout the day prior to the hearing and had not had the opportunity to review the document in its entirety. Mr. Greehan referred to other cases involving aggrieved parties. Mr. Greehan stated, as to the Non-RUP that was issued to Dry Clean Depot, it had not ordered or required Mr. Stikas to do anything, it had not prevented him from doing anything and did not grant Mr.

Stikas any rights under the Non-RUP. Mr. Greehan also stated the Non-RUP was not signed by, addressed to, issued to, or paid for by Mr. Stikas and the County could not enforce the Non-RUP against him. Mr. Greehan stated the decision to issue the Non-RUP put no obligation on Mr. Stikas. Mr. Greehan stated the Courts were very clear that any interest must be direct, immediate, substantial and pecuniary, and stated in this case, any impact or interest was indirect and was very speculative. Mr. Greehan referred to his handout to the Board regarding different cases of this sort. Mr. Greehan stated he believed there were authorities across the Country which stated business competition did not make one an aggrieved party. He stated, as far as his understanding of a constitutional claim as well, the Board of Zoning Appeals, because of its statutory nature, was not empowered to rule on constitutional claims. Mr. Greenhan stated he did not believe constitutional claims could be ruled on by the Board of Zoning Appeals, but the issue of business competition could. However, he believed that such a contention was not sufficient to make one an aggrieved party. Mr. Greenhan stated, due to the fact the case was not direct, immediate or a pecuniary interest, would show under the Virginia law, that Mr. Stikas did not have a standing to challenge the Non-RUP issue to Dry Clean Depot, as an aggrieved party.

Mr. Hammack asked if any of the cases Mr. Greehan had reviewed had a similar Ordinance as Fairfax County which would require someone to appeal within 30 days, or have their rights curtailed. Mr. Hammack asked who could be an aggrieved party if they felt the approval of the Non-RUP was invalidly issued.

Mr. Greehan stated he did not have enough time too look through every statute, however, an example might be, a party who had a Non-RUP issued, which impacted on the access too traffic, or other impacts on adjacent property, would be a situation where the adjacent property owner could state they were aggrieved because of the impacts created as a result of the Non-RUP, however he stated in this case Mr. Stikas was 1.4 miles from the Dry Clean Depot property and any impact was speculative and remote, which was not the kind of interest that the Virginia Supreme Court had stated would give someone status as an aggrieved party.

Mr. Grayson Hanes, Agent for Appellant, came to the podium to speak on behalf of the appellant. Mr. Hanes provided the Board with a handout and made his presentation based on the handout. Mr. Hanes stated the issue was whether Mr. Stikas' business was negatively impacted by the issuance of the Non-RUP to Dry Clean Depot, not whether economics or competition was at issue. He stated if Mr. Stikas could not be an aggrieved party, who could. Mr. Hanes stated an economic advantage was granted with the issuance of the Non-RUP because Mr. Stikas wanted to purchase the property and was told his use was not allowed on the property.

Mr. Shoup stated there was certain criteria that had to be met in order to file an appeal. He stated, in this case, that criteria was not met. Mr. Shoup stated the County had no record that Mr. Stikas was informed he could not use the property for the use in which it was now used. Mr. Shoup stated the County had asked Mr. Stikas for specifics and details and noted at the October 13, 1998, meeting, Mr. Stikas had stated it was a zoning consultant who had informed him he could not occupy the property, not the County.

Mr. Greehan stated that if in fact there was a decision made, there was nothing that prevented that decision at that time from being appealed. He stated the fact that this was verbal would not have stopped Mr. Stikas from asking for that decision in writing so that he could appeal the decision.

Chairman DiGiulian stated Mr. Stikas had probably only decided he had an appealable action when Dry Clean Depot was granted the occupancy permit.

Mr. Stikas came to the podium to speak to the appeal application. He stated in 1985 he had purchased the property adjacent to his Graham Road facility. He stated at that time he had approached the County about expanding the facility and requested approximately 7,500 square feet, to include a corporate office, and was told the Zoning Ordinance limited his use to 6,000 square feet total for related uses, of which 3,000 feet was limited to production space. Mr. Stikas stated after examining the options, and with the issues clearly spelled out in the Ordinance, he found no reason to dispute them due to there not being any ambiguities. Mr. Stikas stated in 1997 he looked into purchasing the property on Arlington Boulevard, after contacting Don Smith, he was informed by Mr. Smith that the Ordinance had not changed since 1985 and the only way to use the space was to subdivide it into two uses, the primary use and a separate and distinct use to meet the Code requirements. Mr. Stikas stated due to the restrictions in size, it restricted the use of services. Mr.

Stikas stated he had to reduce his prices at a loss to his business because he did not have the economy of size that a larger facility had. Mr. Stikas stated the Dry Clean Depot facility has had a definite impact on the value of his company. Mr. Stikas stated the facility was granted an unfair advantage to the economy size.

Mr. Frank Stearns, Attorney representing Dry Clean Depot, came to the podium to speak to the appeal application. Mr. Stearns stated there were no grounds for unfair advantage and that it was only the nature of competition. Mr. Stearns stated County staff had inspected the facility and found it to be in conformance in terms of size and layout and stated there was no requirement within the Zoning Ordinance which stated a use would have to occupy every square inch of the building. Mr. Stearns stated the issue was what the Virginia Law was regarding an aggrieved party, not whether the Board was to provide Mr. Stikas with a fair hearing.

The Board discussed various other cases with regard to an aggrieved party with Mr. Greehan.

Mr. Hanes came to the podium to address the Board and stated the issue was a 3,000 square foot limitation within the building for a processing area and a 6,000 square foot of limitation in the C-5 District. Dry Clean Depot had 8,000 square feet, in which they had an advantage because they had an economy of scale, they could do more than Mr. Stikas could do. Mr. Hanes stated this met the criteria that Mr. Stikas had lost a pecuniary interest. Mr. Hanes stated he did not agree that business competition did not confer standing as an aggrieved party and asked the Board the opportunity to address the appeal application upon its acceptance.

Mr. Shoup stated the initial basis for Mr. Stikas' filing of an appeal was that the County did not treat him equally. Mr Shoup stated Mr. Stikas' testimony suggested that the County was to be held accountable for something he was told by someone in 1997 who retired from the County in 1992. Mr. Shoup stated if Mr. Stikas had come to someone in the County in 1997 he would be in the building and not Dry Clean Depot.

Mr. Pammel made a motion to accept Appeal Application A 1998-PR-029 under Section 18-301 of the Zoning Ordinance. Mr. Kelley seconded the motion.

Mr. Dively and Ms. Gibb both expressed their positions against the acceptance of the appeal.

The motion carried by a vote of 5-2. Mr. Dively and Ms. Gibb voted against the acceptance of the appeal.

Mr. Pammel made a motion to schedule the hearing for January 26, 1999 at 9:30 a.m. Mr. Kelley seconded the motion which carried by a vote of 5-2.

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Page 195, November 10, 1998, (Tape 3), After Agenda Item:

Approval of August 4, 1998, August 18, 1998 and October 20, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 195, November 10, 1998, (Tape 3), After Agenda Item:

Approval of August 25, 1998 Minutes

Mr. Dively moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 196, November 10, 1998, (Tape 3), After Agenda Item:

Status Update on Special Exception Application for Cravens Nursery, A 96-P-049

Mr. Hammack moved to have another status review to be conducted as an after agenda item on December 22, 1998 as was recommended by the Zoning Administrator. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 196, November 10, 1998, (Tape 3), After Agenda Item:

Approval of November 3, 1998 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 196 November 10, 1998, (Tape 3), After Agenda Item:

Out-of-Turn Hearing Request SP 98-S-056
Northern Virginia Therapeutic Riding Program, Inc.

Mr. Hammack moved to accept the out-of-turn hearing for January 19, 1999, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:23 p.m.

Minutes by: Deborah Hedrick

Approved on: February 23, 1999

Regina Thorn, 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 Tuesday, November 17, 1998. The following Board Members were present: Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:02 p.m. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the After Agenda Items to be heard first.

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Page 197, November 17, 1998, (Tape 1), After Agenda Item:

Approval of May 19, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Approval of Revised Plats
Jerry and Ana Mowery, VC 98-L-071 and SP 98-L-031

Mr. Hammack moved to approve the revised plat. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Approval of November 10, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Out-of-Turn Hearing Request
Lawrence D. Pratt, SP 98-S-057

Mr. Dively moved to approve the request for an out-of-turn hearing. Ms. Gibb seconded the motion which carried by a vote of 6-0. The application was scheduled for January 19, 1999. Mr. DiGiulian was absent from the meeting.

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Discussion of Date for an
Out-of-Turn Hearing Request
Falls Reach LLC, VC 98-D-094

Susan Langdon noted that this issue had been before the BZA on November 10, 1998, and the BZA had decided to defer the decision of the date to check out the possibility of setting a special hearing date for this case. Ms. Langdon said there was an available date January 7, 1999, which was a Thursday. She stated the special date would be in addition to the previously scheduled hearing date of January 5, 1999.

Mr. Ribble asked if the special hearing date was only for this one case. Ms. Langdon replied yes.

Mr. Kelley said his understanding was that this date would be available to also schedule other cases. Ms. Langdon stated that currently applications had been scheduled to capacity up to January 26, 1999. She said there were no other cases at this point to schedule on that date.

Mr. Kelley asked about the application which had been granted an out-of-turn hearing for January 19, 1999. He asked whether staff could be ready on that date. Ms. Langdon replied that was a case which needed to be staffed. She said it would present a very short turnaround time.

Mr. Pammel said he was considering the Tuesday between Christmas and New Year's Day for the special public hearing. Mr. Kelley said staff had mentioned that they would be unavailable.

Ms. Langdon stated that staff would not be available due to the holidays.

Mr. Kelley said he was sure staff had made their vacation plans for that period of time, based on the fact that there was no meeting scheduled.

Mr. Ribble said that was because the BZA had that meeting in August.

Ms. Langdon stated that the subject variance was for a 200 foot setback from a major highway. She stated that it involved a subdivision and staff had just received a plat for the subdivision that week. Ms. Langdon said the applicant still needed to submit a noise study which staff had not received.

Mr. Pammel moved to deny the request for an out-of-turn hearing. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. DiGiulian was absent from the meeting.

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Page 198, November 17, 1998, (Tape 1), Scheduled case of:

8:00 P.M. HUNTER MILL EAST, LLC, GOLF PARK, INC., JINDO & YOUNGHEE KIM, A 1997-HM-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants have established uses authorized by SPA 91-C-070-2 without a Non-Residential Use Permit (Non-RUP), and that the uses are not in compliance with Special Permit Conditions 7, 9, 16 and 20, all in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.29 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, and 5. (Rescheduled from 3/10/98; deferred from 7/7/98 and 8/25/98).

William Thomas, Fagelson, Schonberger, Payne, & Deichmeister came forward indicating he was present to speak on behalf of the appellant.

Daryl Varney, Assistant to the Zoning Administrator, said on February 18, 1997, the BZA approved SPA 91-C-070-2 which was the most recent approval governing development of the site. He stated that the special permit amendment approval permitted an expansion of the clubhouse, the addition of two gazebos, the lighting of the driving range and parking lot, an increase in the hours of operation, and an extension of the berm on three sides of the property. Mr. Varney said Condition #7 of the special permit amendment limited the driving range to 10 lights. He said a subsequent interpretation of this condition by the Zoning Evaluation Division staff limited the driving range to 10 light poles with 2 light fixtures per pole. He said the appellant constructed 4 light poles with 6 light fixtures per pole. A second interpretation permitted less than the 10 poles as long as the total number of light fixtures did not exceed 20. Mr. Varney stated that the most recent interpretation of the subject condition dated November 12, 1998, permitted 4 light poles with 5 light fixtures on each pole. The extra fixture on each pole was to be extinguished immediately and removed within 60 days. He said an inspection conducted the evening of the November 17, 1998, revealed that the appellant was operating the driving range lights in accordance with the interpretation; however, because the appellant had 60 days to remove the extra fixtures, this issue remained unresolved.

Mr. Varney said Condition #9 required that all landscaping approved with the site plan to be planted or replaced within 6 months of the SPA approval. He said that site plan was approved for the initial establishment of the use on the property. An inspection conducted by Urban Forestry staff in September 1997, revealed that a total of 294 separate plantings were either missing or in need of replacement. A second inspection, which was conducted on November 13, 1998, revealed that 303 plantings were currently missing or in need of replacement. Therefore, the appellant was in violation of Condition #9.

Mr. Varney said Condition #16 required the architecture of the clubhouse, including building materials, to be compatible with the character of the neighborhood residential architecture. He said zoning inspections revealed that a temporary metal trailer with fabric covering the wheels had been located on the property. Zoning Evaluation staff determined that the trailer was not compatible with the neighborhood's architecture.

Therefore, the appellant was in violation of Condition #16.

Mr. Varney stated that Condition #20 prohibited food preparation on the property. He said zoning inspections revealed that the trailer on the site was being used as a concession stand where hot dogs were cooked, pizza warmed, and fountain drinks served. Mr. Varney stated that the Zoning Evaluation staff determined that these activities constituted food preparation. Therefore, the appellant was in violation of Condition #20.

Mr. Varney stated that the activities authorized by the special permit amendment commenced without approval of a Non-Residential Use Permit (Non-RUP). Therefore, the appellant was in violation of the approved resolution for SPA 91-C-070-2 and Sect. 18-701 of the Zoning Ordinance.

Mr. Hammack asked staff if the trailer was shown on the development plan that was approved by the BZA or if a structure roughly the size the of the trailer in question was shown. Mr. Varney stated that the concession trailer was not shown on the approved plat.

Mr. Hammack asked if that would be a violation of the special permit plat. He then asked how large was the trailer. Mr. Varney replied approximately 10' x 10'.

Mr. Hammack asked if this was not a movable trailer, would the appellant be required to seek a special permit amendment to have a shed or an accessory structure of that size. Mr. Varney replied yes, if it was not shown on the plat.

William Shoup, Deputy Zoning Administrator, gave a clarification stating that there were provisions that allowed minor modifications. He said if it fell within those guidelines perhaps it could be approved. He said theoretically a structure such as that could be approved as a minor modification. Mr. Shoup said because of the condition requiring compatibility, this type of structure most likely would not be a approved with a minor modification.

Mr. Thomas came forward stating that he was somewhat fresh to this issue but that this issue was not fresh with the BZA. He said he knew the BZA had labored over the case numerous times. Mr. Thomas said he wished he had better background on the appeal. He said he had read the background and the statements presented by the appellant in the context of requested deferrals and the appeal itself. Mr. Thomas said he found merit in what the appellant was requesting. He said he would prefer to come before the BZA with the special permit amendment application and that it ought to be in that venue. He stated that the application for the special permit amendment was filed by the engineer and also indicated that a plat would be submitted within 30 days but the engineer had made a commitment that he has not been able to keep. Mr. Thomas said because of the number of projects throughout the County, the engineering community has been deluged with work, which is the reason he believed this engineer had not been able to meet his commitment with the subject application. Mr. Thomas discussed the deficiencies with the special permit amendment application stating that most of the information had been submitted. He said at some level there should have been enough information to evaluate the plat and the engineer could add to the package as the analysis was being conducted by staff. Mr. Thomas asked the BZA to give consideration to a reasonable deferral.

Mr. Kelley said he had swallowed as hard with this appellant as he ever was going swallow. He said everything was done at the eleventh hour including engaging Mr. Thomas' services. Mr. Kelley apologized stating that he was sorry Mr. Thomas had not been present during the numerous hearings and many requests. He said if Mr. Thomas requested a deferral, he would move to deny the request and proceed with the appeal.

Mr. Hammack stated that it had been eight months and three deferrals and the appellant had promised that he would have all the issues remedied. He said the appellant's credibility was low.
Mr. Hammack said he thought the staff report reflected fairness relating to the tree issues.

Mr. Kelley made a motion to proceed with the hearing. Mr. Hammack seconded the motion which carried unanimously. Chairman DiGiulian was absent from the meeting.

Mr. Thomas stated that the appellant was unable to be present at the hearing because he was attending a meeting of the District Task Force on Plan nominations for the subject property. He said the light issue, as he understood, had been resolved by way of interpretation from Barbara Byron, Director, Zoning Evaluation Division. Mr. Thomas said the unapproved lights had not yet been removed from the poles, but that the appellant had turned them off.

Mr. Hammack asked Mr. Thomas if he was agreeing that the lights were not in compliance from his previous statement. Mr. Thomas replied that he was not prepared to admit that the appellant was in non-compliance on the light issue. He said there were inconsistencies on the light plan from what had actually been put in place. Mr. Thomas stated the appellant was bringing the lights into compliance as requested.

Mr. Thomas said on the issue of the trees, he believed without an actual tree survey, it was difficult to determine the number of trees needed. He said the berm changes currently in place were over the top of area where there were supposed be trees which were not there. Mr. Thomas said there were trees missing and that the appellant had intentions of replacing the trees in the context of the special permit amendment.

Mr. Thomas said the concession stand had been shut down and the appellant had conceded that issue in terms of not moving forward on it without a resolution before the BZA. He said it was the appellant's belief that heating a hot dog or pizza was not preparing food. Mr. Thomas said the concession trailer was not unlike many of the accessory structures that existed on all of their lots.
He stated the trailer was basically withdrawn from the appeal and it was conceded that it would be removed.

Mr. Thomas said the appellant could not obtain a Non-RUP until the other issues were resolved.

Mr. Dively asked if the Non-RUP was a part of the appeal. Mr. Varney stated that it was cited in the Notice of Violation.

Mr. Dively asked which issues were left for the BZA to render decisions. Mr. Thomas said just the trees. Mr. Dively asked if the appellant had any evidence contrary to staff's information relating to the tree issue.

Mr. Thomas said the only information he had was the representation from the appellant that he was approved for locational shifts. He said the appellant did not intend for the appeal to go forward because he was in the process of filing a special permit amendment application.

Cecilia Lammers, Chief, Urban Forestry, indicated that the report she submitted was fairly detailed and reflected exact locations of where trees were missing. She said she gave credit for every single planting on the site. Ms. Lammers said she tried to be as fair as she could and if there were any field approvals for locational shifts prior to the implementation of Condition #9, that she was not aware of it. She said when she conducted the site visits, she used the site plan approved by the BZA to conduct the inspection.

Mr. Thomas said the appeals of the lights, of the concessions stand, and the preparing of the food, were withdrawn as moot.

Mr. Hammack said he didn't accept the issues being withdrawn as moot.

Mr. Thomas said he mispoke, but that they were withdrawn as having been resolved.

Mr. Hammack said he was not accepting the withdrawal as having been resolved. He said he thought the appellant would like to put conditions on the withdrawal and that it would have to be an unequivocal withdrawal. Mr. Hammack said he did not want to hear Mr. Thoburn arguing with the Zoning Administrator. He said if the appellant withdraws then he would be conceding with the Zoning Adminstrator's position. Mr. Hammack said the appellant chose to appeal the decision of the Zoning Administrator. He said the appellant had an opportunity to withdraw since March 10, 1998. Mr. Hammack said the appellant had come before the BZA stating that he had merit in his appeal at previous hearings since March.

Mr. Pammel said one of the problems he had was with the light issue. He said there had been a 20% increase with the light fixtures when there was a stipulated limit. Mr. Pammel stated that if this issue was

not clearly decided he could see an ongoing argument between the appellant and staff.

Mr. Thomas said the appellant accepts the conditions of the interpretation and withdraws the appeal with regard to the light issue.

Mr. Kelley stated that he was sick and tired of the entire issue and said what if he made a motion to have a revocation hearing on January 7, 1999. He asked if that would be a better solution, to revoke the permit and start over again.

Mr. Thomas said he did not like the concept of a revocation hearing. He said he would prefer to have it resolved through the special permit amendment.

Mr. Dively said his problem was that he thought he heard twice, withdrawal of all the issues except the trees. He said on the tree issue he didn't see how the BZA could rule in other way except one way because they only had the evidence from staff.

Mr. Pammel noted that the Non-RUP issue was not resolved.

Vice-Chairman Ribble called for speakers.

Bruce Bennet, 1459 Hunter View Farms, Rita Ailinger, 10502 Hunting Crest Lane, Donna Schuster, 1620 Crowell Road, and Ron Stanton, 10309 Browns Mill Road, came forward to speak in favor of the Zoning Administrator's determination. They expressed concerns with the issues as noted in the Notices of Violation. The speakers were distraught about the number of deferrals granted for this appeal and asked had the BZA given preferential treatment to the appellant. Mr. Stanton presented photographs to the BZA.

Mr. Thomas gave rebuttal stating that each of the appeal issues had been withdrawn on the basis of the various documents that had gone back and forth and the appellant's willingness to bring the site into compliance based on what had been represented to him. He said the appellant's desire was to obtain a special permit amendment but the only issue left was the trees. Mr. Thomas said the appellant would try to bring the site into full compliance and obtain the Non-RUP.

Mr. Pammel said the train of thought by the appellant throughout the entire process did not seem to fit into any rational context.

Vice-Chairman Ribble closed the public hearing.

Mr. Hammack said the appellant had sought to withdraw some of the issues from the appeal. He said he was unclear exactly what was withdrawn, because he chose to appeal the issues. Mr. Hammack said the BZA had granted at least eight months worth of deferrals for the appellant to prepare his case and to do other things that might be related such as filing for a special permit amendment. He said he would be willing to consider some of the issues as a special permit amendment. Mr. Hammack said he had appealed the Notices of Violation but the attempts of the appellants counsel to withdraw had some conditions attached that would just lead to more arguments. Mr. Hammack moved to uphold the Zoning Administrator's determination across the board. Mr. Pammel seconded the motion.

Mr. Kelley said he supported the motion whole heartedly, but would like a revocation hearing.

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

Mr. Pammel said the BZA had provided more than adequate time for the appellant to address the issues and that had not occurred so he moved that the BZA find out why the appellant special permit should not be revoked.

Mr. Kelley seconded the motion for purposes of discussion.

Mr. Dively said the Zoning Administrator had been upheld and Zoning Enforcement could take the

necessary actions including going to the courts to enforce its findings. He said he didn't know why it called for a revocation action.

Mr. Pammel said it was serious when you operate without a Non-RUP and illegal.

Mr. Kelley clarified Mr. Pammel's motion stating that he was not requesting a revocation hearing, but to have the appellant explain to the BZA why they shouldn't proceed with a revocation hearing.

Mr. Hammack said he had sympathy for the motion, but was willing to let staff utilize their options.

Mr. Dively asked staff what would be their next step.

Mr. Shoup said the next step would be injunction.

Mr. Hammack said he would prefer to see staff take their normal course of action and perhaps report in 3 weeks with a recommendation. He said he was reluctant to a public hearing.

Vice-Chairman Ribble said he agreed with Mr. Hammack.

The motion failed for lack of 4 votes. Vice-Chairman Ribble, Mr. Dively, Ms. Gibb, and Mr. Hammack voted against the motion.

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As there was no other business to come before the Board, the meeting was adjourned at 9:25 p.m.

Minutes by: Regina Thorn

Approved on: January 19, 1999

Regina Thorn, 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 Tuesday, November 24, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 203, November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. YOUR CHILD'S PLACE, INC., SPA 95-H-007 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-007 for child care center to permit change in development conditions, increase in enrollment, site modifications and increase in land area. Located at 2578 and 2580 Chain Bridge Rd. on approx. 26,037 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 46A, 50. (Concurrent with VC 97-H-099). (RESCHEDULED FROM 1/27/98; DEF. FROM 2/24/98, 4/7/98, 6/9/98 and 8/4/98; MOVED FROM 9/29/98).

9:00 A.M. YOUR CHILD'S PLACE, INC., VC 97-H-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 6.0 ft. from front lot line. Located at 2580 Chain Bridge Rd. on approx. 10,983 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 50. (Concurrent with SPA 95-H-007). (RESCHEDULED FROM 1/27/98; DEF. FROM 2/24/98, 4/7/98, 6/9/98 and 8/4/98; MOVED FROM 9/29/98).

Grayson Hanes, Agent for Applicant, came to the podium and stated that the applicant was working on a revised plat to resolve transportation issues. Mr. Hanes stated as of November 23, 1998, a revised plat was completed and therefore staff had not had the opportunity to review it. Mr. Hanes asked staff to support a deferral to February 9, 1999, at 9:00 a.m.

Mr. Pammel made a motion to defer the applications to February 9, 1999, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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At 9:05 a.m., Mr. Hammack made a motion to convene an Executive Session so the County Attorney could inform the Board on legal matters as requested on the DeAngelo application. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Following the Executive Session, Mr. Hammack moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene executive session were heard, discussed, or considered by the Board of Zoning Appeals during the executive session.

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

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Page 203, November 24, 1998, (Tape 1), After Agenda Item:

Additional Time to Commence Construction Approved by VC 94-L-160
Anastasios Grypeos, 3224 Groveton Street, Tax Map 92-2 ((18)) (3) 10 and 11, Lee District

Mr. Dively moved to grant the request for six (6) months of additional time. Mr. Ribble seconded the motion which carried by a vote of 6-0. The new expiration date is January 22, 1999.

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Page 304, November 24, 1998, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for SP 98-D-058, Arthur P. Hendrick

Mr. Ribble asked staff if there was a better date to schedule the hearing.

Ms. Langdon stated the application was currently scheduled for the middle of February and that the application was moved up to the first available date which was January 26, 1999. Ms. Langdon explained the nature of the application.

Mr. Kelley asked if the application could be moved to January 7, 1999.

Ms. Langdon stated there was a hearing scheduled for January 5, 1999 and January 12, 1999.

Chairman DiGiulian asked if a special hearing was scheduled for January 7, 1999.

Ms. Langdon replied that the Board had requested staff to determine if there was a date for a special meeting to move the Falls Reach variance to, and stated the Board had denied the out-of-turn hearing request on that application and therefore, a special meeting date was not set.

Mr. Ribble stated the January 7, 1999 date was for a special meeting, not only for the one application.

Ms. Langdon stated since the out-of-turn hearing request was denied, staff had informed Facilities Management the date was not needed to schedule the Board room. Ms. Langdon said staff would have to contact Facilities Management again to determine if the date would be available.

Mr. Robert Lawrence, Agent for Falls Reach, LLC, came to the podium and stated if the Board did create the new hearing date, he would be able to make the notice requirements to have his application scheduled on that date.

Mr. Ribble made a motion for a special hearing to be scheduled for January 7, 1999. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Mr. Ribble made a motion to accept the out-of-turn hearing request for January 7, 1999. Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 304, November 24, 1998, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-P-136, James M. Petko

Mr. Kelley made a motion to schedule the out-of-turn hearing for January 7, 1999. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 304, November 24, 1998, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-D-142, Shiloh Baptist Church of Odricks Corner

Mr. Dively made a motion to schedule the out-of-turn hearing for January 7, 1999. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 304, November 24, 1998, (Tape 1), After Agenda Item:

Request for Reconsideration for Golf Park, Inc., A 1997-HM-040

Mr. John Thoburn came to the podium and stated he was unable to attend the November 17, 1998, Page

meeting, however, he had watched the tape of the hearing and stated that staff had misrepresented the conditions on-site. Mr. Thoburn said over 700 trees had been planted and some of them had died due to the deer population. He said it was unfair to him that the application was denied and asked for the conditions to be reasonable and requested a reconsideration of the appeal application be granted.

The Board discussed the letter submitted to the Board by Mr. Thoburn, as well as the November 14, 1998, staff memorandum.

Mr. Dively made a motion to defer the request for reconsideration to December 8, 1998. Mr. Kelley seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion. Ms. Gibb was absent from the meeting.

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Page 205 November 24, 1998, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for VC 98-D-094, Falls Reach, LLC

Mr. Kelley made a motion to schedule an out-of-turn hearing for January 7, 1999. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 205 November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. FAITH BIBLE PRESBYTERIAN CHURCH, SP 98-D-049 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit church and related facilities. Located at 6901 Haycock Rd. on approx. 1.21 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8 pt. (MOVED FROM 1/26/99).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Cathy Lewis, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the existing church and related facilities on a reduced land area of 1.21 acres. Ms. Lewis stated the applicant was also proposing some site improvements in the form of a paved parking lot and parking lot landscaping. Staff concluded the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval of the application.

Mr. Hammack referred to a letter received from a homeowner regarding concerns about the application and asked Ms. Lewis to show him where their property was in relation to the application property. Ms. Lewis stated they lived to the north of the subject property.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated the request was not to change the size of the church or parking lot, only to make the property a little less in size than it was originally. Mr. Lawrence stated the FAR permitted was .30 and currently the church is at .06 FAR, therefore, it was not an intensive use of the site even on a reduced lot size. Mr. Lawrence stated the applicant had no objection to the development conditions which addressed required a barrier fence along the property line; however, he expressed concerns with Development Condition #9 and asked to delete the first bullet and reword the second bullet.

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

Mr. Hammack moved to approve SP 98-D-048 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 17, 1998.

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continued from page 205

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FAITH BIBLE PRESBYTERIAN CHURCH, SP 98-D-049 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit church and related facilities. Located at 6901 Haycock Rd. on approx. 1.21 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8 pt. (MOVED FROM 1/26/99). 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 November 24, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6901 Haycock Road (1.21 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by B.C. Consultants dated, June 1998, as revised through October 23, 1998, 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 Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity of the sanctuary shall not exceed 288. There shall be a minimum of 72 parking spaces. All parking shall be on-site as shown on the special permit plat.

6. The existing vegetation, proposed landscaping and tree save area shall be maintained and preserved and shall be deemed to satisfy the transitional screening along the north and west property lines. A single row of evergreen trees planted eight (8) foot on center shall be planted along the east property line. The species of these evergreens shall be determined between the applicants and the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPW&ES) at the time of site plan review. In the event that any of the existing vegetation must be cleared as a result of final engineering, equivalent landscaped areas shall be substituted on the site as determined by the Urban Forestry Branch.

7. The barrier requirements shall be waived along the east and west property lines. A six-foot high solid wood fence shall be provided along the northern property line between the proposed limits of clearing and grading and the edge of the parking lot.

8. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.

9. Any existing lighting of the parking lot shall not be increased in height and the lights shall be of a design which focuses the light directly on the subject property and shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

10. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

11. The existing chain across the site entrance shall be moved back from Haycock Road to the opening of the parking lot in order to provide adequate space for vehicles to pull off from Haycock Road. Reflective markers shall be permanently added to the chain.

This approval, contingent on the above-noted conditions, shall not relieve 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 subdivision of Lot 8 [Tax Map Number 40-4 ((1)) 8] has been recorded among the land records of Fairfax County and construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or 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. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 2, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 207, November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH J. WEIK, VC 98-M-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.0 ft. from side lot line and 22.0 ft. from front lot line. Located at 6627 Barrett Rd. on approx. 10,270 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 152.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph Weik, 6627 Barrett Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport 2.0 feet from the side lot line and 22.0 feet from the front lot line. A minimum side yard of 12 feet is required, however, a 5 foot extension is permitted, and a minimum front yard of 30 feet is requested; therefore, variances of 5.0 and 8.0 feet were requested.

Mr. Weik presented the variance request as outlined in the statement of justification submitted with the application. Mr. Weik stated that his rear yard was a steep hill which was not buildable and therefore there was no other location to build the carport on his property.

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

Mr. Pammel stated there was only a 2 foot side yard setback and believed it was not adequate to allow maintenance on the property when necessary. He stated most of the variances granted in this area were 5 feet and he would be comfortable with that, but not 2 feet. Mr. Pammel asked the applicant if he could reduce the width of the carport.

Mr. Weik stated that due to the size of the lot and house on the lot there was no way to reduce the carport and it would mean he could not have one if he had to maintain the 5 foot setback.

Mr. Pammel moved to deny the application. Mr. Hammack seconded the motion which failed for a lack of 4 votes. Chairman DiGiulian, Mr. Dively, Mr. Kelley and Mr. Ribble voted against the motion.

Mr. Dively stated the application was a hardship due to the fact it was a narrow lot and there was not another location for the carport.

Mr. Dively moved to approve VC 98-M-111 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 17, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH J. WEIK, VC 98-M-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 2.0 ft. from side lot line and 22.0 ft. from front lot line. Located at 6627 Barrett Rd. on approx. 10,270 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 152. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 24, 1998; and

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

1. The applicant is the owner of the land.
2. Due to the narrowness of the lot, the applicant was limited to the location of a 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a carport addition shown on the plat prepared by Larry N. Scartz, dated June 25, 1985, revised by Gilbert M. Glaubinger, dated June 30, 1998, 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 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 4-2. Mr. Hammack and Mr. Pammel voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 2, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 209, November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SPRINGFIELD GOLF AND COUNTRY CLUB, SPA 76-S-182-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-S-182 for country club to permit building addition and site modifications. 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 applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit construction of a new and larger club house. Staff recommended approval of the special permit amendment subject to the revised proposed Development

Conditions dated November 24, 1998. Mr. Bernal stated the only change to the conditions was Condition #2 which reflected the date of the revised plat.

Mr. Lawrence presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated there was not a proposal to increase the membership of the club, only to provide a new facility for the club, in terms of the building which currently exists. Mr. Lawrence stated the West Fairfax Citizens Association did not believe it was necessary to meet with them due to the membership not being increased. Mr. Lawrence submitted a letter to the Board to support the deletion of a trail as noted in the revised development conditions.

Mr. Lawrence recommended the deletion of Development Conditions #16 and #17.

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

Mr. Kelley moved to approve SPA 76-S-182-5 for the reasons noted in the Resolution subject to the revised Development Conditions dated November 24, 1998, with Conditions #16 and #17 to be deleted.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SPRINGFIELD GOLF AND COUNTRY CLUB, SPA 76-S-182-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 76-S-182 for country club to permit building addition and site modifications. 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. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 24, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-403 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only, Springfield Golf and Country Club, and is not transferable without further action of this Board, and is for the location indicated on the application, 8301 Old Keene Mill Road, consisting of 157.6 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William E. Missell of Rinker-Detwiler and Associates, dated August 4, 1998, as revised through November 23, 1998, 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 Public Works and Environmental Services (DPW&ES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit Amendment plat and these development conditions. Minor Modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

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 maintained as shown on the special permit plat. In addition, Transitional Screening 1 shall be provided and maintained without modification along the lot line south of the tennis courts and swimming pool to completely screen the uses from the Rhygate subdivision, except adjacent to Lots 36 - 42
where the lot owners have submitted a letter requesting less plant material as per condition number 6 of SPA 76-S-182-4. 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.

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, daily.

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. If not already documented, 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. If not already prepared, 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, DPW & ES, 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, DPZ.

15. If not already demonstrated, prior to site plan approval, the applicant shall demonstrate that rip-rap channels already constructed within the 100-year flood plain have not or will not create or aggravate drainage or streambank erosion problems downstream from the subject property, as determined by the DPW & ES. The applicant shall submit information to DPW & ES regarding the design of the streambank stabilization measures established on the property to enable DPW & ES to determine if those measures conform with the design practices of DPW & ES for streambank stabilization. If DPW & ES 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 & ES.

This approval, contingent on the above-noted conditions, shall not relieve 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, with out notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 2, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 212, November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. NANCY AND JOSEPH GENNARO, VC 98-Y-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and deck 3.8 ft. from rear lot line. Located at 14801 Hartlaub Ct. on approx. 5,473 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6)) (9) 15.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nancy Gennaro, 14801 Hartlaub Court, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition and a deck 3.8 feet from rear lot line which abuts open space. A minimum rear yard of 25 feet is required for the addition; therefore, a variance of 21.2 feet was requested. A minimum rear yard of 7.9 feet is required for the deck; therefore, a variance of 1.2 feet was requested.

Ms. Gennaro presented the variance request as outlined in the statement of justification submitted with the application. Ms. Gennaro stated they only owned 15.8 feet behind their home, however they were required to ask for a variance of 21.0 feet. She stated that even the builder should not have been held to this

standard and stated that the rear yard backed up to a floodplain, which was considered a public park. Ms. Gennaro stated no one would be able to see the additions from the street.

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

Mr. Dively moved to approve VC 98-Y-106 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 17, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANCY AND JOSEPH GENNARO, VC 98-Y-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and deck 3.8 ft. from rear lot line. Located at 14801 Hartlaub Ct. on approx. 5,473 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6))(9) 15. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 24, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The owner should not be held to a different standard than the builder.
4. The request was modest due to floodplain in the rear yard.

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

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

confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

1. This variance is approved for the location of the addition and deck shown on the plat prepared by Land Design Consultants, dated August 31, 1998, 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. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 2, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 214, November 24, 1998, (Tape 1), Scheduled case of:

9:00 A.M. G. J. ROMAIN, SP 98-M-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.8 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with VC 98-M-098).

9:00 A.M. G. J. ROMAIN, VC 98-M-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.7 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with SP 98-M-045).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gregory Romain, 7219 Calvert Street, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a storage shed measuring 8.9 feet in height to remain 8.8 feet from the side lot line. A minimum 20 foot side yard is required, representing a 56% error. The applicant also

requested a variance to permit the construction of an addition 12.7 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 7.3 feet was requested.

Mr. Romain presented the variance request as outlined in the statement of justification submitted with the application. Mr. Romain stated he did not know the shed was in error when he purchased the property in 1996, therefore, he asked the Board for their approval of the application. He stated there were many homes in his neighborhood which had sheds, garages and carports and stated his request was nothing unusual, and asked the Board for their approval.

There were no speakers present to speak in support of the application.

Walter Coleman, 7324 Auburn Street, Annandale, Virginia, came to the podium to speak in opposition to the application. Mr. Coleman submitted a letter to the Board and made his presentation based on this letter. Mr. Coleman stated he had no opposition to the special permit application, however, the variance application was out of character with the neighborhood and said the standards for the granting of a variance were not met.

Henry Werner, 7225 Calvert Street, Annandale, Virginia, came to the podium to speak in opposition of the application. Mr. Werner submitted a letter to the Board and made his presentation based on this letter. Mr. Werner said his dwelling was 20 feet from the side lot line and an unlicensed contractor was used to construct the addition. Mr. Werner said the standards were not met and the request was out of character with the neighborhood. Mr. Werner expressed his concern regarding the value of his property if the application was approved.

Mr. Romain came to the podium to rebut the opposition. Mr. Romain stated that Mr. Werner was the former homeowners association president and Mr. Coleman was the present president of the homeowners association. Mr. Romain submitted photographs to the Board to show the distance between the property lines. He stated there were twenty trees that were in a row approximately 200 feet long which separated the property and stated he believed Mr. Werner's comments were inappropriate based on the letter submitted to the Board.

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

Mr. Ribble moved to approve SP 98-M-045 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 17, 1998.

Mr. Ribble moved to deny VC 98-M-098. Mr. Hammack seconded the motion which carried by a vote of 3-3. Mr. Dively, Mr. Kelley and Mr. Pammel voted against the motion. Ms. Gibb was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

G. J. ROMAIN, SP 98-M-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard
requirements based on error in building location to permit accessory structure to remain 8.8 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Concurrent with VC 98-M-098). 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 24,

1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure shown on the plat prepared by Alexandria Surveys, Inc., dated November 21, 1996, as revised through September 1, 1998, 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. Kelley seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 2, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 216 November 24, 1998, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. DARYL SCHAUSS, CEDAR RUN LAWN MANAGEMENT, INC., A 1998-HM-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a contractor's office and shop, storage yard and junk yard on property in the R-1 District, all in

violation of Zoning Ordinance provisions. Located at 9638 Clarks Crossing Rd. on approx. 2.32 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 6.

Daryl Varney, Zoning Administration Division, stated the appellant was not the owner of the property, however was leasing a portion of the property for his lawn maintenance business. Mr. Varney stated zoning inspections revealed commercial vehicles advertising the lawn company were stored on the site as well as other lawn maintenance equipment. The appellant was in violation of Paragraph 5 of Section 2-302 of the Zoning Ordinance.

Daryl Schauss, 829 Baldwin Drive, McLean, Virginia, came to the podium and stated he first started storing vehicles on the property in February 1996. He stated he did not know at that time he was in violation of any County Ordinances. Mr. Schauss stated there were no residential uses around the property at the time he started leasing the property. Mr. Schauss stated he was willing to move his business, however asked the Board if he could be granted enough time to vacate the property. Mr. Schauss suggested a date of April 30, 1999. He stated if he was not granted this time, he would have to sell his business because he would not have a place to store his vehicles and conduct his business. Mr. Schauss submitted a petition of signatures of local neighbors in support of a six (6) month lead time to allow Mr. Schauss enough time to find another place to conduct his business from.

Ugenia Stratus, Starks Crossing development, came to the podium to speak in opposition of the appeal application. She stated the business knew of the violation since July 23, 1998, and already asked for a continuance. She stated to extend this seemed to take advantage of the system. She referred to a letter from the Starks Crossing Homeowners Association which was submitted for the record and stated they were against the business. Ms. Stratus stated the business was a portable business and did not agree to the extension of time.

John Sekas, 9800 Clarks Crossing Road, came to the podium to speak in favor of the application. Mr. Sekas stated he was a neighbor and a developer in the community. He stated his company, Sekas Homes, had built over 100 homes within a 1 mile radius of the property. Mr. Sekas stated he found it appalling that the developers did not show respect for Cedar Run since Mr. Schauss was there first. He stated Mr. Schauss was willing to move out and clean up the property, but he was there first and anyone who bought homes within the area knew his business was there. Mr. Sekas stated the reason for Mr. Schauss asking for the extended time was because he himself was trying to find a place for Mr. Schauss to rent. Mr. Sekas said he lived down the block from the business in the largest home, the highest tax paying home in the neighborhood and the business did not bother him. Mr. Sekas asked the Board to give Mr. Schauss the additional time to give him the opportunity to move his business.

Judith Render, Lot 19, Full Cry Farms, came to the podium to speak in opposition of the appeal. She stated the business was an eyesore and stated prior to this business the owner of the property leased space to someone who stored a boat on the property. Ms. Render stated she supported Ms. Stratus's comments and stated a business should not be conducted in a residential neighborhood.

Mr. Varney submitted photographs which were taken on November 19, 1998, which adequately conveyed the storage and other uses on the property.

Mr. Shoup stated staff was also concerned about allowing the activity to remain until April due to that being the next business season for the lawn company. Mr. Shoup stated that Mr. Schauss had admitted the violation and he asked the Board to uphold the Zoning Administrator. He stated that staff would work with Mr. Schauss and come up with a reasonable agreement about clearing the property but did not support the April time frame.

Mr. Schauss stated he understood the neighbors concerns and agreed with them. He stated the winter time was his slow time and stated it would be the ideal time to move, once he was able to find a new location. Mr. Schauss indicated that the key to his business was the location and stated that was why it was so hard for him to find a new location.

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

Page 218 November 24, 1998, (Tape 1), DARYL SCHAUSS, CEDAR RUN LAWN MANAGEMENT, INC., A 1998-HM-028, continued from page 217

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator in Appeal Application A 1998-HM-028. He stated there was no disagreement about the facts of the case and noted he was impressed by the candor of the appellant in requesting additional time. He noted the appellant had not asked for deferrals in hearing dates to take advantage of the system. Mr. Hammack asked the Zoning Administrator to give Mr. Schauss reasonable time to relocate before actively enforcing the Board's decision to uphold the appeal.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote. Ms. Gibb was absent from the meeting.

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Page 218 November 24, 1998, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. MARK AND BARBARA ZIEGLER, A 1998-SU-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the approval of minor site plan #19695 by the Chief of Site Review Branch, Department of Public Works and Environmental Services, which allows for the construction of a trail on Community Association property. Located at the S.W. corner of Meherrin Dr. and Gristmill Sq. on approx. 19.45 ac. of land zoned R-C. Sully District. Tax Map 53-3 ((4)) (1) C.

Tom Nelson, Department of Public Works and Environmental Services, made staff's presentation as outlined in the staff report dated November 16, 1998.

Mr. Hammack asked Mr. Nelson if he had reviewed the fax received from the Army Corps of Engineers dated November 24, 1998. Mr. Nelson stated he had not had the opportunity to review the document. Mr. Hammack asked Mr. Nelson to review the fax to determine whether the information changed the staff's position on whether the appeal was justified.

John Freedman, Office of Site Development Services, Department of Public Works and Environmental Services, stated the Army Corps of Engineers has a number of nationwide permits available to applicants for construction of and disturbance of small areas of wetlands. Staff would require, in terms of site plans, the applicant sign a statement on the plan that all necessary permits required by law would be acquired before construction began. Mr. Freedman stated the fax document indicated there was a site visit performed by a staff member from the Army Corps of Engineers who determined there may be a need for a nationwide permit for construction of the trail. Mr. Nelson stated, typically, a nationwide permit would allow the disturbance of up to an acre of wetlands without going through a full permitting process and generally those permits were given administratively without any requirements for public hearings.

Mr. Hammack asked if that affected the review process by the Zoning Administrator in approving the trail to be constructed.

Mr. Freedman stated the applicant was responsible to get the permit. Mr. Hammack asked if that would change the position of the County to give the proper approval for the construction of the trail. Mr. Freedman stated the Ordinance specifically required only the developer sign a statement on the plan that he would obtain all necessary wetland permits. Mr. Nelson stated there was a statement on the plan signed by Chet Haney, Sequoia Management, to that effect.

Barbara Ziegler referred to a handout distributed to the Board and made her presentation based on this handout.

Chairman DiGiulian stated he would limit the appeal to what was submitted with the application, which was the County did not enforce State regulations as they referred to RPA's and that the planned construction would fall on the appellants property line. Chairman DiGiulian stated those were the only two issues in the appeal.

Ms. Ziegler stated the area that was cleared was beyond the scope of the approved minor site plan. She stated the mandated preconstruction meeting between the County and the construction company had not taken place. Ms. Ziegler stated substantial damage was done prior to winning a court injunction to stop the

construction. Ms. Ziegler stated the trail behind her home was converted into trail as wide as a two lane highway. She stated many more trees were cleared than were originally planned. She said the construction crews began bulldozing trees before they were marked by Fairfax County officials. Ms. Ziegler referred to photographs contained in her handout. Ms. Ziegler stated although the construction had been halted until the Board hearing, many of the problems sited to the County they had determined would occur had happened due to an inadequate water drainage, she stated they had always suffered from a damp yard which would take weeks to dry after rain. She stated it appeared to have worsened since the construction of the trail began. Ms. Ziegler stated this was a result from the removal of numerous drainage pipes from neighboring homeowners and also from the vast removal of trees from the construction of the trail. Ms. Ziegler stated other environmental concerns include the disruption of wildlife.

Jim Ishi, Attorney for the Appellant, came to the podium and made his presentation as outlined in a handout submitted to the Board. Mr. Ishi stated the Board should be concerned with projects that went forward with construction when the project was done while matters were pending before the Board. Mr. Ishi stated in the staff report staff had indicated there was insufficient information to meet the requirements of the Ordinance. Mr. Ishi stated the appeal was filed by the Ziegler's without any professional help, however stated his firms' involvement was only with the injunction and only became involved with the application within the past few days. Mr. Ishi referred to a letter from the Chesapeake Bay Local Assistance Department, which was contained in the handout to the Board.

Chairman DiGiulian stated there was no factual information provided to the Board from the appellant, in his opinion, he stated it was all hearsay. Mr. Ishi stated referred to the handout and stated there was evidence to see that the area should be considered a wetland area.

Greg Mathieson, 6601 Ashmere Lane, came to the podium to speak in favor of the appeal and showed the Board a video tape of an area in his rear yard which he considered to be a wetland area.
Angela Morgan, 6607 Ashmere Lane, came to the podium to speak in favor of the appeal. Ms. Morgan stated she was directly affected by the trail due a creek running behind her home. She stated any tree removal would affect her property due to the creek flooding. She stated the Board of Trustees circulated a petition for homeowner approval of the trail, which she did not sign, due to the problems they currently endure in their back yard.

Mario Rebelo, 15507 Meherrin Drive, came to the podium to speak in favor of the appeal. Mr. Rebelo expressed his concern of water damage to his rear yard once the trail was built.

Mark Ziegler, stated the trail came to his property line and in some areas was 15 feet from his patio. Mr. Ziegler stated there was no buffer between the trail and his home and expressed his concerns for the safety of his family with the construction of the trail due to the removal of the tree buffer.

Chairman DiGiulian asked if the construction of the trail encroached into his property. Mr. Ziegler stated it did not go into his property.

Mr. Hammack asked if the only issue was whether the Department of Public Works made an error in approving the minor site plan to permit the construction of the trail. Mr. Hammack stated he had not heard any explanation of how the County was in error and asked Mr. Ziegler if he had read the staff report. Mr. Hammack referred to the staff report and asked Mr. Ziegler if he disagreed with the characterization of the appeal as contending by approving the site plan in which the County failed to enforce unspecified State and Federal regulations relative to resource protection areas.

Mr. Ziegler stated that he was aggrieved and referred to his lawyer.

Mr. Ishi responded by stating the particular Code section in the appeal notice was not specified and referred to a letter the Board received regarding regulations from the Chesapeake Bay Local Assistance Department and the implementation of the mapping processes. Mr. Ishi stated the trail was built for purposes of linking to other recreational areas within the community and said there were conditions which could be imposed with respect to allow the trail to comply with Best Management Practices under the Chesapeake Bay Preservation Act.

Mr. Hammack asked if under the existing Ordinance if the County followed its rules and regulations. Mr. Ishi stated under the existing Ordinance the County's regulations were inconsistent or unclear because of the RPA definition. He stated he did not believe County staff had not tried to follow the Ordinance, however believed there was a problem with the Ordinance and in some few specified instances where there was information to the contrary, County staff should look into it.

Diane (inaudible), Eagle Tavern Lane, came to the podium to speak in favor of the appeal. She stated the area was devastated from the tree removal. She stated anyone would have access to the back of the homes with the tree removal and was concerned about the safety for children.

Maura Mathieson, 6601 Ashmere Lane, came to the podium to speak in favor of the appeal. She stated over the years they have had the County out to their property in order to survey the retention storm drain and the water collection. She stated the drain was improperly installed by the builder.

Joe Mingold, Counsel for Virginia Run Community Association, came to the podium and stated there was no showing of
an RPA. He stated the application allegations were general and vague and did not have any ground for the appeal that specifies the basis for the appeal and have made no factual showing supporting the appeal.

Richard Sheets, Architect retained by the Virginia Run Community Association, Project Manager in the oversite of the construction of the trails program. Mr. Sheets stated the area in which the video tape showed massive water was at least two full city blocks from the construction site. He stated the area in which the path was constructed did not sustain any standing water. Mr. Sheets stated the during the construction of the trail rear yard drainage would be necessary. He stated the full width of the trail would be a 6 foot asphalt trail and therefore no more trees were removed than necessary to facilitate the construction of the trail. Mr. Sheets stated the association was very conscientious of the tree removal and attempted to minimize any trees to be cleared. He stated the trail did go through a heavily treed area, however stated that was what was designed and approved. Mr. Sheets stated there was a 50 to 60 foot opening in the treed area that already existed in the Ziegler's rear yard and stated that had not been disturbed. He said none of the tree protection had been taken away from what they currently had. The trail did not encroach on their property or any other property, he said it was all contained within the association property. Mr. Sheets stated the project was 40% completed and to stop the project would create a further hazard due to erosion and the trees were already removed and asked the Board to allow the trail construction to go forward.

Mr. Pammel questioned documentation dated 1988 which was a master plan for the community which reflected the open areas and asked if the association had adopted a trails plan for the community and asked when that was completed.

Mr. Sheets stated his company was brought into the project after all the planning was done, after all the engineering was completed and approved and after all permits were issued.

Mr. Steve Logan, 15090 Weatherburn Drive, Centreville, Virginia, President, Board of Trustees for the Virginia Run Community Association, showed Mr. Pammel a copy of a 1991 master trails plan which identified trails for the association which identified the trail in question specifically.

Mr. Pammel asked if the plan was approved by vote of the entire association or only the Board of Trustees.

Mr. Logan stated in 1994 the entire community held a public hearing, as would happen with any major project, and addressed not only the trails but also a recreation site which was completed one year prior. He stated at that meeting the entire community was invited to come and voice their opinion and based on that input from the community the Board of Trustees moved forward and decided as to whether to go forward with the project or not. Mr. Logan stated at that meeting there was no opposition to the trails. He stated based on the court injunction, Mr. Logan believed it was necessary to poll the community and see if there was an overwhelming majority of the people in the community who had changed their mind to the trail. Mr. Logan stated the Board of Trustees received over 90 proponents for the trail in the community. He stated the majority surveyed were people nearest the trail and abutting the trail had voted in favor of the trail, as well as the two neighbors adjacent to the Ziegler property.

Mr. Pammel asked if it was a requirement that the association budget be approved by the association in its entirety or did the Board allocate the funds as appropriate.

Mr. Logan stated at their annual meeting the budget was presented and stated there was no requirements in their covenants which required a full community vote on the budget. He stated the Board of Trustees voted on the levels of the budget.

Greg Rickter, 6204 Points Circle, Centreville, a member of the Board of Trustees, stated he was the person who went through the neighborhood for petition signatures. He stated he could have gone to only the neighbors who were not affected by the trail, however, he said he went to all affected homeowners and informed them of the Board of Trustees plan to build the trail and asked for signatures if a homeowner was in favor and if the homeowner was not in favor, he stated he then asked why and what the opposition was. He confirmed the neighbors on either side of the Zieglers and the neighbors across the street all supported the trail.

Robert Donnolly, 15495 Eagle Tavern Lane, approximately 2 blocks away from the trail on Meherrin Drive, came to the podium to state the community had gone the extra mile in the matter. He stated the community overwhelming supported the construction of the trail and said he was also in favor of the trail.

Bill Bushmarr, 15145 Weatherburn Drive, Centreville, came to the podium and stated the property boarders common
properties and said the trails were heavily used and were one of the more sought after amenities within the community and said he was also in favor of the trail.

Mr. Ishi stated there was evidence of wetlands along the trail and asked the Board to overrule the Zoning Administrator.

Mr. Pammel made a motion to uphold the opinion of the Zoning Administrator in appeal application A 1998-SU-030. He stated his rationale was the process followed the proper process by the association and their representatives. He said the specific appeal involved two points, the encroach of the property owners and whether the County procedures and standards were followed with the approval of the minor site plan. Mr. Pammel stated in both instances the County had complied with the letter of the law and said even the existing wetlands did not preclude the construction of trails.

Mr. Kelley and Mr. Hammack seconded the motion.

Mr. Hammack stated the issue was very narrow and did not see any compelling evidence the County had made an error in their approval process, which was the burden the appellant had to carry.

Chairman DiGiulian also supported the motion and stated how the decision to build the trail was arrived at or how the community voted for the trail did not enter his decision, he stated his decision was based upon the appeal and that the appellants had not shown any way that the County had failed to enforce State regulations that pertain to RPA as well as the appellants testimony that there was no encroachment on their property.

The motion to uphold the Zoning Administrator carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 221, November 24, 1998, (Tape 1), Scheduled case of:

9:30 A.M. SMITH PROPERTY HOLDINGS, A 1998-PR-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has installed a freestanding subdivision entrance sign which obstructs and interferes with the sight distance of motorists, in violation of Par. 1 of Sect. 2-505 of the Zoning Ordinance. Located at 8301 Anderson Dr. on approx. 17.79 ac. of land zoned R-20. Providence District. Tax Map 49-4 ((1)) 57B.

Mr. Pammel moved to accept the withdrawal request for the above referenced appeal. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:56 a.m.

Minutes by: Deborah Hedrick

Approved on: March 9, 1999

Regina Thorn, 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 Tuesday, December 1, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Nancy Gibb was absent from meeting.

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

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Page 223, December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. TOMMY P. CHIN, VC 98-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.5 ft. from front lot line **(THE ADDITION REQUEST WAS WITHDRAWN)** and accessory structure 1.0 ft. from side lot line. Located at 4925 Grafton St. on approx. 20,000 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((3)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tommy Chin, 3350 Monarch Lane, Annandale, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 32.5 feet from the front lot line and an accessory structure 1 foot from the side lot line. A minimum front yard of 35 feet is required; therefore, a variance of 2.5 feet was requested for the addition. A minimum side yard of 15 feet is required; therefore, a variance of 14 feet was requested for the accessory structure.

Mr. Chin presented the variance request as outlined in the statement of justification submitted with the application. He said the garage had been built 60 years ago and the structure was deteriorating and becoming a hazard and needed to be replaced. He said the request to enclose the front porch was withdrawn and that he would keep the existing front porch.

Mr. Hammack asked if the proposed garage would be closer than the existing garage. The applicant replied no.

Chaiman DiGiulian called for speakers.

William B. Smith, 4929 Grafton Street, came forward to speak in opposition. He requested that the proposed garage be moved over four (4) feet from the property line.

Mr. Chin gave rebuttal indicating that he would have to remove oak trees over 100 years old and move the existing driveway to accommodate the request.

Mr. Hammack asked the applicant if he would be willing to move the garage 1 foot over. Mr. Chin said if it would please the Board, he would do what he could.

Mr. Hammack noted that the oak trees were not shown on the plat.

Mr. Hammack moved to approve-in-part VC 98-M-108 and for the applicant to construct the detached garage at least 2 feet from the property line. He said he understood Mr. Chin's concerns about removing the trees. Mr. Hammack said the applicant would have to provide revised plats showing the garage in the new location.

Mr. Pammel seconded the motion.

Mr. Kelley made a substitute motion, and said he supported the garage and didn't think the Board should make him change the location because it had been there for over 60 years. He said the applicant would have to go through the expense of extra plats and he didn't think that was necessary. Mr. Kelley said this was a replacement of an existing structure.

Mr. Dively said if that was a substitute motion he would second it.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TOMMY P. CHIN, VC 98-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.5 ft. from front lot line **(THE ADDITION REQUEST WAS WITHDRAWN)** and accessory structure 1.0 ft. from side lot line. Located at 4925 Grafton St. on approx. 20,000 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((3)) 15. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1998; and

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

1. The applicant is the owner 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a detached garage shown on the plat prepared by Stephen K. Chan, P.E., dated June 28, 1993, as revised through September 5, 1998, 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. Dively seconded the motion which carried by a vote of 4-1 with Mr. Pammel voting nay. Mr. Ribble was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 225 December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN J. AND MARJORIE A. GRUBIC, VC 98-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in a front yard, stairs to remain 4.9 ft. and 5.4 ft. from side lot line and pool coverage to exceed 30% of the minimum required rear yard. Located at 12320 Valley High Rd. on approx. 9,524 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((8))(1) 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. Marjorie Grubic, 12320 Valley High Road, Herndon, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a 6.0 foot high fence in a front yard and pool coverage to exceed 30% of the minimum rear yard. The stairs which were originally part of the variance request was found to be in compliance. The maximum permitted height of a fence in a front yard is 4 feet; therefore, a variance of 2 feet was requested.

Ms. Grubic presented the variance request as outlined in the statement of justification submitted with the application. She said the permit to build the pool was approved and the plat signed by the County reflecting that the pool was within the 30% rear yard guidelines. Ms. Grubic said when she replaced an existing wall, the County reinvestigated the proposal and said the pool alone covered at least 40% of the rear yard. She said she would not have constructed the pool knowing it was not in compliance. Mr. Grubic stated they had contracted Long Fence to build their fence and that it would not affect sight lines and would increase safety for the children in the neighborhood. He said there was limited vehicle access because of the pipestem. He said the fence would pose no hazard or hardship for his neighbors. Mr. Grubic presented a copy of a sight inspection report to the Board prepared by Greenhorne & O'Mara .

Chairman DiGiulian called for speakers.

Steve and Hillary Warnock, 12311 Valley High Road, Janet Sansalone, 12309 Valley High Road, and Rhonda Marcella, 1311 Forty Oaks Drive came forward to speak in support of the application. They stated

that a 6 foot fence was common in their neighborhood and would provide safety.

Tom and Darlene Holdsworth, 12318 Valley High Road, Charles and Marissa Wortman, 12314 Valley High Road, and Christina Windsar, 12316 Valley High Road, came forward to speak in opposition of the application. They expressed concerns relating to drainage problems caused by the pool and concerns about safety and security relating to the sight lines caused by the fence.

Ms. Grubic stated in her rebuttal that she felt the application met the required standards for a variance. She said she would like additional privacy which could be obtained by the fence. Ms. Grubic said she had obtained a traffic evaluation and safety was not an issue.

Mr. Hammack indicated that Mr. Holdsworth had filed an appeal previously. He asked what happened with the appeal. Mr. Holdsworth said he withdrew the appeal because he had been threatened in writing with a lawsuit and that the police

had been called on their son. He said the appeal was not a good idea for neighborhood harmony.

Mr. Pammel said this application was controversial and difficult. He said the issue of drainage was not to be considered by the BZA, but by the Department of Public Works and Environmental Services. He said the issues of sight lines relating to the fence had been addressed by the report from Greenhorne & O'Mara. Mr. Pammel stated that everyone had the right to use their property to its full enjoyment and the solution would be to have everyone drive very carefully. He said the property was attractive and was not detrimental to the neighborhood. Mr. Pammel moved to approve VC 98-D-107 for the reasons noted in the Resolution.

Mr. Kelley supported the motion, stating that when you buy a pipestem lot there would be other concerns to deal with.

Mr. Hammack said the Grubics had moved their fence from the property line to give the owner of Lot 23 visibility. He said the testimony indicated that children were allowed to play freely on the pipestem and were not being taught to respect adjoining property owners. He said children could easily climb a 4 foot fence. Mr. Hammack said the applicants made efforts to provide safety and protect residents in the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN J. AND MARJORIE A. GRUBIC, VC 98-D-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in a front yard, stairs to remain 4.9 ft. and 5.4 ft. from side lot line **(REQUEST FOR STAIRS ADMINISTRATIVELY WITHDRAWN)** and pool coverage to exceed 30% of the minimum required rear yard. Located at 12320 Valley High Rd. on approx. 9,524 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((8))(1) 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 December 1, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The applicant has the right to use their property for their full enjoyment.
4. The issue of the fence pertaining to sight distance was adequately addressed by the engineers of

Greenhorne and O'Mara.

5. There is a need for security because of the pool.
6. The issue of rear yard coverage is moot and the neighbors had no problem with that issue.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for the location of a swimming pool with decking, and for a fence measuring six (6) feet at its maximum height, in the locations shown on the plat prepared by Greenhorne & O'Mara, Inc., dated February 15, 1986, and sealed on September 21, 1998, submitted with this application and is not transferable to other land.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. STEPHEN M. AND SUSAN M. RENNA, VC 98-M-112 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.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven Renna, 8214 Hillcrest Road, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 16.7 feet from the street line of a corner lot. A minimum yard 35 feet is required; therefore, a variance of 18.3 feet was requested.

Mr. Renna presented the variance request as outlined in the statement of justification submitted with the application. He said the property was a corner lot with 2 front setbacks. He said a variance was granted for the proposed addition in 1995 but was never constructed and the variance expired. He said most homes in the neighborhood had garages. Mr. Renna said the neighbors were in support of the application.

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

Mr. Dively moved to approve VC 98-M-112 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN M. AND SUSAN M. RENNA, VC 98-M-112 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. 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, 1998; and

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

1. The applicants are the owners of the land.
2. The variance requested is modest.
3. The lot has an unusual situation with two 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.

Page 229, December 1, 1998, STEPHEN M. AND SUSAN M. RENNA, VC 98-M-112, continued from page 228

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

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

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

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

1. This variance is approved for the location of the garage and breeze-way addition shown on the plat prepared by

   Alexandria Surveys, Inc., 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.

3. The addition shall be architecturally compatible to 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. Mr. Hammack was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 229, December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD C. AND RUBY E. SMITH, VC 98-H-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. from rear lot line. Located at 2904 Oak Shadow Dr. on approx. 15,546 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 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. Richard Smith, 2904 Oak Shadow Drive, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 17.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 7.2 feet was requested.

Mr. Smith presented the variance request as outlined in the statement of justification submitted with the application. He said permitting construction of a screened porch would allow all members of his family to enjoy exposure to the rear yard.

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

Mr. Ribble moved to approve VC 98-H-113 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD C. AND RUBY E. SMITH, VC 98-H-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. from rear lot line. Located at 2904 Oak Shadow Dr. on approx. 15,546 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 25-4 ((20)) 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 December 1, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The variance was needed because of the placement of the house on the lot and the converging lot lines.
4. The lot was oddly shaped.

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

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

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

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

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

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

1. This variance is approved for the location of a screen porch addition shown on the plat prepared by Kenneth W. White, dated June 9, 1998, 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. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 231, December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DORY TEIPEL, VC 98-D-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line and second story deck addition 10.0 ft. from side lot line. Located at 1424 Ingleside Ave. on approx. 9,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7))(1) 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dory Teipel, 1424 Ingleside Avenue, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition and 2nd story deck. A minimum rear yard of 25 feet was required; therefore, a variance of 15 feet was requested for the addition and the deck.

Ms. Teipel presented the variance request as outlined in the statement of justification submitted with the application. She said the lot was very narrow and that she was restoring an old farm house on the lot. She said she would like to preserve a tree on the lot.

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

Mr. Kelley moved to approve VC 98-D-115 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DORY TEIPEL, VC 98-D-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport and second story deck 10.0 ft. from rear lot line. Located at 1424 Ingleside Ave. on approx. 9,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7))(1) 31. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1998; and

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

1. The applicant is the owner of the land.
2. The application met the nine required standards for a variance.
3. The lot is exceptionally narrow.

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

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

Page 233, December 1, 1998, DORY TEIPEL, VC 98-D-115, continued from page 232

not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of a carport and second story deck addition shown on the plat prepared by Joseph A. Wohlmuth, dated October 27, 1998, revised through November 4, 1998, submitted with this application and is not transferable to other land.

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

3. The carport and deck shall be architecturally compatible with the dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 233, December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DALE E. STEVENS, VC 98-M-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.33 ft. from side lot line and fences greater than 4.0 ft. high in a front yard. Located at 4328 Roberts Ave. on approx. 24,272 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((5)) 73A.

Chairman DiGiulian noted the deferral request. Mr. Ribble moved to defer the application to February 9, 1999 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from meeting.

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Page 233, December 1, 1998, (Tape 1), Scheduled case of:

9:00 A.M. LARRY W. BUSCHING AND ERIK J. MCCONNELL, VC 98-Y-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 5A1 having a lot width of 67.8 ft. Located at 2509 Hollybrook Pl. on approx. 4.66 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((12)) 5A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larry Busching, 2509 Hollybrook Place, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into two lots with proposed lot 5A1 having a lot

continued from page 233

width of 67.80 feet, where a minimum of 200 feet is required by the Zoning Ordinance.

Mr. Busching presented the variance request as outlined in the statement of justification submitted with the application. He said there was an old tennis court on the property, but that the house sat on the crest of a hill and most of the property lies to the southwest of the home. Mr. Busching said the property contained a conservation easement which precludes any use of the left side of the property. He said he had spoken with a neighbor who had no objection to the application.

Chairman DiGiulian called for speakers.

Judy Kaplan, 2131 Twin Mill Lane, and Paul Hoofnagle, Rice and Associates came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 98-Y-102 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LARRY W. BUSCHING AND ERIK J. MCCONNELL, VC 98-Y-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 5A1 having a lot width of 67.8 ft. Located at 2509 Hollybrook Pl. on approx. 4.66 ac. of land zoned R-E. Sully District. Tax Map 37-1 ((12)) 5A. 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, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant satisfied the nine required standards for a variance.
3. The applicant presented testimony noting the topographical conditions of the lot.
4. The existing lot is irregularly shaped with a double front yard.
5. The applicant made a case for the variance to be granted.
6. The proposed subdivision would be consistent with density recommendations under the Comprehensive Plan.

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

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

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

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

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

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

1. This variance is approved for the subdivision of one (1) lot into two (2) lots with proposed Lot 5-A1 having a lot width of 67.80 feet, as shown on the plat prepared by Donald E. Schultz of Rice Associates, P.C. dated June 10, 1998. 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 each of 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. The minimal amount of clearing possible shall be allowed for construction of the driveway, the dwelling and the septic system on lot 5-A2, as determined by the Urban Forestry Branch.

Pursuant 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. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 235 December 1, 1998, (Tape 1), Scheduled case of:

9:30 A.M. SHEEHY INVESTMENTS ONE LIMITED PARTNERSHIP, A 1997-LE-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has not obtained a Non-Residential Use Permit required to

Page 236 December 1, 1998, SHEEHY INVESTMENTS ONE LIMITED PARTNERSHIP, A 1997-LE-028, continued from page 235

establish the use as authorized by the approval of SEA 86-L-053-1, and therefore is in violation of Sect. 18-701 of the Zoning Ordinance. Located at 6727 Loisdale Rd. on approx. 117,411 sq. ft. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51A. (Deferred from 11/11/97; Moved from 6/2/98 and 9/29/98).

Chairman DiGiulian noted the deferral request. Mr. Pammel moved to defer the appeal to March 9, 1999 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 236 December 1, 1998, (Tape 1), Scheduled case of:

9:30 A.M. KINGSTON CONSTRUCTORS INC., A 1998-MA-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is allowing property in the C-3 District for residential purposes as well as for the operation of a commercial cleaning business, the parking of a trailer and the storage of several inoperable motor vehicles on the property, all in violation of Zoning Ordinance provisions. Located at 7222 Poplar St. on approx. 10,227 sq. ft. of land zoned C-3 and SC. Mason District. Tax Map 60-3 ((16)) 93. (Deferred From 10/6/98).

Chairman DiGiulian noted the request for withdrawal. Mr. Pammel moved to accept withdrawal of the appeal. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 236, December 1, 1998, (Tape 1), Scheduled case of:

9:30 A.M. HAPPY HOMES CARPET CLEANING AND MAINTENANCE, A 1998-MA-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is using property in the C-3 District for residential purposes as well as operating a commercial cleaning business, parking a trailer and storing several inoperable motor vehicles on the property, all in violation of Zoning Ordinance provisions. Located at 7222 Poplar St. on approx. 10,227 sq. ft. of land zoned C-3 and SC. Mason District. Tax Map 60-3 ((16)) 93. (Deferred from 10/6/98).

Chairman DiGiulian noted the request for withdrawal. Mr. Pammel moved to accept withdrawal of the appeal. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 236, December 1, 1998, (Tape 1), After Agenda Item:

Request for an Intent to Defer
Carolyn and William Peters, A 1998-BR-035

Mr. Dively moved to defer the appeal to April 6, 1999 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 236 December 1, 1998, (Tape 1), After Agenda Item:

Request for Reconsideration
G.J. Romain, VC 98-M-098

Mr. Ribble moved to approve the request for reconsideration. Mr. Hammack seconded the motion which

Page 237 December 1, 1998, After Agenda Item, continued from page 236

carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 237 December 1, 1998, (Tape 1), After Agenda Item:

Approval of November 24, 1998 Resolutions

Mr. Pammel moved to approve the Resolutions with the exception of the Romain variance. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms Gibb 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 10:49 a.m.

Minutes by: Regina Thorn

Approved on: March 12, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, December 8, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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

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Page 239 December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. DAVID E. AND MARY T. HOWE, SP 98-P-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.0 ft. from side lot line and shed to remain 1.4 ft. from side lot line and 1.3 ft. from rear lot line. Located at 3404 Cypress Dr. on approx. 10,655 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8))(8) 3. (MOVED FROM 11/3/98).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Howe, 3404 Cypress Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a carport 0.0 feet from the lot line and shed to remain 1.4 feet from the side lot line and 1.3 feet from the rear lot line. A minimum side yard of 7 feet is required for the carport; therefore, the percent of error is 100%. A minimum side yard of 12 feet and a minimum rear yard of 8.8 feet is required for the shed; therefore, the amount of error is 88% and 85%, respectively.

Mr. Howe presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Howe stated their desire to rectify the error in building and asked for a way to keep the carport and shed. Mr. Howe stated that the shed existed when the property was purchased in good faith over 10 years ago. He said the carport was built using reference books and was built in good faith and he was unaware of being in error until a Notice of Violation was given to him. He said the fence line was used as the property line to build the carport. He stated the neighbor which the carport abutted did not object to the structure and said the carport was not visible from the street or the neighbor's side yard and was architecturally compatible with their home and the neighborhood and therefore, asked for the Board's approval of the application.

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

Mr. Hammack stated he did not have a problem with the shed but the carport was on someone else's property and therefore could not support the application as it was submitted. He stated an easement from the neighbor for the carport to remain on their property would be needed and also stated the fence was on their property and suggested to Mr. Howe that he resolve the issue with his neighbor to obtain an easement or remove the carport. Mr. Hammack asked the Board to consider a deferral of the application to allow Mr. Howe the opportunity to seek some appropriate remedy.

Mr. Pammel stated he was not sure if an easement would solve the problem because it was someone else's property. He said it would have to be an acquisition of enough property so they would own it and then could legally request a new variance from the property line.

Mr. Ribble asked if the neighbor was also in violation.

Ms. Langdon stated it was attached to the applicant's house and was across the property line and stated she was unsure of an appropriate answer to the question.

Ms. Gibb asked if the fence was Mr. Howe's or his neighbor's fence. Mr. Howe stated it was his neighbor's 6 foot fence along the eastern boundary line and said the fence was there when he purchased his home 10 years ago.

Mr. Hammack asked if a survey was prepared when he purchased the property and if the fence was on the

survey at that time. Mr. Howe stated it was not marked as a fence.

Mr. Howe asked if it was possible to modify the front posts which was on his neighbor's property and stated they could be moved back into their property on the side lot line. He stated it could remove the overhang and stated the neighbor did not have objection to the structure.

Mr. Hammack stated there would still be overhang and asked why a building permit was not obtained.

Mr. Howe replied originally it was planned to be a shed and was told a building permit was not needed for a shed under 150 square feet and that he then made the proposed shed into a carport but did not obtain any details on a carport.

Mr. Ribble stated the driveway was also on the neighbor's property. Mr. Howe stated he did not pay that much attention to the survey when they purchased the home.

Ms. Gibb asked if the applicant wanted to modify the application would they need to remove the overhang as it encroached the property and then apply for the carport to be located 0 feet from the side lot line.

Mr. Hammack stated he did not want to mislead the applicants by questions he had asked and said he generally did not support applications on a property line.

Mr. Hammack made a motion to continue the hearing to February 9, 1999, at 9:00 a.m. to either get a report back or have the applicants present a revised plat to best resolve the issues. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 240 December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BEHROUZ NOBARIAN AND AZAR BINA, VC 98-D-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two outlots into one lot, with lot width of 87.83 ft. Located at 7701 Magarity Rd. on approx. 8,857 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 68A.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Roger Kent Bohr, Project Manager, RC Fields, Jr. and Associates, 718 Jefferson Street, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of two outlots into one buildable lot, with the proposed minimum lot width of 87.83 feet. A minimum lot width of 95 feet is required for corner lots in the R-4 District. According to County records, the outlots were created for public utility purposes in 1952 with the approval of the Pimmit Hills Subdivision. Those lots were later conveyed by the Fairfax County Water Authority to private owners in 1970. If the lots were consolidated under a subdivision in order to build a single family dwelling, the resultant lot would meet the minimum lot area requirements and appeared to meet the density requirements of the R-4 District, but was 7.17 feet less than the required minimum lot width for the R-4 District. In staff's evaluation, there were no land use, transportation or environmental issues associated with this request, and staff believed that the variance application met the required standards for approval of a variance.

Mr. Bohr presented the variance request as outlined in the statement of justification submitted with the application. Mr. Bohr stated the applicant believed the application met the variance requirements and agreed with staff recommendations to create a subdivision plat.

Ms. Gibb asked if the request was for outlot 4 and part of outlot 5. Mr. Bohr replied that was correct. Ms. Gibb asked what happened to the other part of outlot 5. Mr. Bohr stated the other part of outlot 5 remained an outlot and ran behind several other lots in Pimmit Hills and it was an illegal subdivision by Fairfax County Water Authority and would need to be made a legal subdivision with a consolidation plat as part of the

staff's conditions.

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

Mr. Pammel moved to approve VC 98-D-109 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BEHROUZ NOBARIAN AND AZAR BINA, VC 98-D-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two outlots into one lot, with lot width of 87.83 ft. Located at 7701 Magarity Rd. on approx. 8,857 sq. ft. of land zoned R-4. Dranesville District. Tax Map 39-2 ((6)) 68A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The variance request was a minimal request.
4. The lot should be established for a residential use and meets the density requirements.

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

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

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

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

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

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

1. This variance is approved for the subdivision of the lot shown on the plat prepared by R.C. Fields, Jr., dated April 8, 1998, as revised through October 23, 1998. 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 the lot.

2. A subdivision plat shall be submitted for review and approval by the Department of Public Works and Environmental Services (DPW & ES) which demonstrates that with the incorporation of the lot, the density requirements will be met for the Pimmit Hills Subdivision.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. WENDY GRIFFITHS POHANKA, VC 98-P-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.2 ft. from rear lot line. Located at 3403 Waples Glen Ct. on approx. 42,694 sq. ft. of land zoned R-1. Providence District. Tax Map 46-2 ((23)) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wendy Griffiths Pohanka, 3403 Waples Glen Court, Oakton, Virginia, replied that it was. Ms. Pohanka introduced her builder, Glen Hosenick, to give her presentation to the Board.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch addition 15.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 9.8 feet was requested.

Mr. Hosenick presented the variance request as outlined in the statement of justification submitted with the application. He stated a septic field and septic tanks forced the house to be located 26 feet from the rear lot line. The porch was modest in size and would extend 12 feet from the back of the house and would be 19 feet in width. Mr. Hosenick stated that the construction of a screened porch addition would not be a detriment to any surrounding property and stated she had talked to her neighbor regarding the request. Mr. Hosenick asked for the Board's approval of the variance application.

There were no speakers to speak in support of the application.

Jennifer Goetz, 11331 Waples Mill Road, Oakton, came to the podium to speak in opposition to the application. Ms. Goetz stated she was directly behind the application property. She said there was no information in the application which stated how close the property was to the back of her home, which was 58 feet. Ms. Goetz said the plans Ms. Pohanka had shown her involved a deck that would extend almost the full length of her home as one option and a second option would involve a two story deck. Ms. Goetz stated the addition would be detrimental to her property. Ms. Goetz gave the Board photographs which showed the view from her bedroom and bathroom windows. She stated the public areas of Ms. Pohanka's home all faced the private areas of her home. Ms. Goetz stated she did not have any serious objection to the application if some mature trees were planted; however, did not agree with anything that would be overwhelming on the house.

Mr. Dively asked if the builder could have built a deck by-right when the house was constructed.

Ms. Schilling stated the builder could have constructed a deck because that could extend into the rear yard, however, the builder could not have constructed the screened porch without approval of a variance.

Mr. Hosenick stated trees had been planted between 5 and 6 feet tall to supplement the existing tree line behind the house in an effort to provide further isolation from one home to the other. Mr. Hosenick stated the trees could be seen in the pictures presented by Ms. Goetz.

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

Mr. Dively moved to approve VC 98-P-118.

Mr. Hammack questioned the preliminary layout in the staff report and the footprint of the house location survey showed slightly different configurations.

Ms. Schilling stated Ms. Pohanka submitted a revised building elevation after the production of the staff report which met with the footprint, which was a two story deck, which included a second story deck on top of the screened porch addition.

Ms. Langdon stated the revised elevation was submitted to staff just prior to the public hearing and submitted staff's copy for the Board's review.

Mr. Hosenick stated the first elevation had an adjacent ground level deck which was eliminated so the proposed screened porch was a structure which was 12 foot by 19 foot.

Mr. Dively asked if there was two decks. Ms. Pohanka stated there would be a door coming off of the master bedroom. Mr. Dively stated the request was rendered atypical.

Ms. Gibb asked if the deck requested in the staff report was larger in area than the December 8, 1998, revised plan submission. Ms. Pohanka stated it was because it extended further across the back of the house.

Mr. Pammel stated a deferral was appropriate due to the neighbors objection to the second floor deck which was too close to the adjoining property. Mr. Pammel moved to defer the application so the applicant could submit a final plan to staff and the Board. Mr. Dively withdrew his original motion and seconded Mr. Pammel's motion.

Ms. Pohanka asked if the original plan could be submitted and stated she believed it was less obtrusive to her neighbor because it did not extend as far across the back of the house.

Mr. Pammel asked if she was referring to the plan in the staff report. Ms. Pohanka agreed.

Mr. Dively stated that was the plan he moved to approve and stated he would stand by his motion which was seconded by Mr. Ribble for the reasons noted in the Resolution subject to the Development Conditions

contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WENDY GRIFFITHS POHANKA, VC 98-P-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.2 ft. from rear lot line. Located at 3403 Waples Glen Ct. on approx. 42,694 sq. ft. of land zoned R-1. Providence District. Tax Map 46-2 ((23)) 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 December 8, 1998; and

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

1. The applicant is the owner of the land.
2. The variance request was necessary due to the odd shaped configuration of the lot.
3. The variance request was a typical request with nothing unusual.
4. The request did not impede on the privacy of other houses nearby.
5. The applicant has 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch shown on the plat prepared by Eugene A. Kiernan, Jr. Land Surveyor, dated November 9, 1998 submitted with this application and is not transferable to other land.

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

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

4. The screened porch shall be one (1) level as depicted in the staff report and attached architectural drawing.

Pursuant to Sect. 18-407 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 16, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 244, December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN C. AND JEAN B. BOTTS, VCA 93-S-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 93-S-149 to permit construction of second story addition 33.0 ft. from front lot line. Located at 6800 Newman Rd. on approx. 1.09 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-4 ((1)) 18.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven C. Botts, 6800 Newman Road, Clifton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition 33.0 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a variance of 7.0 feet was requested.

Mr. Botts presented the variance request as outlined in the statement of justification submitted with the application. Mr. Botts stated that his home was built in 1910, before a setback requirement existed. He stated a variance was approved in 1994 to extend the front porch out 4 feet to convert the porch into a room. He asked approval of a modest one room addition which would be on top of the old porch and at its closest would be 33.0 feet from the front lot line and would lay within the footprint of the original house as built in 1910. He stated there was no other option to add a room in any other location.

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

Mr. Ribble moved to approve VCA 93-S-149 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN C. AND JEAN B. BOTTS, VCA 93-S-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 93-S-149 to permit construction of second story addition 33.0 ft. from front lot line. Located at 6800 Newman Rd. on approx. 1.09 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-4 ((1)) 18. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The addition would be within the footprint of the existing house.

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

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

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

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

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

1. This variance is approved for the location of the second story addition shown on the plat prepared by Andrew P. Dunn, dated June 23, 1978, recertified June 1, 1994, as revised by James Hricko, dated September 29, 1998 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 second 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. 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 16, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 247 December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. HARRY A. HALL AND VELLIE S. DIETRICH, VC 98-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. from side lot line. Located at 5214 Gilpin Dr. on approx. 11,762 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5))(24) 148.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Harry A. Hall, 5214 Gilpin Drive, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a room addition 4.5 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 7.5 was requested.

Mr. Hall presented the variance request as outlined in the statement of justification submitted with the application. Mr. Hall stated that due to his recent marriage which combined families, a room addition was necessary to accommodate all members of the family. He stated he had received no negative comments from any neighbors with regard to the addition.

There was no one to speak in support of the application.

Ms. Hannah Lee, 5216 Gilpin Drive, Springfield, came to the podium to speak in opposition of the application. Ms. Lee stated they had purchased their home in 1989 specifically for the front and side yards. Ms. Lee stated most remodeling in the neighborhood was either done in the front or the back of the home and could not find any home which had an addition on the side. She said the addition was too close to the property line, had too many windows and would impact the property value of her home. She expressed her concerns regarding the property value and also on her privacy with the addition being too close to the side

lot line.

Mr. Hall spoke in rebuttal and stated the side of the house which the addition currently had windows and would only be moved closer to the property line by 12 feet. He also stated there would still be 25 feet between the homes, stating most homes only had 11 or 12 feet.

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

Ms. Gibb moved to approve VC 98-M-128 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HARRY A. HALL AND VELLIE S. DIETRICH, VC 98-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.5 ft. from side lot line. Located at 5214 Gilpin Dr. on approx. 11,762 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5))(24) 148.
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1998; and

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

1. The applicants are the owners of the land.
2. The location for the addition was the only location possible due to the narrow shape of the lot.
3. The applicant has 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

Page 249, December 8, 1998, (Tape 1), HARRY A. HALL AND VELLIE S. DIETRICH, VC 98-M-128, continued from Page 248

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by R. C. Fields, Jr., dated August 24, 1998, 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. Four (4) evergreen trees, a minimum of six (6) feet in height, shall be planted between the proposed addition and the southern lot line to screen the proposed addition from the dwelling on Lot 149.

Pursuant to Sect. 18-407 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 5-1-1. Mr. Pammel opposed the motion. Mr. Hammack abstained from the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1998. This date shall be deemed to be the final approval date of this variance.

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Page 249 December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MARK M. VASTOLA, VC 98-L-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in the front yard. Located at 6319 Windsor Ave. on approx. 23,950 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 29. (DEFERRED FROM 10/6/98).

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the notices were not in order for the application and suggested a deferral date of February 9, 1999, at 9:00 a.m.

Chairman DiGiulian stated the application had been deferred once before and asked for the reason for the deferral.

Ms. Langdon stated the applicant had previously mailed their notices but not within the 15 day time limit. She stated this time they mailed their notices in a timely manner, however, missed an adjacent property

owner.

Mr. Hammack moved to defer the application to February 9, 1999, at 9:00 a.m. Mr. Dively seconded the motion. The motion carried by a vote of 4-2. Mr. Kelley and Mr. Pammel opposed the motion. Mr. Ribble was not present for the vote.

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Page 250, December 8, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL D. AND CYNTHIA B. FOX, VC 98-Y-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.8 ft. from rear lot line and fence 4.2 ft. high to remain in front yard. Located at 2832 Young Dr. on approx. 40,316 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((2)) 8.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig Durosko, Agent, Sun Design Remodeling Specialists, Inc., 5799K Burke Center Parkway, Burke, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition 16.8 feet from the rear lot line and a 4.2 foot high fence to remain in the front yard. A minimum rear yard of 25 feet is required; therefore, a variance of 8.2 feet for the sunroom was requested and 0.2 inches for the fence was requested.

Mr. Durosko presented the variance request as outlined in the statement of justification submitted with the application. Mr. Durosko stated the property was purchased in good faith by Mr. and Mrs. Fox in 1990. He stated the property had two extraordinary conditions which made the house sit too close to the rear lot line; a 10 foot wide storm drainage easement which was angled across the front yard and a septic field on the other side of the front yard. He stated the position of the house was much closer to the rear lot line than other similar sized lots. Mr. Derosco stated the sunroom addition would be of similar architectural design and would not be a detriment to adjoining properties. He stated the addition would not be visible from adjacent lots to the rear because the lot was heavily wooded.

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

Mr. Kelley moved to approve VC 98-Y-122 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL D. AND CYNTHIA B. FOX, VC 98-Y-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.8 ft. from rear lot line and fence 4.2 ft. high to remain in front yard. Located at 2832 Young Dr. on approx. 40,316 sq. ft. of land zoned R-1. Sully District. Tax Map 36-4 ((2)) 8. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1998; and

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

1. The applicants are the owners of the land.

2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The placement of the house on the lot required the need for the variance.
4. The written statement of justification submitted with the application outlines the reasons 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 **APPROVED** with the following limitations:

1. This variance is approved for the locations of an addition and a 4.2 feet high fence in the location shown on the plat prepared by Kenneth W. White, dated through October 7, 1998, 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 16, 1998. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOHN R. POKRANT, VCA 98-Y-064 Appl. under Sect(s). 18-403 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 15391 Twin Creeks Ct. on approx. 15,387 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 361.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Pokrant, 15391 Twin Creeks Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to a previously approved variance to permit the construction of a gazebo 10.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 15.0 was requested.

Mr. Pokrant presented the variance request as outlined in the statement of justification submitted with the application. Mr. Pokrant stated the application was specifically for the approval of a gazebo on an existing deck with screens which would be removable. He stated he had assumed, with the approval of the original variance, the gazebo was included, however, when the builder submitted drawings which included a gazebo, the permit was not issued due to the original plat not labeling the area for a gazebo. Mr. Pokrant stated the entry to the deck was 9 feet off the ground. Due to the height and the rear setback of 25 feet, a variance was necessary. He stated the rear yard opened to a large open common area, the neighbors were in favor of the variance and it was also approved by the architectural committee of the association.

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

Mr. Hammack moved to approve VCA 98-Y-064 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 1, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN R. POKRANT, VCA 98-Y-064 Appl. under Sect(s). 18-403 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 15391 Twin Creeks Ct. on approx. 15,387 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 361. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The variance request was necessary due to the diagonal placement of the house to 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a gazebo addition shown on the plat prepared by R. C. Fields, Jr., dated October 26, 1998 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 December 16, 1998. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. WILLIAM J. PETERS III AND CAROLYN H. PETERS, A 1998-BR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are keeping 7 dogs on a lot containing 15,001 sq. ft. of land in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 4713 Eddystone St. on approx. 15,001 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7))(7) 3.

William Shoup, Deputy Zoning Administrator, stated the Board had approved an intent to defer on December 1, 1998, to April 6, 1999, to allow the appellant time to file a special permit application to seek approval to have more dogs than otherwise allowed on the property. Mr. Shoup stated the special permit application was filed December 7, 1998.

Mr. Pammel made a motion to defer A 1998-BR-035 to April 6, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Request for Reconsideration for Appeal Application A 1997-HM-040,
Golf Park, Inc., Hunter Mill East, LLC

William Shoup, Deputy Zoning Administrator, stated consideration of the request for reconsideration was continued to allow staff to walk the site with Mr. Thoburn and a representative of Supervisor Dix's Office to count the trees on the property, which took place on December 3, 1998. Mr. Shoup referred to a report from Urban Forestry dated November 13, 1998, which was the report which identified the plantings missing on site. Mr. Shoup stated that of the 303 plantings missing on site, 179 of those were trees and 124 were landscape shrubs which were missing in the parking lot and around the building. Mr. Shoup stated the dispute was between staff's position that 303 plantings needed to be provided and Mr. Thoburn's position who believed only 81 trees were needed. Therefore, the distinction between trees and shrubs needed to be made. Mr. Shoup stated there was no disagreement that the shrubs were missing and stated with respect to the trees there was a difference of 81 trees if you looked strictly at the numbers. Mr. Shoup stated that the plan reflected that 702 trees were to be provided, but that only 621 had been provided. Mr. Shoup stated more trees were provided on the north side of the property than the plan had called for. No credit was given for the 35 trees planted on a berm on the north side of the property because it was not on the site plan. Mr. Shoup stated staff stood by the November 13, 1998, memorandum and asked the Board to deny the request for reconsideration.

Mr. Pammel asked what would be necessary for Mr. Thoburn to get credit for the trees that were planted because staff did not give him credit because they were not on the plan. Mr. Shoup stated the best scenario would be another special permit amendment to address the issue. Mr. Shoup stated Mr. Thoburn did submit plats the prior week for a special permit amendment and it was approved.

Mr. Pammel asked if the revised plan showed the additional trees he was not given credit for. Mr. Shoup stated the request was to allow the existing vegetation on-site to suffice for the landscaping and screening requirement as well as additional berming and flexibility to replace plantings when he does the berming.

Mr. Kelley stated his concern regarding trees that would be removed if Mr. Thoburn had planted them. Mr. Shoup stated that was on the Toll Road side of the property where 63 trees were missing and stated under the last special permit, berms were approved on that side of the property. Mr. Shoup stated the plantings had to be provided within 6 months of the approval in February 1997. He stated Ms. Byron's position was that either within 6 months, he put in all plantings shown without the berm or within 6 months he would do the berms and put the plantings on top or to request an interpretation to allow some flexibility given the fact

that the berms would be coming later. Mr. Shoup stated none of these three options occurred.

Mr. Hammack questioned the berm with 35 trees and asked if the berm would be considered a legal berm or should additional berming have been a request before the Board. Mr. Shoup stated in the last special permit application, there was a berm shown in that location, and the condition stated it had to extend 600 feet south of Crowell Road. Mr. Shoup stated the berm did not extend that far down and said Mr. Thoburn did get approval for the berm required by the condition and the condition had not been satisfied.

Mr. John Thoburn came to the podium and stated the site plan showed 700 trees which were required to be planted. He stated he had planted all of the required trees and said a number of the trees died due to the deer population. Mr. Thoburn stated the issue of the 621 trees, of which 81 trees had died, of those 81 trees, 63 were along the Toll Road which was in the area of the new berms. He stated he had offered to staff to replant the 81 trees in a location that would not be bulldozed, in which staff did not agree. He stated, with the approval of the Urban Forester, he was allowed to relocate the trees that would be more effective in screening the neighbors. Mr. Thoburn stated the new Urban Forester was not giving him credit for the original shifts her predecessor approved, and stated it was unfair. He stated there was no point in planting another 31 trees in front of a home which currently had adequate screening when the additional screening was needed elsewhere. Mr. Thoburn stated the required trees along the Toll Road served no community purpose in terms of protecting the community. Mr. Thoburn stated conditions could be misinterpreted and said to take staff's interpretation would be unreasonable and requested the Board move to reconsider and defer a decision until after the next public hearing of the special permit amendment application.

Mr. Kelley asked Mr. Thoburn's assurance not to ask for another deferral with regard to the new special permit amendment application. Mr. Thoburn stated he would not ask for any deferral and stated he would request an expedited hearing. Mr. Kelley asked what the status of the engineer was. Mr. Thoburn stated the engineer had completed the plat and it was accepted and stated there were no issues to request a deferral on the application in the future.

Mr. Hammack asked in the request for reconsideration, only the issue of the tree count was raised and asked if that meant he wasn't questioning the decision of the Zoning Administrator with respect to the other issues which the Board had ruled in their favor and asked if he was withdrawing the challenge to those determinations by their omission in the request for reconsideration.

Mr. Thoburn stated he would withdraw the challenge for the number of lights per pole and the food stand and stated the only issues were the tree and the shrubs on-site.

Mr. Pammel stated landscaping would need to be addressed in the next special permit amendment application and said a landscaped architect would be appropriate to do a final plan that was going to be the plan for the foundation planting around the parking area and around the club house because the Board could not approve something and the appellant then does something else. Mr. Pammel stated the dilemma all along had been that Mr. Thoburn had done something other than what was in the approved plan. He stated he understood the position; however, the Board had to know and also let the community know.

Mr. Dively made a motion to grant the request for reconsideration to February 23, 1999, at 9:30 a.m. on the issue of the plantings only to be heard concurrently with the special permit amendment application. Mr. Kelley and Mr. Pammel seconded the motion which carried by a vote of 6-1. Mr. Hammack opposed the motion.

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Page 255, December 8, 1998, (Tape 2), After Agenda Item:

Approval of December 1, 1998 Resolutions

Mr. Pammel made a motion to approve the December 1, 1998, Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Request for an Intent to Defer Appeal Application A 1998-DR-038,
Mary and Kenneth Toone

William Shoup, Deputy Zoning Administrator, stated staff had concern regarding delaying the appeal due to a significant violation, however, he recognized the appellants had recently retained counsel, who had a conflict. Mr. Shoup recommended a deferral to February 9, 1999.

Mr. Dively made a motion to defer A 1989-DR-038 to February 9, 1999, at 9:30 a.m. Ms. Gibb 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 10:55 a.m.

Minutes by: Deborah Hedrick

Approved on: March 9, 1999

Regina Thorn, 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 Tuesday, December 15, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:04 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 257, December 15, 1998, (Tape 1), Scheduled case of:

8:00 P.M. CHURCH DIOCESE OF NEWTON FOR THE MELKITES IN THE UNITED STATES OF AMERICA, INC., SPA 80-D-069-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-069 for church and related facilities to permit addition and site modification. Located at 8501 Lewinsville Rd. on approx. 4.41 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 21A. (MOVED FROM 9/15/98; DEFERRED FROM 11/3/98).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Russell Smith, Adtek Engineers, Agent, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a building addition and site modifications. Ms. Wilson stated there would be no change in the previously approved seating capacity and no increase of intensity was proposed. Site modifications include reconfiguration of the parking lot and addition of parking lot landscaping. The applicant also requested modification of the transitional screening and barrier requirements along the northern, eastern and western property boundaries of the site. Staff recommended approval of the application subject to the development conditions contained in Appendix 1 of the Staff Report dated October 27, 1998.

Mr. Smith presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Smith stated the applicant had met with members of the McLean Commission and Citizens Groups and had achieved a consensus and had their approval of the plans. Mr. Smith stated the applicant agreed with the staff recommendations and proposed development conditions.

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

Mr. Hammack moved to approve SPA 80-D-069-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 27, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHURCH DIOCESE OF NEWTON FOR THE MELKITES IN THE UNITED STATES OF AMERICA, INC., SPA 80-D-069-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-069 for church and related facilities to permit addition and site modification. Located at 8501 Lewinsville Rd. on approx. 4.4 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 21A. (MOVED FROM 9/15/98; DEFERRED FROM 11/3/98). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general standards of special permit uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Church Diocese of Newton for the Melkites in the United States of America, Inc., 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), structures and/or use(s) indicated on the special permit plat prepared by ADTEK, dated through September 17, 1998, and approved with this application, as qualified by these development conditions.

3. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

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

5. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

6. The maximum number of seats in the main area of worship shall be limited to 300 seats.

7. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 and shall be a minimum of 75 parking spaces. Parking geometrics shall satisfy those guidelines specified in the Public Facilities Manual unless waived by DPW&ES. All parking for this use shall be on site.

8. Transitional screening shall be modified in favor of that shown on the Special Permit Amendment Plat. All proposed landscaping species and methods of installation shall be to the satisfaction of the Urban Forester. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary. The parsonage and the parking lot may be allowed to extend into the transitional screening yard as they currently exist.

9. The barrier requirements shall be waived.

10. Parking lot landscaping shall be provided as depicted on the special permit plat. Size and species of all vegetation shall be to the satisfaction of the Urban Forester, DPW&ES.

11. Right-of-way of forty-five (45) feet, as delineated on the SPA Plat, shall be dedicated to the Board of Supervisors, in fee simple, at time of site plan review or within sixty (60) days upon demand by Fairfax County, whichever is sooner, if dedication is not already completed.

12. Stormwater management for the application site shall be provided to the satisfaction of the Department of Public Works and Environmental Services. Creative approaches such as

bioretention/rain garden systems may be used to accomplish all or part of on-site stormwater management, to the satisfaction of DPW&ES. The existing stormwater management pond may be altered or adjusted in size to the satisfaction of DPW&ES without the requirement of a special permit amendment.

These development 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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 23, 1998. This date shall be deemed to be the final approval date of this special permit.

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Page 259, December 15, 1998, (Tape 1), After Agenda Item:

Approval of September 15, 1998 Minutes

Mr. Ribble made a motion to approve the September 15, 1998 Minutes. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 259, December 15, 1998, (Tape 1), After Agenda Item:

Request for Reconsideration for VC 98-P-118, Wendy Pohanka

Susan Langdon, Chief, Special Permit and Variance Branch, stated the request was made by Jennifer Goetz to reconsider the approval of the application.

There was no one present to speak to the request for reconsideration.

Mr. Hammack made a motion to deny the request for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 259, December 15, 1998, (Tape 1), After Agenda Item:

Approval of December 8, 1998 Resolutions

Mr. Ribble made a motion to approve the December 8, 1998 Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 260, December 15, 1998, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel, Max Pizza, Inc.

Mr. Hammack made a motion to approve retention of legal counsel to represent the Board in the appeal of application A 1998-SU-026 reversing the Zoning Administrator's determination regarding Max Pizza, Inc. Mr. Hammack moved to retain Mr. Brian McCormick to represent the Board in this matter. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 260, December 15, 1998, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel, Wolfe Brothers, Inc.

Mr. Hammack made a motion to approve retention of legal counsel to represent the Board in the appeal of application A 1998-DR-025 reversing the Zoning Administrator's determination regarding Wolfe Brothers, Inc. Mr. Hammack moved to retain Mr. Brian McCormick to represent the Board in this matter. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 260, December 15, 1998, (Tape 1), Scheduled case of:

8:00 P.M. STEPHEN L. CLEMENT, A 1998-PR-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is maintaining a junkyard in the R-1 District and has erected a fence exceeding 4 ft. in height in the front yard and 7 ft. in the side yard, all in violation of Zoning Ordinance provisions. Located at 2952 Fairlee Dr. on approx. 20,000 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 48-4 ((7)) 25. (DEF. FROM 8/18/98 AND 10/13/98).

Chairman DiGiulian noted a letter was received from Mr. Royce Spence requesting a withdrawal of the appeal application.

William Shoup, Deputy Zoning Administrator, stated all the issues of the Notice of Violation had been resolved and staff concurrent with the withdrawal request.

Mr. Dively moved to withdraw the appeal application A 1998-PR-012. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 260, December 15, 1998, (Tape 1), Scheduled case of:

8:00 P.M. MUSTANG CROSSING OWNERS, INC., A 1998-SU-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that the maximum density calculations for Rezoning Application RZ 1998-SU-007 are in accordance with the provisions of Par. 2 of Sect. 2-308 of the Zoning Ordinance. Located at 2910 Centreville Rd. on approx. 697,612 sq. ft. of land zoned R-1. Sully District. Tax Map 25-3 ((1)) 1.

Diane Johnson-Quinn, Zoning Administration Division, made staff's presentation. Ms. Johnson-Quinn stated the property which was the subject of both the rezoning and this appeal, was a 16 acre tract located at 2910 Centreville Road which is zoned PDH-5. Of the 16 acres, 6 acres (or 36% of the total area of the site) consist of floodplain and adjacent steep slopes. The property was proposed to be developed with 93 townhouses in accordance with the recent approval of RZ 1998-SU-007.

The issue on appeal was whether the Zoning Administrator properly applied the provisions of Par. 2 of Sect. 2-308 in the determination provided to Supervisor Frey during the Board's consideration of the rezoning application. This section of the Zoning Ordinance provides for a reduction in the maximum allowable density on lots which have a considerable amount of area (at least 30% of the total area of a site) which is comprised of certain specified features, including floodplain & adjacent steep slopes. In this case, the

Zoning Administrator ruled that since 36% of the total area of the site consisted of floodplain & adjacent steep slopes, Par. 2 of Sect. 2-308 was applicable. Further, the Zoning Administrator ruled that since the area consisting of these features was 36% of the site, the 50% density reduction applies to 6% of the total area of the site, as that is the area of the site which contains the features and is more than the 30% threshold. This paragraph was first established in 1978 with the adoption of the current Zoning Ordinance, however, it was then amended on January 16, 1979, to provide clarification as to the intent of the provision. This provision was also the subject of Zoning Administrator's Interpretation # 39, which was issued in 1980 and, while not directly on point, addresses the very issues raised in this appeal. The basis for this provision was concern that in an instance where more than 30% of a site contained one or more of the specified constraints, then fairly intense development would result on the buildable area of the lot, if density was calculated on the gross acreage without any reduction. Ms. Johnson-Quinn stated it was determined that such a parcel should not be treated the same for purposes of maximum density as a parcel which does not contain such constraints. The intent of the provision was not to reduce the density of sites with relatively small amounts of such constraints (i.e., up to 30% of the total area of a site), but rather, only affect those sites with considerable constraints. Accordingly, this provision was only triggered when a site contained constraints of 30% or more of the total area of the site, and then only to limit the density for that portion of the referenced features which was above and beyond 30% of the total area of the lot.

Ms. Johnson-Quinn summarized by stating that this interpretation and its application throughout the County had been longstanding. Every parcel received up to 30% of its area with such features without density limitation, and density reduction applied only to that portion of such specified features which exceeds the first 30% of the site.

Mr. Stephen Christenson, Resident and Director of the Mustang Crossing Owners, Inc., 2810 Mustang Drive, Herndon, Virginia, made his presentation based on his letter provided to the Board dated December 11, 1998. In summary, Mr. Christenson stated that the result obtained when the plain language of the Ordinance was followed gave full meaning to the entire Ordinance and resulted in no absurdities or unreasonable results, and effected its stated purpose and the statutory mandate that it be designed in a manner which reasonably prevented the overcrowding of land and undue density of population. Therefore, Mr. Christenson said the position of the Zoning Administrator in ignoring the plain language of the Ordinance and the potential consequences thereof was arbitrary, capricious and unreasonable and failed to comport with State Law.

Daniel Bell, 2802 Mustang Drive, Herndon, Virginia, came to the podium to speak to the appeal application. Mr. Bell made his presentation based on his letter provided to the Board dated December 15, 1998. In summary, Mr. Bell stated he believed the interpretation of the Zoning Administrator, in providing credits for undevelopable portion of a lot, was contrary with Ordinance intent and made it impossible for the Ordinance to perform its intended function and was unreasonable.

Claude Harris, 2832 Mustang Drive, Herndon, Virginia, came to the podium to speak to the appeal application. Mr. Harris made his presentation based on his letter provided to the Board dated December 15, 1998. In summary, Mr. Harris stated he believed that the current interpretation for the Zoning Ordinance provisions was arbitrary, capricious, unreasonable, inconsistent with the intent of the Zoning Ordinance and should be revised accordingly to reflect the concerns.

Victoria Guvanasen, 2822 Mustang Drive, Herndon, Virginia, came to the podium to speak to the appeal application. Ms. Guvanasen made her presentation based on her letter provided to the Board dated December 15, 1998. In summary, Ms. Guvanasen stated the planned development would be contrary to the intent of the Zoning Ordinance. She stated the building of 93 dwelling units would not provide safety from flood, would not protect against the overcrowding of land, would not encourage the preservation of stream valleys, and would not be in harmony with the surrounding development.

Varut Guvanasen, 2822 Mustang Drive, Herndon, Virginia, came to the podium to speak to the appeal application. Mr. Guvanasen made his presentation based on his letter provided to the Board dated December 15, 1998. In summary, Mr. Guvanasen stated an arbitrary and capricious interpretation of the Zoning Ordinance would cause adverse impacts on the environment, and deleterious effects on existing and future communities. He stated the Ordinance must be interpreted according to the plain language of the Ordinance and the well being of the County residents depended on it.

Anne Keehn, 13514 Maverick Lane, Herndon, Virginia, came to the podium to speak to the appeal application. Ms. Keehn made her presentation based on her letter provided to the Board dated December 15, 1998. Ms. Keehn referred to a map provided with her handout and stated that providing credits instead of limits for the impaired portion of a lot created densities far in excess of the stated maximum density for the specified residential districts and put disharmoniously high-density residential next to low density light industry, commercial and single family home uses.

Mr. Ribble asked what the area was between the subject property and Mustang Crossing. Ms. Keehn stated it was all floodplain within Horsepen Run.

Christopher Bell, Attorney, McGuire, Woods, Battle and Boothe, came to the podium to speak on behalf of Alban Development Corporation (developers of proposed subdivision). He stated in response to concerns, he believed the statutory construction was applied appropriately in this case. Mr. Bell stated the rezoning application was approved by both the Planning Commission and the Board of Supervisors and said Section 2-308 was also approved; therefore, if it was the intent of the citizens to suggest a modification to the provision, the process should begin with the Board of Supervisors. Mr. Bell stated the only issue was whether Section 2-308 was a validly enacted Ordinance and whether it was clear to support the Zoning Administrator's determination as it was rendered and asked the Board to affirm the interpretation by the Zoning Administrator.

Ms. Johnson-Quinn stated the determination on appeal was based on the intent of the provision as staff understood it to be at the time it was adopted. Ms. Johnson-Quinn stated there was considerable testimony during the public hearings in 1978 with regard to how much density should have been applied to areas affected by the constraints. Ms. Johnson-Quinn said staff's determination did not give anyone any more density than they were entitled.

Mr. Pammel asked staff if they agreed that the request was a minimal reduction for 36% of the site being unusable. Ms. Johnson-Quinn replied it was.

Mr. Christenson stated a plain reading of the Ordinance was necessary and stated the position of the Zoning Administrator was arbitrary, capricious and unreasonable and referred to his letter and attachments dated December 11, 1998.

Mr. Pammel asked if the 20% affordable housing credit did not apply. Mr. Christenson stated the 20% affordable housing credit only applied if the density was 50 units in the development and said if the density was less than 50 units, it did not apply.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination based on the interpretation by the Zoning Administrator and said it had been applied consistently for the last 20 years. Mr. Ribble seconded the motion.

Mr. Pammel stated just because something had been interpreted for the last 20 years did not necessarily make it right and said it could have been and continue to be interpreted for convenience sake and stated he could not support the motion. The motion carried by a vote of 6-1. Mr. Pammel opposed the motion.

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Page _____, December 15, 1998, (Tape 1), After Agenda Item:

Request from Appellant in Appeal Application A 1998-HM-034
Richard D. Jurgens

Chairman DiGiulian referred to a letter received by Mr. Jurgens dated December 15, 1998, requesting the Board of Zoning Appeals subpoena a County employee to testify on behalf of the appellant.

William Shoup, Deputy Zoning Administrator, stated the request related to an appeal to be presented on December 22, 1998, regarding a fence issue. He stated the appellant was asking the Board to subpoena an employee from the Department of Public Works and Environmental Services who was a site inspector.

Mr. Shoup said he had talked with the supervisor of that inspector and was told if the Board desired to have someone at the hearing to address the issue he would have someone there; however, he was unsure what could be added to the issue because all that could be required was what was required on the plan and he did not see how that would relate to the appeal issue.

Mr. Ribble stated he did not believe the Board should get into the habit of accommodating requests such as this. Chairman DiGiulian and Mr. Hammack agreed with Mr. Ribble.

Mr. Ribble made a motion to deny the request. Mr. Hammack seconded the motion.

Mr. Kelley stated he agreed with the motion; however, did not want to set a precedent that the Board will never subpoena County employees.

Chairman DiGiulian stated if the Board felt it necessary to subpoena a County employee for the Board's information, that was a different situation than the request from the appellant.

The motion carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:04 p.m.

Minutes by: Deborah Hedrick

Approved on: March 9, 1999

Regina Thorn, 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 December 22, 1998. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

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

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Page 265 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. ROLAND AND MARY V. ROBERTSON, VC 98-S-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 8 ft. high fence to remain. Located at 12150 Sangsters Ct. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-3 ((12)) 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. Roland and Mary Robertson, 12150 Sangsters Court, Clifton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an 8 foot high fence to remain in the rear yard. The maximum height allowed for a fence is 7 feet; therefore, a variance of 1 foot was requested.

Ms. Robertson presented the variance request as outlined in the statement of justification submitted with the application. She said the homeowner's association approved the fence in 1997. The fence was needed to keep the deer out of the yard.

Chairman DiGiulian asked if a 7 foot fence was not adequate to keep the deer out of the yard. Ms. Robertson replied that they had deer problems in the previous area in which they lived and knew that a 7 foot fence would not suffice.

Chairman DiGiulian called for speakers.

Curtis T. Cruz, 12160 Sangsters Court, came forward to speak in opposition. He stated that the applicant did not contact the adjacent property owners when building the fence. Mr. Cruz said the deer's natural path would be blocked because of the fence. He expressed concerns with the applicant starting a commercial greenhouse nursery on the property.

Mr. Robertson said in his rebuttal that he had spoken with neighbors regarding the fence. He said he had no plans to open a commercial establishment.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 98-S-119 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROLAND AND MARY V. ROBERTSON, VC 98-S-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 8 ft. high fence to remain. Located at 12150 Sangsters Ct. on approx. 5.0 ac. of land zoned R-C and WS. Springfield District. Tax Map 76-3 ((12)) 6. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 22, 1998; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The lot is large and the fence is not visibly obtrusive.
4. There is an unusual situation because of the deer population.
5. The fence does 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a 8.0 feet high fence in the location shown on the plat prepared by Randall C. McEntire, dated December 8, 1997, revised through September 11, 1998, submitted with this application and is not transferable to other land.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 267 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN ARNE AND CHERYL OSGOOD LARSEN, VC 98-V-120 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., addition 8.0 ft. from front lot line and 9.7 ft. from side lot line and 6.0 ft. high fence to remain in front yard of a corner lot. Located at 6413 Potomac Ave. on approx. 11,018 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2))(36) 1 and 1A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steve Larsen, 6413 Potomac Avenue, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variance to permit the construction of an accessory structure in the front yard of a lot containing less than 36,000 square feet, an addition 8 feet from the front lot line and a 6 foot high fence to remain in the front yard of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 22 feet was requested for the addition. A maximum of 4 feet for a fence in a front yard is required; therefore, a variance of 2 feet was requested.

Mr. Larsen presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was a double corner lot fronting three streets with one adjoining property. Mr. Larsen said the fence was on the entire rear yard of the property when he purchased it. After the County granted a vacation of the portion of 8th street, narrowing the right-of-way, the property line on that side of the house was extended out 18 feet towards 8th street. Along with the vacation application, the fence was moved to reflect the new boundary. Mr. Larsen said the request satisfied the requirements for a variance. He said similar variance requests were granted in the neighborhood. Mr. Larsen stated that the storage workshop in the rear yard was needed because he had inadequate storage space and no basement. He said the request for the addition was the most economical place for the addition. Mr. Larsen said all the neighbors were in support of the application.

Chairman DiGiulian called for speakers.

Steve Valentine, 6422 Woodhaven Road, and Bruce Machanic, 6412 Woodhaven Road, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-V-120 for the reasons noted in the Resolution.

Mr. Kelley said he lived near the property and the property was neat.

Ms. Gibb said she had represented the Larsens in an unrelated matter and that there was no conflict for her to render a decision on this matter.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN ARNE AND CHERYL OSGOOD LARSEN, VC 98-V-120 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., addition 8.0 ft. from front lot line and 9.7 ft. from side lot line and 6.0 ft. high fence to remain in front yard

of a corner lot. Located at 6413 Potomac Ave. on approx. 11,018 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2))(36) 1 and 1A. 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 22, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. There was an unusual situation of frontage on three roads.
4. The applicants were bound by setback requirements.
5. The lot is narrow.
6. The variance request is reasonable.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure, a fence and an addition shown on the plat prepared by Robert L. Franca, dated September 6, 1998, signed September 23, 1998, 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 and 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 269 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MORGAN BROOKE-DEVLIN, VC 98-P-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence 8.0 ft. in height and permit shed in excess of 200 sq. ft. Located at 7717 Idylwood Rd. on approx. 15,456 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 231. (Concurrent with SP 98-P-052).

9:00 A.M. FOREST A. NESTER AND MORGAN BROOKE-DEVLIN, SP 98-P-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.2 ft. from rear lot line and 6.4 ft. from side lot line. Located at 7717 Idylwood Rd. on approx. 15,456 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 231. (Concurrent with VC 98-P-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. Morgan Brooke-Devlin, 7717 Idylwood Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for an error in building location to permit an accessory structure to remain 8.2 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a modification of 3.8 feet was requested. The applicants also requested a variance to permit construction of an 8 foot high fence to be located in the front yards of a corner lot. A maximum of 4 feet in height is permitted in a front yard; therefore, a variance of 4.0 feet was requested for the fence.

Ms. Morgan-Devlin, presented the requests as outlined in the statement of justification submitted with the application. She said the property was purchased in 1987 and at that time the property was surrounded by wooded areas on 2 sides and the lot was comprised of approximately an acre. The only outlet was a small outlet road that ran beside her house. She said the house was about 150 years old and originally fronted on Idylwood Road. Ms. Devlin said the previous owners of the property had changed the front door from facing Idlywood Road to facing the outlet road. She said when she purchased the property, the lot had been subdivided and they were offered the property next door which had a large 3-car garage and on their property was a storage building. Ms. Devlin said soon after purchase of the property she had the storage building torn down. She said several years later she built another structure and had called the County who told her she could build without permits because a structure had been there previously. Ms. Devlin said she had always obtained permits for all construction that had taken place on the property. She said the structure was attractive and architecturally compatible with the existing dwelling. Ms. Devlin said the

property was surrounded by fencing and landscaping. She said because of development, her property had become a corner lot. Ms. Devlin said she had no privacy and it was extremely noisy from traffic, which was the reason for the request of the fence.

Chairman DiGiulian called for speakers.

James Cassett, White Hill Homeowners Association, came forward to speak in opposition. He expressed concerns with sight lines as related to the fence. He said a fence would detract from the property.

James McCurdy, came forward to speak in opposition stating that he was concerned with encroachment onto his property. Mr. McCurdy said that there were boundary disputes.

Mr. Hammack asked if the fence encroached onto Mr. McCurdy's property. Mr. Bernal replied that according to the plat the fence belonged to Mr. McCurdy and the proposed fence would not encroach.

Mark Trossell, Edgemore Homes, came forward to speak on behalf of Mr. McCurdy. He said Mr. McCurdy didn't want the fence extending into his yard.

William Burns spoke in opposition stating that an 8 foot fence did not belong in the neighborhood and would affect the sale of homes. He said the property would look like a fort if the fence was allowed.

Ms. Devlin stated in her rebuttal that there would be no impediment regarding sight lines.

Mr. Dively moved to approve SP 98-P-052 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FOREST A. NESTER AND MORGAN BROOKE-DEVLIN, SP 98-P-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.2 ft. from rear lot line and 6.4 ft. from side lot line. Located at 7717 Idylwood Rd. on approx. 15,456 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 231. (Concurrent with VC 98-P-121). 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 22, 1998; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory storage structure shown on the plat prepared by Kenneth W. White, dated July 25, 1998, 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. 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 6, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively said he was troubled by the fence in a front yard. He said the lot would look like a fortress and the variance request was clearly for convenience. He moved to approve-in-part VC 98-P-121.

Mr. Hammack seconded the motion for purposes of discussion. He said an 8 foot fence was not justified in a front yard adjacent to a main rood. He said it was too high in a residential neighborhood and that 6 feet would be consistent.

The motion failed for lack of 4 votes.

Mr. Ribble moved to approve-in-part VC 98-P-121 for the reasons noted in the Resolution to allow the shed and deny the fence.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MORGAN BROOKE-DEVLIN, VC 98-P-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit

a fence 8.0 ft. in height and permit shed in excess of 200 sq. ft.**(THE FENCE WAS DENIED)** Located at 7717 Idylwood Rd. on approx. 15,456 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 231. (Concurrent with SP 98-P-052). 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 22, 1998; and

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

1. The applicants are the owners 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 **APPROVED-IN-PART** with the following limitations:

1. This Variance is approved for the location of the shed as shown on the plat prepared by Kenneth W. White, dated July 25, 1998, 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 addition 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.

Ms. Gibb 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 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 278 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT S. AND MARTHA GEORGE, VC 98-H-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction in lot width, lot area and permit an accessory structure in the front yard on a lot containing less than 36,000 sq. ft. Located at 1636 Irvin St. on approx. 27,992 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((10)) 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. Patrick Via, Attorney and Agent, replied that it was.

Peter Braham, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicants requested a variance to permit a reduction in lot area, lot width and to allow an accessory structure to remain in the front yard on a lot with less than 36,000 square feet. The requested reduction in lot area for the 27,992 square foot lot was to allow the dedication of 2,771 square feet for roadway purposes. The dedication would also reduce the lot width along Irvin Street to 127.34 feet, along the new public street to 76 feet, and along Ashgrove Lane to 173.6 feet. One hundred seventy-five (175) feet is required for a corner lot in the R-1 District.

The applicants also requested a variance to permit an accessory storage structure (shed) to remain in the front yard.

Mr. Via, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants desired to dedicate property to the Board of Supervisors to allow the construction of a public street. In May, 1998, the Board of Supervisors approved RZ 1997-HM-018, rezoning approximately 5.6 acres at the end of Irvin Street from the R-1 zoning district to the R-2 zoning district, subject to proffers. Included in the proffers was a transportation network which would serve the new community and the existing community as well as any future communities. The proffered transportation network, reviewed and approved by the Fairfax County Office of Transportation, was specifically intended to provide for current and future development and was designed to eliminate the current safety issues. Accordingly, the rezoning included a proffer requiring the owner of the subject property to seek a variance allowing the dedication.

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

Mr. Ribble moved to approve VC 98-H-117 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT S. AND MARTHA GEORGE, VC 98-H-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction in lot width, lot area and permit an accessory structure in the front yard on a lot containing less than 36,000 sq. ft. Located at 1636 Irvin St. on approx. 27,992 sq. ft. of land zoned R-1. Hunter Mill

District. Tax Map 28-4 ((10)) 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 December 22, 1998; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The applicant's attorney illustrated the extraordinary situation in his testimony.

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

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

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

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

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

1. This variance is approved for Tax Map Parcel 28-4 ((10)) 42 having a lot width along Irvin Street of 127.34 feet, a lot width along the new public street of 76 feet, a lot width of 173.6 feet along Ashgrove Lane, a lot size of 27,992 square feet and to allow an accessory storage structure in the front yard as shown on the plat prepared by Harold A. Logan Associates, PC, dated June 15, 1998,

Page 275 December 22, 1998, (Tape 1), SCOTT S. AND MARTHA GEORGE, VC 98-H-117, continued from Page 274

as revised through September 21, 1998, submitted with this application and is not transferable to other land. These conditions shall be recorded among the land records of Fairfax County for this 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 all necessary approvals under the subdivision ordinance have been obtained and the new lot is recorded in the land records. 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 275 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. MAUREEN ZAINO, VC 98-Y-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.9 ft. from rear lot line. Located at 13517 Brightfield Ln. on approx. 7,112 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4))(4) 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. Maureen Zaino, 13517 Brightfield Lane, Herndon, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 23.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 1.1 feet was requested.

Ms. Zaino presented the variance request as outlined in the statement of justification submitted with the application. She said the request was a minimal one to add a rear entry doorway to the kitchen. Ms. Zaino said there would be no other enlargements to the kitchen.

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

Ms. Gibb moved to approve VC 98-Y-123 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAUREEN ZAINO, VC 98-Y-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.9 ft. from rear lot line. Located at 13517 Brightfield Ln. on approx. 7,112 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4))(4) 28. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1998; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The property was an oddly shaped, shallow lot.
4. The variance request was modest.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by David Hangen, Architect, dated October 6, 1998, 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 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 278 December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. BULL RUN STABLES, LLC, SPA 91-Y-035-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 91-Y-035 for riding and boarding stable to permit change in development conditions and site modifications. Located at 6001 Bull Run Post Office Rd. on approx. 40.0 ac. of land zoned R-C and WS. Sully District. Tax Map 42-4 ((1)) 15V and 15Z.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Richards, 6001 Bull Run Post Office Road, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 91-Y-035 to permit an increase in the total maximum number of students taking riding lessons at any one time, and to delete the limitation on students who do not board horses on the site. The applicant also requested approval to hold up to six (6) horse shows or clinics per year on the site. Minor site modifications from that previously approved were requested as to the number of three-sided run-in horse sheds and their locations. The number of sheds were reduced from six to five, and the total square footage of the sheds was increased by 27 square feet. Locations were adjusted slightly to conform with PFM regulations and environmental guidelines. No other changes, modifications or construction was proposed. Staff recommended approval of Special Permit Amendment Application SPA 91-Y-035-2 subject to the Proposed Development Conditions in Appendix 1 of the staff report.

Mr. Richards presented the special permit request as outlined in the statement of justification submitted with the application. He said the structure was very attractive inside and out. Mr. Richards said he had given the County a conservation easement along the eastern border of almost an acre and he had constructed a pond according to the County requirements. He said the activities on the property would be barely visible. Mr. Richards asked that the BZA approve the request to increase the number of students and to be able to hold up to 6 shows a year. He asked the BZA to amend the application by changing the hours of instruction to conform to the hours of operation. Mr. Richards asked that the BZA remove the condition requiring the applicant to submit a site plan to the Department of Public Works and Environmental Services (DPW&ES) because his amendments did not require site plan approval. Mr. Richards expressed concern with language in the staff report requesting that the applicant commit to providing any needed right-of-way dedication for the roadway subsequent to a determination of final alignment. He said the language in the staff report indicated that he was giving DPW&ES permission to request or receive dedication of road right-of-way along his property frontage and he did not agree to that. Mr. Richards referenced a previous appeal he filed regarding his dedication of property and said he did not want to deal with that issue again after it had been previously resolved. He said he was uncomfortable going forward with the language as it was written in the staff report.

Mr. Hammack asked if the applicant was only concerned about the condition related to site plans. He replied yes. The Board voted to add a sentence to Development Condition #3 stating that the BZA does not recommend that any land dedication be required.

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

Mr. Kelley moved to approve SPA 91-Y-035-2 for the reasons noted in the Resolution.

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SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BULL RUN STABLES, LLC, SPA 91-Y-035-02 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 91-Y-035 for riding and boarding stable to permit change in development conditions and site modifications. Located at 6001 Bull Run Post Office Rd. on approx. 40.0 ac. of land zoned R-C and WS. Sully District. Tax Map 42-4 ((1)) 15V and 15Z. 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 22, 1998; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Bull Run Stable, LLC, 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), structures and/or use(s) indicated on the special permit plat prepared by TRI-TEK Engineering, which is dated June 26, 1996, as revised through October 29, 1998, and approved with this application, as qualified by these development conditions.

3. This Special Permit is subject to the provisions of Article17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance. The Board of Zoning Appeals does not recommend that any land dedication be required.

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

5. The maximum number of horses boarded on site shall be thirty-five (35), and no horses shall be rented to visitors.

6. The hours of operation shall be limited to the following:

   General Hours of Operation and Hours for Riding Instruction
   Monday through Sunday - 8:00 AM to 10:00 PM

7. There shall be no more than six (6) employees at any one time on the premises. A maximum of twenty-five (25) student riders at any given time may participate in riding instruction classes on site. Horse events on the site which may be open to the public, such as horse shows or clinics, shall be

limited to a maximum of six (6) such events per year and may include riding participants from off-site who are not horse boarders at Bull Run Stables.

8. The transitional screening requirements shall be waived along all lot lines in favor of existing vegetation. The existing fencing shall be deemed to satisfy the barrier requirement along all lot lines. The existing fence shall remain and be maintained in good repair and replaced as necessary.

9. The minimum number of parking spaces on site shall be eighteen (18). All parking associated with the use shall be located on site. All parking, permanent or temporary parking for the horse shows/clinics only, shall be located outside of an area that is fifty (50) feet from the centerline of the adjacent stream channel that is part of the Environmental Quality Corridor.

10. The entrance shall meet Virginia Department of Transportation (VDOT) requirements for commercial entrances, unless waived or modified by VDOT.

11. Prior to the issuance of any grading permit within the area depicted as hydric soils on the Fairfax County Soils Map, a wetlands study shall be conducted by the applicants, submitted to the Department of Public Works and Environmental Services (DPWES), and approved by the Department of Planning and Zoning (DPZ) and DPWES to ascertain whether the area containing hydric soils are non-tidal wetlands; the applicant shall delineate the limits of the non-tidal wetlands on the site plan if the proposed clearing, grading, and/or construction of the proposed structures will adversely impact these wetlands. The appropriate U.S. Army Corps of Engineers permits shall be obtained prior to site plan review, if required.

12. If DPWES or the Fairfax County Health Department requires additional drainfields for public sanitary facilities, a geotechnical study shall be provided to identify those areas suitable for the location of temporary or permanent public toilets and drainfields, or alternative systems on the site prior to site plan approval. Any recommended drainfield shall be located such that it is in substantial conformance with the special permit plat dated October 29, 1998 and these conditions.

13. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with DPWES. 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 DPWES at the time of site plan review that additional erosion and sedimentation controls measures beyond Public Facility Manual (PFM) standards are desirable, such measures shall be provided to the satisfaction of DPWES.

14. In order to preserve water quality in the Bull Run Watershed, an Environmental Quality Corridor (EQC) buffer of a minimum of fifty (50) feet from the centerline of the tributary stream shall be provided. In any area where existing fencing or existing structures preclude the provision of this buffer, the buffer may be reduced to a minimum distance of twenty-five (25) feet or such greater distance which would still allow the passage of farm equipment between the fencing and the edge of the EQC. Furthermore, any area identified as non-tidal wetlands in Condition Number 11 above shall be included within an EQC.

    There shall be no clearing or grading of any vegetation in this EQC, except for dead or dying trees or shrubs, and the existing hedgerows along the western, eastern and southern lot lines shall be preserved. No field mowing shall be allowed within fifteen (15) feet of the centerline of the tributary. There shall be no new structures or site improvements located in the EQC area or any modification to the existing gravel drive which affords access across the EQC to the eastern grazing fields.

15. The existing farm pond shall be upgraded to function as a Best Management Practice (BMP) designed to remove at least 50 percent of the incoming phosphorus load for the entire subject property, in accordance with the design criteria of the Water Supply Protection Overlay District regulations in the Public Facilities Manual (PFM).

16. Any lighting associated with the use shall be in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed thirty-five (35) feet.
- The lights shall focus directly on the subject property.
- Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility or off the property.
- The lights shall not be lit beyond the approved hours of operation for the use.

17. The sound emanating from the public address system and from the riding ring shall not be in excess of the sound levels prescribed in Chapter 108 of the Code of Fairfax.

18. Any storage tanks present on site shall meet the provisions of Chapter 62 of the Fairfax County Code, which regulates the storage of flammable, combustible, and hazardous materials.

19. The existing accessory dwelling unit shall not be rented out and shall not be used for commercial purposes other than the approved special permit use.

These development 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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Dively 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 6, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 280, December 22, 1998, (Tape 1), Scheduled case of:

9:00 A.M. THANH TRUONG, ANANDA BUDDHIST MEDITATION INSTITUTE, INC., SP 98-P-051 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 3418 Annandale Rd. on approx. 3.36 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the application had been administratively indefinitely deferred because of errors with the application. Ms. Langdon stated that this application required no action from the Board at this time.

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Page 280, December 22, 1998, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD D. JURGENS, A 1998-HM-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence in the front yard of a through lot exceeding 4.0 ft. in height, in violation of Zoning Ordinance provisions. Located at 1322

Millfarm Dr. on approx. 75,000 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-2 ((19)) 2.

Jayne Collins, Zoning Administration Division, presented staff's position as set forth in the memorandum. She said at issue was a fence exceeding 4 feet in height located in the front yard of a through lot. A zoning inspection of the subject property on August 4, 1998, revealed that a board fence had been erected along the southeastern portion of the property which abuts Crowell Road and continues along the lot line between the subject property and the adjacent Lot 1. Photographs of the fence were distributed to the Board members. She said Crowell Road was a publicly dedicated right-of-way from its intersection of Brown's Mill Road south of subject property, to the lot line between 1401 and 1407 Crowell Road and the remainder is an outlet road. Ms. Collins said as a result, the entire portion of Crowell Road, adjacent to the subject property, is publicly dedicated right-of-way. The Zoning Ordinance defines a public street as a platted street dedicated for the use of the general public, graded and paved in order that every person has the right to pass and to use it all times, for all purposes of travel, transportation or parking. She said that although the road is not paved along the portion adjacent to the subject property, Crowell Road is a platted street dedicated for the use of the general public and has been a long standing zoning interpretation that land dedication to public street purposes and shown on an approved plat is deemed a public street.

Ms. Collins said since the subject lot had frontage along Millfarm Drive and Crowell Road, both of which were publicly dedicated streets where they abut the subject property, that met the definition of a through lot. On a through lot, the two yards lying between the principal building and the two or more public streets are front yards controlled by the Zoning Ordinance for front yards, one of which that a fence or wall in a front yard may not exceed 4 feet in height. The height of the appellants fence and fence post, exceed 4 feet.

Mr. Ribble asked who filed the complaint. Ms. Collins replied that Mr. Jurgens' neighbor on Lot 1 filed the complaint.

Mr. Jurgens presented the arguments forming the basis for the appeal. He presented drawings of his subdivision and said that Millfarm Drive was the only public street. Mr. Jurgens said he did not agree that the street or the dedication were public streets. He said he had tried to discuss that issue with Zoning Administration and had been told that they did not have to follow the Code definition. Mr. Jurgens said that the road did not meet the Code definition or the State definition, nor was it maintained by the State. Mr. Jurgens presented a letter from the Virginia Department of Transportation stating that the subject road was not maintained by them. He said he had written volumes on issues pertaining to these roads not being public roads. Mr. Jurgens stated that the people who had filed the complaint moved away two months prior. He presented a letter from Gene Hayman, 1318 Millfarm Drive reflecting his support for the appellant's position.

Ms. Collins said that the appellant had made a number of arguments, but Crowell Road is dedicated public right-of-way used by the general public meeting the definition of a public street.

Chairman DiGiulian asked staff if they were stating that the Zoning Ordinance supersedes the State Code definition of a public road.

Discussions ensued between staff and BZA members regarding the definitions of public roads as stated in the State Code and the Zoning Ordinance and right-of-way dedication.

Ms. Gibb asked if the appellant could have a 4 foot fence. Staff replied yes.

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

Mr. Hammack said this was an interesting application and he did not have time to sort through the material submitted to the Board today by the appellant and in order to do justice, he moved to continue the appeal to the next meeting. He said he would review the information submitted by the appellant and make a motion at the January 5, 1999 meeting.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.
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Page 282, December 22, 1998, (Tape 1), Scheduled case of:

9:30 A.M. MARY K. AND KENNETH A. TOONE, A 1998-DR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a contractor's office and shop and are keeping construction equipment associated with the business on the property in an R-1 District, in violation of Zoning Ordinance provisions. Located at 6818 Geogretown Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) D.

William Shoup, Deputy Zoning Administrator, noted that the BZA had issued an Intent to Defer to February 9, 1999 at 9:30 a.m. on December 8, 1998

Mr. Pammel moved to defer the appeal to February 9, 1999. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was not present for the vote.

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Page 282, December 22, 1998, (Tape 1), After Agenda Item:

Status Update, Cravens Nursery
A 96-P-049

William Shoup, Deputy Zoning Administrator, said the appellant submitted a revised plat and the application for special exception was now acceptable.

Chairman DiGiulian stated that he would like to have a periodic update on the special exception application.

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

Minutes by: Regina Thorn

Approved on: March 4, 1999

Regina Thorn, 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 Tuesday, January 5, 1999. The following Board Members were present: Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel. Chairman John DiGiulian and Robert Dively were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:06 a.m.

The first order of business was the election of Chairman and Vice Chairmen to the Board of Zoning Appeals for the 1999 calendar year.

Mr. Kelley nominated John DiGiulian for Chairman. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Dively absent from the meeting.

Mr. Kelley nominated John Ribble and Paul Hammack to serve as Vice Chairmen to the Board of Zoning Appeals. Hearing no other nominations, Mr. Pammel seconded the nomination which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Dively absent from the meeting.

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Page 283, January 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAUL AND KICHO LOCIGNO, SP 98-S-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.9 ft. from rear lot line and accessory structure to remain 7.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 8203 Cherry Ridge Rd. on approx. 12,476 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 35. (Moved from 11/3/98).

Julie Schilling, Staff Coordinator, stated that the applicant was in the process of revising their affidavit and suggested a deferral date of Tuesday, January 12, 1999.

Mr. Kelley moved to approve the deferral and Ms. Gibb seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mr. Dively absent from the meeting.

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Page 283, January 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ANNANDALE ARDEN L.L.C., VC 98-M-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 8.0 ft. high fence in front, side and rear yards. Located at 7024, 7030, and 7104 Braddock Rd. on approx. 3.42 ac. of land zoned R-3. Mason District. Tax Map 71-3 ((8)) 7, 7A, and 8.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth Baker, Planner with Walsh, Colucci, et al, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to construct an 8 foot high fence in the front, side and rear yards of the proposed development therefore; variances of 4 feet and 1 foot were requested.

Ms. Baker presented the variance request as outlined in the statement of justification submitted with the application. Ms. Baker gave a brief description of the dwelling, stating that it was a medical facility for Alzheimer patients and that the fences were needed to prevent visibility surrounding the facility to discourage patients from wandering off. She believed the facility met the zoning requirements.

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

Mr. Hammack moved to approve VC 98-M-127 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANNANDALE ARDEN L.L.C., VC 98-M-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 8.0 ft. high fence in front, side and rear yards. Located at 7024, 7030, and 7104 Braddock Rd. on approx. 3.42 ac. of land zoned R-3. Mason District. Tax Map 71-3 ((8)) 7, 7A, and 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 5, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of an 8.0 foot board on board fence shown on the plat prepared by Peter J. Rigby Jr., dated August 18, 1998, 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 fence shall be architecturally compatible with the proposed building.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 285, January 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES & EILEEN DUGGAN, VC 98-D-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 1958 Massachusetts Ave. on approx. 12,158 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13))(4) 21A.

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. Jeff Ricketts, Agent, 1625 Dempsey Street, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 11.5 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 3.5 feet was requested.

Jeff Ricketts presented the variance request as outlined in the statement of justification submitted with the application. He said that the owners of the property were living in Florida at the present time and planned on retiring in this home. The applicants hired his firm to remodel the inside of the home and design a new entrance and garage. Upon performance of a feasibility study, it was found that the existing carport was not sized properly for two cars, the minimum set back requirement had changed since the carport was constructed and it was in violation of the current Ordinance. He further stated that the remodeling would increase the property value of the home and that the community was in support.

Mr. Hammack asked how he planned on handling the roof line with the extension of the roof. Mr. Ricketts replied that the main roof line would stay the same, but there would be a gable roof coming off of the front.

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

Mr. Pammel moved to approve VC-98-D-129 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES & EILEEN DUGGAN, VC 98-D-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 1958 Massachusetts Ave. on approx. 12,158 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13))(4) 21A. Mr. Pammel moved that

the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The house location is not parallel to the lot line.
4. The lot is unusually shallow.
5. The addition would not encroach further into the side lot because it is less than the current building on site.

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by R. C. Fields, Jr., dated September 24, 1998, 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. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 287, January 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS W. BARNETT, JR., VC 98-P-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from front lot line. Located at 2833 Douglas Ave. on approx. 6,300 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 89, 90, and 91.

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. Thomas W. Barnett, Jr., 2833 Douglass Avenue, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a new dwelling to be located 18.0 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 12 feet was requested.

Mr. Barnett presented the variance request as outlined in the statement of justification submitted with the application. Mr. Barnett stated that his intent was to tear down the house in question and rebuild in the same location.

Ms. Gibb asked if the new house would be located back farther from the street. Mr. Barnett said that the house would be set back farther.

Vice Chairman Ribble called for speakers.

John Watkins, 2919 Bourber Street, Falls Church, Virginia, came forward to speak in support of the variance application.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 98-P-130 for reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS W. BARNETT, JR., VC 98-P-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from front lot line. Located at 2833 Douglas Ave. on approx. 6,300 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 89, 90, and 91. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant presented written statements indicating compliance with the required standards for a variance.
3. The lot is a combination of three small lots.
4. The lot has a very shallow building envelope.

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

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

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

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

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

1. This variance is approved for the location of a dwelling shown on the plat prepared by Harold A. Logan, dated August 10, 1998, submitted with this application and is not transferable to other land.

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

requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 289, January 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY AND CAROL GRADY, VC 98-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 666 Live Oak Dr. on approx. 35,654 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-1 ((5)) 10A.

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. Carol Harrison Grady, 666 Live Oak Drive, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition 15.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 9.1 feet was requested.

Ms. Grady presented the variance request as outlined in the statement of justification submitted with the application. Ms. Grady stated that the lot was unusually shaped and they had community support.

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

Mr. Kelley moved to approve VC 98-D-125 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY AND CAROL GRADY, VC 98-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 666 Live Oak Dr. on approx. 35,654 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-1 ((5)) 10A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1999; and

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

1. The applicants are the owners of the land.
2. The lot is unusually shaped.
3. The applicants met the required standards for a variance.

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc, dated August 25, 1988, and recertified on October 2, 1998 by Mark Allan Coupard, Architect, submitted with this application and is not transferable to other land.

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 290, January 5, 1999, (Tape 1), Scheduled case of:

9:30 A.M. JDA CUSTOM HOMES INC., A 1998-HM-039 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Department of Public Works and Environmental Services determination

that the proposed consolidation/resubdivision of lots depicted on Subdivision Plan #9826-RP-01-1 does not comply with the density requirements set forth in Sect. 3-108 of the Zoning Ordinance. Located at 9516 and 9509 Leemay St. on approx. 2.06 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 28; 28-1 ((18)) A; and 28-3 ((3)) 3.

Donna Pesto, Zoning Administration Division, presented staff's position as set forth in the memorandum dated January 5, 1999. The appellant's proposed subdivision did not comply with the density requirements of the R-1 District because of the inclusion of a non-contiguous parcel within the subdivision which constituted an impermissible transfer of development rights. In the appellant's current subdivision proposal, which was the subject of the appeal, Lot 28 and Outlot A of the Highview subdivision were proposed to be consolidated and Lot 3 of the Carrol Dodson subdivision was included for the purpose of meeting the density requirements of the R-1 District for the consolidation of Lot 28 and Out lot A.

Ms. Pesto further stated that the problem originated from the fact that Lot 3 was both separate and not contiguous to Lot 28 or Outlot A. She defined the phrase, TDR, for the Board.

Ms. Gibb asked for clarification of Lot 28, when it was created and whether or not it was used for density with the original subdivision. Ms. Pesto replied that this was the left-over lot from the original subdivision that wasn't used for density. She further stated that this lot did not meet the lot size requirement for the district at the time of creation and it was not a buildable lot.

Mr. Hammack asked what the assessment value of Lot 28 was. Ms. Pesto replied that it was assessed at $4,000.

Mr. Hammack asked if the essential way for Mr. Rice to get relief would be to get the properties rezoned. Ms. Pesto said that yes that was one option for Mr. Rice, and another one would be to acquire additional land area from an additional parcel.

Mr. Dennis Rice presented the arguments forming the basis for the appeal. He stated that the property had been taxed as a buildable lot since it was created in 1952 and at that time there was no density credit for dedication of the road and if the road frontage was counted that the property would have enough density. He further stated that the lot met all of the requirements for Fairfax County except the 43,560 feet needed for density.

Mr. Rice provided an example of a recent subdivision and illustrated how the subdivision was implemented and how it mirrored his situation.

Mr. Pammel asked for staff response. Ms. Pesto stated that they were just provided with this information but she was vaguely familiar with the area, and that the land was all contiguous and that there may have been a rezoning that covered all of the area. She further stated that since she didn't have the subdivision plats for the area it was hard to give the Board an accurate assessment of how the example related to the appellant's property.

Vice Chairman Ribble called for speakers.

Timothy McGary, Representative for Mr. McDowal, 9518 Leemay Street, Herndon, Virginia spoke in opposition of the appellant's position. He stated that the original plat indicated that no development or building permits were to be issued for Outlot A, which led the surrounding property owners to believe that Outlot A would remain open space. He said that the appellants had created this problem themselves and were now asking for relief. Mr. McGary presented the Board with a copy of the deed of subdivision and stated that a 60 foot setback from the property was required, so even if development were allowed, due to the covenant, this house would not conform with that requirement.
Luella McCormick, 9518 Leemay Street, Herndon, Virginia spoke in opposition of the appellant's position. She said that she lived at this address for nearly 18 years. She stated that a spring runs through Lot 28 and feeds the ponds on the neighboring property and that, she believed, was the reason the plat indicated there should be no development.

General Edwin Coy, 9528 Leemay Street, Herndon, Virginia spoke in support of the appellant's position. He stated that he lived at this address for nearly 17 years. He said that he would normally be opposed to new construction, but since these Lots had become both safety and developmental hazards and they were not

maintained at all by the owners, a new home would be more compatible with the neighborhood.

Evelyn Ahern, 9525 Leemay Street spoke in opposition of the appellant's position. She agreed that the Lots were not maintained by the owners but felt like construction was not the answer.

Vice Chairman Ribble asked Ms. Pesto if she had any further clarifications. She stated that upon studying the appellant's example she found that it was not similar to the appellant's position, because the property was one contiguous tract and there was a rezoning and development plan that covered all of the parcels.

Mr. Rice stated in his rebuttal that before he purchased the property he researched it with Fairfax County and was given verbal assurance that it was a buildable lot. He said that the lot was not maintained and that the neighbors were dumping trash and grass clippings on his lot. He stated that Jane Gwinn, Zoning Administrator, made a ruling that density from Outlot A could be removed from the other subdivision without revising the variance that was used to build pipestem lots in Highview 3. He responded that Mr. McDowell was located on a pipestem that was created off of a private street.

The Vice Chairman closed the public hearing.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. He said Lot 28 and Outlot A were clearly non-developable pieces of property in the original subdivision and that Lot 3 was noncontiguous. Mr. Hammack stated that the remedy for this would be for the appellant to get the property rezoned.

The motion carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 292, January 5, 1999, (Tape 1 and Tape 2), Scheduled case of:

9:30 A.M. RICHARD D. JURGENS, A 1998-HM-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence in the front yard of a through lot exceeding 4.0 ft. in height, in violation of Zoning Ordinance provisions. Located at 1322 Millfarm Dr. on approx. 75,000 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-2 ((19)) 2. (Continued from 12/22/98)

Mr. Hammack asked staff who was responsible for maintaining the outlet road in question. William Shoup, Deputy Zoning Administrator replied that the area was privately maintained and that he had talked with the Department of Transportation and they indicated that the outlet road portion would never be developed into a public street, but that a cul de sac would be developed in the future. He stated that the bubble dedication that occurred with the subdivision still caused their yard to be a front yard, putting Mr. Jurgens' fence in a front yard and exceeding 4 feet in height. Mr. Shoup provided an overhead to illustrate the bubble dedication.

Mr. Hammack stated that he had a problem with the definition of a public street.

Mr. Shoup stated that the outlet road and dedicated area, other than being paved, met all of the requirements of a public street; therefore, a front yard had to be maintained because of the potential construction of a useable street.

The Vice Chairman closed the public hearing.

Mr. Hammack moved to uphold the determination of the Zoning Administrator due to the fact that the there was a road dedication for public purposes adjacent to the rear or side yard of the appellant's property and the cul de sac at the intersection of Crowell Road and the outlet road, along with the portion that runs down his property was also dedicated for public purpose and that paving was the only element that had not been met. He said that there was definite dedication of public right-of-way on Lots 3A and 4A and they were being used for ingress and egress purposes. Mr. Hammack stated that he believed the appellant's property has double front yard requirements.

Mr. Pammel seconded the motion. Mr. Pammel stated that he thought there was a standard practice of this occurring in the County.

Ms. Gibb disagreed and stated that she thought the Ordinance was clear on the definition of a public street. She did not think that the land in question was a public street because it did not meet the definition. Ms. Gibb said she did not know what was to be gained by calling the entire lot a front yard and that the appellant would not be able to build a new house facing that direction because of his septic field.

The motion failed by a vote of 2-3. However, because four (4) votes are required to reverse the Zoning Administrator's position, it was noted that the position was upheld. Mr. Kelley changed his vote making it a vote of 3-2 with Chairman DiGiulian and Mr. Dively absent from the meeting. The Zoning Administrator's position was upheld.

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Page 293, January 5, 1999, (Tape 2), Scheduled case of:

9:30 A.M. NATIONS BANK, A 1998-MA-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that proposed installation of a canopy over an existing drive-in window of a bank constitutes an enlargement of the use which requires special exception approval under the provisions of Par. 2 of Sect. 15-101 of the Zoning Ordinance. Located at 5707 Seminary Rd. on approx. 37,347 sq. ft. of land zoned C-8, HC, SC, and CRD. Mason District. Tax Map 62-3 ((2))

Susan Epstein, Zoning Administration Division, presented staff's position as set forth in the memorandum dated January 5, 1999. She stated that the proposed installation of a canopy over an existing drive through window of a bank constituted an enlargement of use, which required special exception approval. According to records, a drive-in banking window was established for the building subsequent to the approval of a variance on December 19, 1973, which permitted the bank teller mechanical equipment closer to the front property line. Ms. Epstein stated that the property was rezoned in 1978 to read that any additions to drive-in banks not located in a shopping center, would require approval from a special exception.

Mr. Pammel asked if staff considered the variance that had been approved in 1973 no longer valid. Ms. Epstein replied that the canopy was not valid because it had not been built but that the mechanical portion of the drive-through was valid. Mr. Pammel stated there was an inconsistency and he felt the canopy was valid because construction had started and by not putting up the canopy the variance was still in existence and could not expire until construction was completed.

Mr. Shoup replied that the one year time limit did take effect because they didn't start construction of the canopy within that 1 year time period. Mr. Pammel replied that it was an integral package and since they were joined and the variance had been granted for both functions, it was still valid. Mr. Shoup replied that he wasn't sure that the proposed canopy is the same structure that was reviewed in 1973 and he maintained that there was no unending right to install the canopy under the variance. Mr. Pammel stated that if the canopy was different than the one approved under the variance the appellant had a right to amend the variance and resubmit it. He stated that he didn't believe that covering an open area with a canopy required a special exception.

Mr. Shoup replied that the canopy added a structure to the building and that it would have to meet the minimum set-back requirements and that it would add bulk to the building.

Harold Pierce, Architect for First Virginia Bank, presented the arguments forming the basis for the appeal. Mr. Pierce stated that there was a 6 foot overhang and customers who used the drive-through were being exposed to inclement weather. He further stated that the canopy did not touch the ground and would not increase the size of the building.

Mr. Hammack asked if the proposed canopy was the same size as the one originally approved. Mr. Pierce stated that it was approximately the same size, but that he couldn't be sure.

Mr. Shoup stated that the two canopies were not the same size and that this canopy would extend closer to the lot line than the previous one. He stated that the yard requirements had changed since that variance and the current proposal would meet the 40 foot set-back requirement of the current Ordinance. He also reiterated that the canopy would cause an enlargement of the building.

Mr. Pammel moved to reverse the decision of the Zoning Administrator. Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 294, January 5, 1999, (Tape 2), After Agenda Item:

Approval of December 22, 1998 Resolutions

Mr. Pammel moved to approve the December 22, 1998 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively 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: Lori M. Mallam/Regina Thorn

Approved on: March 23, 1999

Regina Thorn

Regina Thorn, 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 Thursday, January 7, 1999. The following Board Members were present: Vice Chairman Ribble; Nancy Gibb; Paul Hammack; Robert Kelley; and James Pammel. Chairman DiGiulian and Robert Dively were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:01 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 295, January 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. PETKO, VC 98-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.9 ft. from front lot line. Located at 6716 Arlington Blvd. on approx. 7,200 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 50-4 ((13))(2) 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. Lori Greenlief, Agent, Jane Kelsey and Associates, Inc., 14368 Nandino Court, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an addition 26.9 feet from the front lot line. A minimum of 40 feet in the front yard is required; therefore, a variance of 13.1 feet was requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. Ms. Greenlief stated that Dr. Petko wanted to make some renovations to an existing building that was currently sited 26.9 feet from the front lot line and after renovations would continue to be sited 26.9 feet from the front lot line. The subject property is located in a strip of commercially zoned properties along Route 50 that were originally zoned residential and developed with dwellings. The lots were rezoned to the C-3 District in the 1960's. As presented in the staff report, Arlington Boulevard had been widened and a service drive added along the front of this property, thus vastly altering the relationship of the building to the front lot line.

To clarify Dr. Petko's request, Ms. Greenlief's stated that the proposal did not involve constructing any closer to the front lot line than the existing building. The plat showed an existing stoop located 26.9 feet from the front lot line. The proposal only involved increasing the height of the roof on the stoop and the height of the front wall of the building. The front wall was located 30.9 feet from the front lot line. Ms. Greenlief presented photographs to the Board showing the existing building and the proposed renovations. The request was to construct within the footprint of the building in the front.

Ms. Greenlief stated that the applicant acquired the subject property in good faith and was not aware until he submitted a site plan for the renovations that a variance was necessary to simply increase the height of the porch and front wall. The lot was exceptionally narrow and had extraordinary circumstances with the change in zoning on the property from residential to commercial, the widening of Arlington Boulevard and the fact that it is substandard in size with respect to today's Ordinance. Ms. Greenlief stated that strict application of the Zoning Ordinance regulation of a 40 foot minimum front yard would produce undue hardship in that the building could not be renovated to the current design standards in the area because 13 feet of an existing building would have to be removed. The properties to the south, which would be most affected by the infringement into the minimum front yard, are developed with a Honda dealership and a McDonalds and separated from the subject property by a 4 lane divided highway with service drives. Ms. Greenlief said she had spoken to the City Park Civic Association, and while the area did not have an actual architectural review board that reviews these type of applications, they were supportive and did not voice any concerns regarding the application. Ms. Greenlief requested a waiver of the 8 day waiting requirement.

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

Mr. Hammack moved to approve VC 98-P-136 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES M. PETKO, VC 98-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.9 ft. from front lot line. Located at 6716 Arlington Blvd. on approx. 7,200 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 50-4 ((13)) (2) 10. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 7, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by SDE, Inc.,

dated September 28, 1998, revised through November 10, 1998, 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 and Mr. Dively were absent from the meeting. The Board waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 7, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 297, January 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR P. HENDRICK, SP 98-D-058 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 14.8 ft. from side lot line. Located at 823 Turkey Run Rd. on approx. 1.11 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 36B.

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 P. Hendrick, 3259 Harness Creek Road, Annapolis, Maryland, replied that it was. Mr. Hendrick introduced Kenneth Sanders, Agent, 3905 Railroad Avenue, Fairfax, Virginia, to present his application.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction to minimum yard requirements based on error in building location to allow an addition to remain 14.8 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, the amount of error was 5.2 feet or 26%.

Mr. Sanders, Agent, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Sanders stated that the encroachment was very small and was located only on the rear corner of a small addition. Mr. Sanders stated Mr. Hendrick's immediate neighbor was in support of the application. Mr. Sanders said all lots were large and wooded and therefore there would be no adverse effects to allow the addition. Mr. Sanders requested that the Board waive the eight day waiting period.

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

Mr. Kelley moved to approve SP 98-D-058 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 22, 1998.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR P. HENDRICK, SP 98-D-058 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 14.8 ft. from side lot line. Located at 823 Turkey Run Rd. on approx. 1.11 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 36B. 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 7, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition to the dwelling shown on the plat prepared by David T. Currin, Land Surveyor, dated November 17, 1998 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. Pammel and Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting. The Board waived the eight day waiting period.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 7, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. SHILOH BAPTIST CHURCH OF ODRICKS CORNER, VC 98-D-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of residential buildings within 200 ft. of Dulles Airport Access Rd. Located at 1341 Springhill Rd. on approx. 7.77 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 54 pt., 55, 56 pt.; and 29-2 ((1)) 30 pt.

Vice Chairman Ribble called the applicants 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 & Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Inda Stagg, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a residential structure, which was housing for the elderly, to be located within 200 feet of the Dulles Airport Access Road. Ms. Stagg stated the structure would be located 110 feet from the Access Road Right-of-Way; therefore, a variance of 90 feet was requested.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Martin stated that the application was to build a noise wall to mitigate any noise impact on the proposed residential structure. Mr. Martin stated the special exception application was approved by the Planning Commission and Board of Supervisors.

Mr. Pammel asked Mr. Martin if he noted the building construction would include noise mitigation. Mr. Martin replied yes.

Mr. Kelley asked Mr. Martin if the applicant agreed with the proposed revised development conditions. Mr. Martin replied yes.

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

Diane Darsey, Co-Chairman of the Planning and Zoning Committee of the McLean Citizens Association, came to the podium to speak in favor of the application. Ms. Darsey stated the applicant had worked with the community and the Citizens Association supported the application.

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

Mr. Pammel moved to approve VC 98-D-142 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated December 22, 1998, as revised through January 7, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SHILOH BAPTIST CHURCH OF ODRICKS CORNER, VC 98-D-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of residential buildings within 200 ft. of Dulles Airport Access Rd. Located at 1341 Springhill Rd. on approx. 7.77 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 54 pt., 55, 56 pt.; and 29-2 ((1)) 30 pt. 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 7, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has 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 **APPROVED** with the following limitations:

1. This variance is approved for construction of the residential building less than two-hundred (200) feet from the right-of-way of the Dulles Airport and Access Road as shown on the plat prepared by BC Consultants, dated January 5, 1999, submitted with this application and is not transferable to other land.

2. The noise wall shall extend along the site's entire Dulles Airport and Access Road frontage, shall be constructed to VDOT standards and shall be in a location, height and materials as approved by VDOT. This wall shall utilize building materials with characteristics to achieve a maximum interior noise level of 45 dBA LDN and a maximum exterior noise level of 65 dBA LDN, as demonstrated in the noise study provided by the applicant pursuant to RZ 1997-DR-021.

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 301, January 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FALLS REACH LLC, VC 98-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2220 and 2228 Great Falls St. on approx. 5.29 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8 pt., 10, and 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. Robert Lawrence, Agent, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Cathy Lewis, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of dwellings within an 18 lot subdivision with proposed lots 8 through 15 having insufficient depth in order to comply with Zoning Ordinance requirements which required that residential buildings be set back a minimum of 200 feet from the right-of-way of an interstate highway. Ms. Lewis stated due to many unresolved issues staff recommended denial of the variance request for reasons outlined in the staff report dated December 22, 1998. Ms. Lewis stated the main issues related to noise levels and a need for a complete noise study from the applicant. Ms. Lewis noted on January 4, 1999, the applicant had submitted a revised variance plat with a new letter from the noise consultant, which were distributed to the Board prior to the hearing. Ms. Lewis stated that due to the late submission, staff was unable to adequately analyze the new information to determine if a proposed berm and fence would reduce noise to Comprehensive Plan levels. Ms. Lewis stated the applicant had provided previously unknown information on the revised plat, including the location of the proposed dwellings, the specifications and spot elevations for the proposed berm and solid wood fence, and a detail of the solid wood fence. Ms. Lewis noted the Department of Transportation recommended the applicant install a Virginia Department of Transportation standard noise wall within the I-66 right-of-way. Ms. Lewis noted the revised variance plat did not depict how much of a variance was being requested for each dwelling; no landscaping was shown for the berm; the letter from the noise consultants did not address noise levels in the side or front yards; and no information had been provided on interior noise levels or proposed interior noise mitigation measures. Ms. Lewis stated the variance request did not satisfy standards 4, 5, 6, 7 and 9 as detailed in the staff report dated December 22, 1998; therefore, staff recommended denial of the variance application. Ms. Lewis referred to new development conditions dated January 7, 1999, which included three new conditions which addressed new issues raised with the applicant's January 4, 1999, submission of a revised plat. Staff requested more time to analyze the applicant's proposal.

Mr. Kelley asked what the exact distance of the variances were. Ms. Lewis stated staff did not know what the distance from the houses to I-66 was going to be because it was not shown on the new submission.

Vice Chairman Ribble questioned why staff would take a position of approval or denial on a variance request. Ms. Langdon replied that due to issues of noise and distance from the highway and requirements in the Ordinance to meet the noise standards, staff believed it would be appropriate to note their recommendation.

Mr. Kelley stated he did not wish to vote on the application if the distance of the variance was unknown.

Mr. Lawrence presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated with regard to the setbacks of the buildings, the plat was to scale and showed the building locations and noted the applicant was agreeable to conditions recommended by staff that the buildings would go no closer to the right-of-way than where they were currently depicted on the plan. Mr. Lawrence stated there was a note on the plan which referred to the footprint and stated the footprint could vary but the building could not move closer to the right-of-way. Mr. Lawrence provided the Board with a handout from the applicant's noise consultant with respect to noise attenuation both internally and in the rear yard of the houses proposed. Mr. Lawrence stated an issue with staff was their recommendation to build a State barrier. Mr. Lawrence said this would not be economically feasible for an 18 home subdivision, however would address noise attenuation to meet the decibel levels required, which Mr. Lawrence stated

were standard proffers.

Mr. Lawrence provided the Board with a copy of the applicant's proposed development conditions dated January 6, 1999. Mr. Lawrence reviewed the applicant's proposed conditions with the Board to include changes to conditions 3, 6, 7, 8, 10 and 11.

Mr. Pammel stated there were a number of issues that bothered him with this case and recommended a 30 to 60 day deferral to allow staff to review technical issues of the noise study.

Mr. Kelley seconded the motion and stated if he were to vote on the application at the current hearing, his vote would be to deny the application as it was represented.

Ms. Langdon stated a 30 day deferral to February 2, 1999, was available. Mr. Pammel moved to defer the application to February 2, 1999. Mr. Kelley noted an intent to defer of an appeal application from the January 26, 1999, agenda. Mr. Pammel moved to defer the variance application to January 26, 1999, at 9:00 a.m., due to the deferral of an appeal from this date. Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Dively were absent from the meeting. Mr. Hammack was not present for the vote.

Terrance O'Grady, Attorney, representing some of the affected homeowners came to the podium and stated his appreciation of the Board's deferral. Mr. O'Grady noted to the Board the community's outpouring opposition to the proposal.

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Page 302 January 7, 1999, (Tape 1), After Agenda Item:

Request for an Intent to Defer Appeal Application A 1998-PR-029
Emanuel Stikas

Mr. Pammel moved to defer the appeal application to March 9, 1999 at 9:30 a.m. Ms. Gibb and Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian and Mr. Dively were absent from the meeting. Mr. Hammack 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 9:48 a.m.

Minutes by: Deborah Hedrick

Approved on: March 30, 1999

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

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

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 12, 1999. The following Board Members were present: Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 303 January 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. PAUL AND KICHO LOCIGNO, SP 98-S-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum rear yard requirements based on error in building location to permit addition to remain 13.9 ft. from rear lot line and accessory structure to remain 7.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 8203 Cherry Ridge Rd. on approx. 12,467 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 35. (Moved from 11/3/98) (Def. From 1/5/99)

Julie Schilling, Senior Staff Coordinator, stated that the applicant needed to submit a revised affidavit and the application could not go forward as scheduled. Staff suggested a deferral date of January 19, 1999. Ms. Gibb moved to defer the subject application to January 19, 1999, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 303 January 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. RONALDO AND MICHAELA PUNO, VC 99-D-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into 3 lot with proposed lots 2 and 3 having a lot width of 10.02 ft. Located at 10917 Georgetown Pi. on approx. 4.91 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 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. Charles Johnson, 12310 Pinecrest Road, Reston, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot into 3 lots with proposed lots 2 and 3 having a lot width of 10.02 feet where 150 feet is required. Therefore, variances of 139.98 feet for both lots were requested.

Mr. Johnson, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the application met the required standards to a variance. Mr. Johnson stated that he had left his presentation in his briefcase and was only prepared to answer questions. He said the applicant's proposed subdivision was based on the fact that the property was deep with respect to frontage, it had good perkable soil, the surrounding properties had been similarly divided, it was in conformance with the surrounding neighborhood and compatible with the existing uses.

Vice Chairman Ribble called for speakers.

James Frazier, 11001 Georgetown Pike, came forward to speak. He said his comments were not in support or opposition of the application. Mr. Frazier expressed concern with storm water drainage once the proposed lots were reconfigured. He also was concerned about the hydrology once 2 more wells were built.

Mike Strang, 801 Lake Windemere Court, came forward and expressed concerns relating to congestion, safety and compatibility. He said Georgetown Pike was very congested and three families would be using a narrow sloped driveway to access Georgetown Pike, which would cause a safety hazard. Mr. Strang said the request was not compatible with the neighborhood.

Mr. Johnson stated in his rebuttal, that the entire portion of Georgetown Pike had pipestem lots and the request was compatible with the neighborhood.

Mr. Kelley said the staff report indicated that the entire portion of Georgetown Pike was not in compliance with the required standards for a variance and stated that the applicant had not addressed those issues.

Mr. Kelley moved to continue the public hearing to allow the applicant to get better prepared to present the application. He said the application was serious and he didn't think the applicant was prepared to present the case. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The application was scheduled for January 26, 1999, at 9:00 a.m.

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Page 304, January 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. NICHOLAS AND JOY STARR, VC 98-Y-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot and outlot to 3 lots with proposed lot 2 having a lot width of 27.78 ft. and proposed lot 3 width of 10.76 ft. Located at 3000 Fox Mill Rd. on approx. 4.07 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((5)) B.

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. John H. Thillman, Agent for the applicant, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of one lot and an outlot to 3 lots with proposed lot 2 having a lot width of 27.78 feet and proposed lot 3 with a lot width of 10.76 feet. A minimum lot width of 150 feet is required; therefore, variances of 122.2 feet and 139.24 feet were requested respectively.

Mr. Thillman, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicant could subdivide the subject property into four lots by-right, but they were trying to preserve the trees. Mr. Thillman said he disagreed with staff's opinion that the application did not meet all the required standards.

Vice Chairman Ribble called for speakers.

Richard Toth, 3002 Fox Mill Road, and John Hagen, 2998 Fox Mill Road, came forward to speak in support of the application. They indicated that they were in favor of a subdivision of 3 or fewer lots.
Vice Chairman Ribble closed the pubic hearing.

Mr. Hammack said this case was really close with regard to the hardship issue. He said considering a 200 year old historic house and the preservation of one of the oldest and largest oak trees in the County, and that the request would result in less density and be more compatible with the existing development in the community, he moved to approve VC 98-Y-124 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NICHOLAS AND JOY STARR, VC 98-Y-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot and outlot to 3 lots with proposed lot 2 having a lot width of 27.78 ft. and proposed lot 3 with a lot width of 10.76 ft. Located at 3000 Fox Mill Rd. on approx. 4.07 ac. of land zoned R-1. Sully District. Tax Map 36-3 ((1)) 29 and 36-3 ((5)) B. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1999; and

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

1. The applicants are the owners 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 **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of one (1) lot and an Outlot into three (3) lots with proposed Lot 2 having a lot width of 27.78 feet and proposed lot 3 having a lot width of 10.76 feet, as shown on the plat prepared by Kenneth L. Kidder of Bowman Consulting Group, dated October 15, 1998, as revised through January 5, 1999. 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 each of 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. A tree preservation plan shall be prepared, reviewed and approved by the Urban Forestry Branch prior to approval of the overlot grading plans for each lot. The plan shall locate and show preservation of the monarch Oak tree and shall delineate the minimal amount of clearing necessary for the construction of the driveways and buildings on site.

Pursuant 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 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 306 January 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. KAMELSH PURI, SP 98-D-053, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a child care center and nursery school. Located at 1850 Lusby Pl. on approx. 13, 352 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 298.

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. Kamlesh Puri, 4203 Maylock Lane, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to operate a child care center and nursery school for 35 children by converting an existing single family dwelling to a 1,443 square foot child care center on a 13,362 square foot lot. The proposed hours of operation for the child care center and nursery school were from 7:00 a.m. to 6:00 p.m., Monday through Friday. Staff concluded that the subject application did not meet all standards for a Special Permit use as required by the Zoning Ordinance and was not in harmony with the applicable recommendations of the Comprehensive Plan. Therefore, staff recommended denial.

Ms. Puri represented the special permit request as outlined in the statement of justification submitted with the application. She said the special permit would allow her to provide child care at affordable prices because she had a low mortgage. Ms. Puri said child care was in demand and she had been in the child care field for a long time.

Vice Chairman Ribble called for speakers.

Prem Puri, 4203 Maylock Lane, came forward to speak in support of the application. He said he was the husband of the applicant and that his wife had 20 years of experience with child care. Mr. Puri said because the proposed child care center was in a residential neighborhood, it would be safe. He stated that the property was in good condition.

Clifford Mac Donald, 1843 Lusby Place, Glen Clawson, 1846 Lusby Place, Charles Sanders, 1841 Lusby Place, Debra Todd, Pimmit Hills Civic Association came forward to speak in opposition. They expressed concerns relating to traffic, parking, and setting a precedent for commercial development.

Ms. Puri stated in her rebuttal that she did not want to hurt anyone, but that she was concerned about families who could not afford high cost child care centers. She said she wanted to provide a safe environment for children. Ms. Puri said there would not be more than two cars parked a the property at the same time.

Mr. Dively asked Ms. Puri how long had she lived on the property. She replied that she had lived at the subject property for 8 years but had moved four years ago and the property had been vacant since May, 1998.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel complimented the applicant's pursuit to provide affordable child care. He said the major issue was the locational criteria. Mr. Pammel said the applicant had to comply with established criteria and transportation issues. He said the proposed facility was incompatible with the community. Mr. Pammel moved to deny SP 98-D-053 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KAMLESH PURI, SP 98-D-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a child care center and nursery school. Located at 1850 Lusby Pl. on approx. 13,362 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 298. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1999; and

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

1. The applicant is the owner of the land.
2. A facility of this size would not be compatible with the community.
3. The application does not meet established criteria of the Plan for locations of child care centers with the cul-de-sac and transportation issues.

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 Sect(s). 18-401 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 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1999.

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Page 307 January 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. DAVID A. WALTER O. HARRISON, VC 98-D-037, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 34.3 ft. from front lot line. Located at 11800 Leesburg Pks. On approx. 1.39 ac. of land zoned C-8. Dranesville District. Tax Map 6-4 ((1)) 35. (MOVED FROM 9/29/98 AND 11/3/98).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Harrison, 11800 Leesburg Pike, Herndon, Virginia, replied that it was.

Cathy Lewis, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 34.3 feet from the front lot line. A minimum

front yard of 40 feet is required; therefore, a variance of 5.7 feet was requested. The subject property was the subject site of a special exception for a vehicle light service establishment, SE 98-D-020, and was approved by the Board of Supervisors on January 11, 1999.

Mr. Harrison, presented the variance request as outlined in the statement of justification submitted with the application. He said the property had been family owned since the 1920s, and started out as a small country store that sat on the edge of Route 7. Mr. Harrison said in the 1930s when they paved Route 7, the State of Virginia moved the store back to meet the setback requirement. He said in 1946 his father built the existing service station and was given the instruction to build it even with the store, to be within the setback requirements. In the 1950s, the country store was moved and the station was extended on both sides. Mr. Harrison submitted photographs of the station when it was first built. He said the problem began in the late 1960s when Route 7 was expanded to four lanes and the setback requirements might have been changed because the existing building is too close. Mr. Harrison said the proposed addition would extend 35 feet to the west. He said the variance would not be detriment to the neighborhood.

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

Mr. Dively moved to approve VC 98-D-037 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID A. AND WALTER O. HARRISON, VC 98-D-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 34.3 ft. from front lot line. Located at 11800 Leesburg Pk. on approx. 1.39 ac. of land zoned C-8. Dranesville District. Tax Map 6-4 ((1)) 35. (Moved from 9/29/98 and 11/3/98). 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 12, 1999; and

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

1. The applicants are the owners of the land.
2. It seems fairly clear that when the special exception was approved it was anticipated that the variance would easily be approved. The addition is more in the nature of a continuation of the existing building with the slightest of modifications than any other kind of real serious change.

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

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

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

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

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

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

1. This variance is approved for the location of the building addition as shown on the plat entitled "Variance Plat, Lot 35 for the land of Walter Harrison" prepared by T.E.L.S., Ltd. (Thurber Engineering and Land Surveying) dated February 26, 1998, and revised through June 25, 1998, as 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 the 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. 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 January 20, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 309 January 12, 1999, (Tape 1) Scheduled case of:

9:30 A.M. KATHLEEN G. PACE, A 1998-MV-042 Appl. Under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a home child care facility for 12 children, which exceeds the maximum number of children permitted to be cared for under Zoning Ordinance provisions. Located at 8816 McNair Dr. on approx. 21,768 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((12)) 4.

Jack Reale, Zoning Administration Division, stated the issue was an appeal of the determination that the appellant was operating a home child care facility for 12 children which exceeded the maximum number of children permitted to be cared for under zoning Ordinance provisions. The appellant operates a home child care facility in a single family detached dwelling in which she lives and is caring for 12 children at a time. The appellant employs 3 part-time workers to assist her in a child care business. The Zoning Ordinance

defines a home child care facility as a dwelling where 10 or fewer children receive care, protection, and supervision during only part of the 24 hour day. Unattended by parent or guardian. The home child care facility is permitted either as an accessory use in accordance with the use limitations which provide for a maximum of 7 children to be care ;for at a time, in a single family detached dwelling or by special permit approval in which case the maximum number of children may exceed 7 but under no circumstances is the number of children permitted to exceed 10. He noted that the appellant indicated that she has provided child care in her home since 1981 and that she had done so under County permit approval; however, as noted in the staff report, at no time during the appellant's stated period of home child care operation has the zoning Ordinance permitted greater than 7 children to be cared for at any one time without the approval of a special permit. Likewise, the Ordinance has never permitted non-resident employees as a matter of right. He discussed the appellant's argument that the State licenses that she had been issued since 1986 allowed her to care for up to 12 children at a time. He said the appellant's basis for her appeal rest principally on her view that a State issued license somehow exempts her from Zoning Ordinance regulations. However, the appellant had not acknowledged the notation on her license which states that this license does not exempt licensee for maintaining compliance with local Ordinances and laws. In addition, the appellant provided no legal basis by which she would be permitted to employ workers to assist in her home day care business. The appellant's child care center cares for 12 children, thus exceeding the maximum of 7 children, which is permitted as an accessory use under Ordinance provisions. The appellant could seek to increase the permitted number of children by applying for special permit to allow a maximum of 10 children.

Ms. Pace said she had been doing child care for 17 years and she had copies of her approvals for the 1980s that the zoning people were not able to find. She said she had done everything by the book.

Mr. Dively asked if staff had seen copies of the permits. Ms. Pace replied that she had not spoken with staff.

Mr. Reale said under the conditions of the use as an accessory use, she was only permitted up to 7 children, but that staff would appreciate looking at the information from the appellant.

The Board recessed at 10:12 a.m.

The Board reconvened at 10:17 a.m.

Mr. Reale stated that the appellant had State documents relating to food issues relative to her day care use. He said unfortunately in the 1980s when she initiated her use, she would have been permitted as a home occupation and she had no evidence of those permits. Mr. Reale stated that as of January 1990 the Office for Children would have given her a permit for a use that had up to 5 children and there weren't any permits for the office either.

Mr. Kelley asked the appellant if she admitted to having 12 children in the child care and were they all there at one time. Ms. Pace replied that yes she had 12 children but not necessarily all at one time. She said a couple of children had left since the beginning of the whole issue and she had not replaced them yet, so she only had 10 children in her care presently.

Mr. Kelley asked if the appellant was advised of her option to apply for a special permit. Ms. Pace replied that she was told that the first thing she needed to do was to fine an appeal, and then a variance and special permit. Ms. Pace said she really didn't understand.
Mr. Kelley stated that the appellant could apply for a special permit to get the issues resolved. He moved to defer the appeal in order to allow the appellant to file for special permit. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Hammack noted that the appellant was forwarded a copy of a special permit application along with the Notice of Violation.

William Shoup, Deputy Zoning Administrator, asked if the Board could schedule the appeal for April 6, 1999 and subsequently adjust the appeal hearing date to coincide with the special permit hearing date.

Page 311, January 12, 1999, (Tape 1), KATHLEEN G. PACE, A 1998-MV-042, continued from Page 310

Mr. Hammack requested that staff give a status report on April 6, 1999, and if the special permit was not filed in a timely manner then the Board would reschedule the appeal.

Mr. Pammel requested that staff notify the individuals who wrote letters in opposition to make them aware of the new hearing date.

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Page 311, January 12, 1999, (Tape 1) After Agenda Item:

Request for Reconsideration
Richard Jurgens, A 1998-HM-034

Mr. Kelley moved to approve the Request for Reconsideration of the action taken on January 5, 1999, because all of the Board of Zoning Appeals members were not present. There was no second and the motion carried by a vote of 3-2-1 with Mr. Hammack and Mr. Pammel voting nay and Mr. Dively abstaining from the vote. Chairman DiGiulian was absent from the meeting.

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Page 311, January 12, 1999, (Tape 1) After Agenda Item:

Approval of January 5th and 7th 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motions which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 p.m.

Minutes by: Regina Thorn

Approved on: March 30, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, January 19, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 313, January 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WESLEY D. AND BARBARA W. TURNER, VC 98-B-131 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 19.6 ft. Located at 10727 Rippon Lodge Dr. on approx. 9,577 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3 ((11)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wesley Turner, 10727 Rippon Lodge Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 9.0 feet from the side lot line. A variance of 4.0 feet was requested.

Mr. Turner presented the variance requested as outlined in the statement of justification submitted with the application. He said that he wanted to enclose the existing carport and make it into a garage with a storage shed, and that due to the narrowness of the property, a variance was needed. He also articulated that the surrounding houses had garages.

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

Mr. Pammel moved to approve VC 98-B-131 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WESLEY D. AND BARBARA W. TURNER, VC 98-B-131 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 19.6 ft. Located at 10727 Rippon Lodge Dr. on approx. 9,577 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-3 ((11)) 7. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 19, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Charles J. Huntley, Jr., dated November 5, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ESSI ABDO, a.k.a. ESFANDIAR ABDOLLAHZADEH, VC 98-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line such that side yards total 16.7 ft. Located at 15110 Olddale Rd. on approx. 12,047 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 53-2 ((3)) 220.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Essi Abdo, 15110 Old Dale Road, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 7.3 feet from the side lot line. Such that side yards totaled 16.7 feet. Variances of 3.3 feet and 7 feet were requested.

Mr. Abdo presented the variance request as outlined in the statement of justification submitted with the application. He said that they wanted to have the garage to protect their vehicles from inclement weather.

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

Mr. Dively moved to approve VC 98-Y-133 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ESSI ABDO, a.k.a. ESFANDIAR ABDOLLAHZADEH, VC 98-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.3 ft. from side lot line such that side yards total 16.7 ft. Located at 15110 Olddale Rd. on approx. 12,047 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 53-2 ((3)) 220. 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 19, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant's request was modest and reasonable.

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

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by Richard H. Smith, dated October 8, 1998, 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. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 316, January 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MIDDLETON A. MARTIN, SP 98-D-054 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 1030 Pine Hill Rd. on approx. 1.0 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 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. Middleton Martin, 1030 Pine Hill Road, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow eight Peafowl on a property of less than two acres. The Zoning Ordinance states that domestic fowl could be kept on a minimum lot of two acres.

Mr. Martin presented the special permit requested as outlined in the statement of justification submitted with the application. He submitted support letters to the Board along with a map of the property. He stated that the Peacocks enhanced the surrounding school board property and woodlands and that the neighbors felt the same way. He also said that the birds didn't create odors or smell themselves, their waste disintegrated rapidly and doesn't create a mess, and they weren't aggressive or threatening.

Chairman DiGiulian called for speakers.

James Glasko, an abutting neighbor of the applicant, alleged that he had lived there for 22 years. He said that the Peacocks enhanced the neighborhood and losing the Peacocks would be a great loss.

Mr. Ribble brought a letter of opposition to Mr. Martin's attention. The letter stated that the birds were not contained on the applicant's property and they were eating neighbor's vegetation. Mr. Martin replied that he kept the birds in a netted area, but there were some that were outside of it. He stated that the Peacocks did not leave the property unless an unleashed dog chased them. He also added that they did not eat flowers.

Chairman DiGiulian asked who filed the complaint. Tammy Brown, Zoning Inspector, explained that the complaint was called in by Audrey Pentergrass, 6719 Barron Road. Chairman DiGiulian asked Mr. Martin if he knew this neighbor. Mr. Martin answered that he was told of her opposition from surrounding neighbors who were in support of the birds, but he had never spoken with her about them directly.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny SP 98-D-054 because the birds were not contained. This motion failed for lack of a second.

Mr. Pammel moved to approve SP 98-D-054 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MIDDLETON A. MARTIN, SP 98-D-054 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 1030 Pine Hill Rd. on approx. 1.0 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 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 January 19, 1999; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1030 Pine Hill Road, one (1) acre lot

shown on the plat prepared by Robert S. Yale, as revised and submitted by Middleton A. Martin, dated September 25, 1998, and is not transferable to other land.

2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.

3. This approval shall be for no more than eight (8) Peafowl.

4. The aviary used for the peafowl shall be cleaned of animal debris every day and the debris shall be disposed of in a method approved by the Health Department.

Pursuant to Sect. 18-407 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 6-1. Mr. Ribble voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 318, January 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GORDON LOGWOOD, SP 98-L-055 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 6608 Fargo St. on approx. 9,898 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5))(15) 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. Gordon Logwood, 6608 Fargo Street, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to keep 6 dogs on a lot of less than 20,000 square feet. The Zoning Ordinance read that dogs may be kept in accordance to the minimum lot size.

Mr. Logwood presented the special permit requested as outlined in the statement of justification submitted with the application. He submitted pictures of the animals and a letter from his wife's doctor. He then read a letter from his wife in support of the animals. He explained that his wife suffered from Agoraphobia and the loss of the dogs would have devastating effects on her. He further said that the dogs were kept mostly indoors and that they did have a fenced yard that was kept free of waste.

Chairman DiGiulian called for speakers.

Robin Whitcom, the applicant's daughter, brought in a dog to demonstrate the size of the dogs.

Chairman DiGiulian closed the public hearing.

Ms. Gibb asked how the complaint was filed. Mr. Bernal replied that the animal warden was called by a neighbor who no longer lived in the area.

Mr. Logwood informed the Board that the person who filed the complaint had never lived in the area, but owned the house next door. He said that he felt this person had a disliking for dogs in general and filed the complaint for spite.

Ms. Gibb moved to approve SP 98-L-055 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GORDON LOGWOOD, SP 98-L-055 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit a modification to the limitation on the keeping of animals. Located at 6608 Fargo St. on approx. 9,898 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5))(15) 29. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 19, 1999; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6608 Fargo Street, 9,898 square ft., shown on the plat prepared by R.C. Jackson, dated May 27, 1977, revised by Gordon Logwood, as revised through September 28, 1998, and is not transferable to other land.

2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.

3. This approval shall be for the applicant's existing six dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.

4. The yard used for 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.

5. The dogs shall not remain in the yard unsupervised.

Pursuant to Sect. 18-407 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. ROBERT H. NEFF, VC 98-D-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of canopy 31.8 ft. from front lot line. Located at 1905 Kirby Rd. on approx. 20,744 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((1)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert H. Neff, 1905 Kirby Road, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report.
The applicant requested a variance to permit construction of a canopy over an existing stoop 31.8 feet from the front lot line. The minimum required yard for a canopy in a front yard in an R-1 district is 37 feet; therefore, a variance of 5.2 feet was requested.

Mr. Neff presented the variance requested as outlined in the statement of justification submitted with the application. He acknowledged that the original house was built in 1939 prior to the first Zoning Ordinance and the purpose of the canopy was to provide shelter for the front porch. He further stated that the neighboring homes had similar canopies.

Mr. Pammel asked staff to clarify between the feet requested in the staff report and the length of the canopy with the steps. He asked whether an encroachment into a yard was permitted. Ms. Schilling replied that the house was constructed before the implementation of the Zoning Ordinance so the house itself encroached into the 40 foot set back and with addition of the cover over the stoop and the steps totaled the 31.8 feet.

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

Mr. Kelley moved to approve VC 98-D-132 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT H. NEFF, VC 98-D-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of canopy 31.8 ft. from front lot line. Located at 1905 Kirby Rd. on approx. 20,744 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((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 January 19, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant's request is standard for the neighborhood
3. The applicant met the required standards for a variance.

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

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

F. An extraordinary situation or condition of the subject property, or

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of a canopy shown on the plat prepared by Robert W. Reinhardt, Architect, dated May 29, 1997, as revised through October 29, 1998, 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 canopy 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 and Ms. Gibb 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 27, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 321, January 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAUL AND KICHO LOCIGNO, SP 98-S-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.9 ft. from rear lot line and accessory structure to remain 7.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 8203 Cherry Ridge Rd. on approx. 12,476 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 35. (Moved from 11/3/98)(Def. From 1/5/99 and 1/12/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul R. Locigno, 8203 Cherry Ridge Road, Fairfax Station, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for error in building location to allow a screened deck addition to remain 13.9 feet from the rear lot line and an accessory structure to remain 7 feet from the side lot line and 0.0 feet from the rear lot line. With respect to the enclosed deck addition, the Zoning Ordinance requires a minimum rear yard of 25 feet; therefore the amount of error was 11.1 feet or 44%. With respect to the shed the Zoning Ordinance requires a minimum side yard of 8 feet and a minimum rear yard of 10 feet, therefore the amount of the error was 13% and 100% respectively.

Mr. Locigno presented the special permit requested as outlined in the statement of justification submitted with the application. He explained that he did not intentionally have the structure enclosed knowing that he was in violation. The contractor told him that they would be responsible for the permit. He said that he was out of the country at the time of construction. Mr. Locigno stated that upon receipt of the violation he found that the original set-back of the house was also in violation. He said that the deck was constructed the same time as the house was and at the time he had a permit. He did not realize that the shed was so close to the lot line because it was in a wooded area. He further claimed that his neighbor had the same deck and submitted a letter of support from that neighbor.

Mr. Hammack asked when the shed was constructed and if he built it or if it was already built when he purchased the house. Mr. Locigno answered that he built the shed himself and it had been up for 13 years. Mr. Hammack asked if the applicant had access to the area behind the house. Mr. Locigno replied that the area behind his house was common wooded area.

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

Mr. Hammack moved to approve SP 98-S-042 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL AND KICHO LOCIGNO, SP 98-S-042 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 13.9 ft. from rear lot line and accessory structure to remain 7.0 ft. from side lot line and 0.0 ft. from rear lot line. Located at 8203 Cherry Ridge Rd. on approx. 12,476 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((6)) 35. (Moved from 11/3/98. Deferred from 1/599 and 1/12/99). 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 January 19, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an enclosed deck and shed shown on the plat prepared by Kenneth W. White, dated May 14, 1997 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. 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 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 323, January 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THE ENTERPRISE SCHOOL OF NORTHERN VIRGINIA D/B/A, THE ENTERPRISE SCHOOL, SPA 85-C-049-4 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-049 for a private school of general education with an enrollment of less than 100 students daily to permit building additions, site modifications and change in development conditions. Located at 1629 Beulah Rd. on approx. 4.5 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 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. Elizabeth Baker, Walsh, Colucci. et. al., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to their special permit to allow construction of a 10,000 square feet building to be used as offices and classrooms, an increase in enrollment to be phased in over five years from 29 students to

50 students, an increase in employees from 9 to 13, and an adjustment in the hours of operation to extend the hours on Tuesdays until 6:00 p.m. The applicants also requested elimination of the five year term on the approval of the special permit to an unlimited term. Site modifications were proposed that included relocation of the parking lot to be constructed in the event that additional dedication and construction of frontage improvements should be required in the future along Beulah Road. Staff recommended approval subject to the development conditions listed in the staff report. Staff reported the applicant's request to change several development conditions. (These changes were reflected in the resolution.)

Ms. Baker presented the special permit amendment request as outlined in the statement of justification submitted with the application. She explained that the school had been in operation since 1986 and said that the current space occupied was less than optimal. She stated that the increase in enrollment may never reach 50 students but they will have the space to accommodate that number if the permit was granted. She informed the Board that the applicants have worked closely with the adjoining neighbor to provide fencing and landscaping to satisfy them. She said that the applicants wanted the extra evening hours on Tuesday for parent/teacher conferences and teacher planning time. Ms. Baker articulated that the applicants asked for termination of the five year limitation because they had operated within the conditions and because it was an added expense to have to come back every five years. Ms. Baker further stated the reasons for the requested development condition changes reflected in the staff report.

Ms. Baker stated that the plat did not reflect a multi purpose court behind the new structure but there was a multi purpose court located at the rear of the existing building. She requested to add an additional multi purpose court at the rear of the new structure. She stated that the location of the new court would provide better supervision of the students. Mr. Pammel added the new court as condition 15.

Ms. Gibb asked what type of student body the school taught. Ms. Baker replied that it was an alternative school that was funded by the Juvenile Court/Board of Supervisors. She answered that the school was basically for students with truancy problems.

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

Mr. Pammel moved to approve SPA 85-C-049-4 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE ENTERPRISE SCHOOL OF NORTHERN VIRGINIA D/B/A, THE ENTERPRISE SCHOOL, SPA 85-C-049-4 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-049 for a private school of general education with an enrollment of less than 100 students daily to permit building additions, site modifications and change in development conditions. Located at 1629 Beulah Rd. on approx. 4.5 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 13. 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 19, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board that they met the prescribed criteria for Special Permit 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 Sect(s). 3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1629 Beulah Road (4.5 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by dated Charles P. Johnson and Associates, dated July 1998, as revised through December 17, 1998; 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 Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Upon issuance of a Non-Residential Use Permit for the site modifications for the private school of general education, the total maximum daily enrollment may increase and shall be limited to fifty (50) students.

6. Parking shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance for parking requirements for a private school of general education for high school students, and shall be on-site in the locations shown on the special permit plat. The size and configuration of parking spaces shall be in conformance with the Public Facilities Manual (PFM) as determined by the Director, DPWES, at the time of site plan review.

7. Upon issuance of a Non-Residential Use Permit for the site modifications for a private school of general education, the hours of operation may increase and shall be limited to 7:45 a.m. to 3:30 p.m. Monday, Wednesday, Thursday, and Friday. The hours of operation shall be limited to 7:45 a.m. to 6:00 p.m. on Tuesdays.

8. Right-of-way to 60 ft. from the existing centerline of Beulah 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 from the Virginia Department of Transportation or Fairfax County when a road improvement project is initiated in front of the site. Ancillary easements shall be provided to fifteen (15) ft. behind the new right-of-way line. Parking on the site shall be provided in accordance with that shown on Sheet 2 of the approved special permit plat, however, the applicant shall relocate the parking lot in accordance with sheet 3 of the approved special permit plat at the time of to dedication of the right-of-way, including the provision of a 6 ft. high barrier fence and supplemental landscaping along the western property boundary adjacent to the new location of the parking lot.

9. The existing vegetation along the northern and eastern lot lines shall be deemed to satisfy the transitional screening requirements of Article 13. Supplemental landscaping shall be provided along the southern property boundary adjacent to the driveway and the second building, in accordance with Attachment B, subject to the review and approval of the Urban Forestry Branch of DPWES., to screen the view of the school and parking lot from adjacent residential lots. A 6 ft. high barrier fence

and supplemental landscaping shall be provided along the western property boundary to screen the view of the parking lot and school from the rear yards of adjacent residences. The 6 ft. high wooden fence shall be installed adjacent to the southern and southeastern boundaries of the adjacent lot identified as Tax Map 28-1 ((1)) 13C. This new fence shall tie into the existing fence located along the eastern boundary of lot 13C. Where the new fence ends, additional evergreen trees including one magnolia tree shall be planted adjacent to the eastern property line of lot 13C in order to provide an effective year round screen of the school buildings and parking lots.

10. If a waiver of the dustless surface agreement is not approved by the Director, DPWES, the parking lots and driveway shall be paved in accordance with PFM Standards.

11. There shall be no clearing or grading within the limits of clearing and grading as shown on the special permit plat, except for dead or dying vegetation and except for clearing necessary to maintain the septic field as shown on the special permit plat.

12. There shall be a maximum of 13 employees.

13. Any 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) ft.
    - The lights shall be low intensity design which directs the light directly onto the facility.
    - Shields shall be installed, if necessary to prevent the light from projecting beyond the parking lot area.

14. The proposed second building shall be constructed in general accordance with the conceptual architectural elevation shown in Attachment A.

15. An outdoor multipurpose court may be constructed to the rear of the new structure subject to meeting all of the set back requirements and further subject to the approval of the Urban Forestry Branch of DPWES.

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

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. (Except that the alternate parking lot shall be considered Phase II and shall be constructed at the line of dedication and construction of frontage improvements). The Board of Zoning Appeals may grant additional time to establish the use or 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 326 January 19, 1999, (Tape 1 and 2), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC., SP 98-S-056 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit riding and boarding stable. Located at 10804

Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank Shukis, 8937 Victoria Road, Springfield, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to establish a riding and boarding stable in order to conduct horseback riding classes design to provide therapeutic benefit to disabled children. The applicant also requested modification of the transitional screening and barrier requirement on all lot boundaries.
She further reported that the property was surrounded by single family homes with open fenced pastures and other structures which facilitated the keeping of horses. Staff recommended approval of the special permit.

Mr. Shukis presented the special permit requested as outlined in the statement of justification submitted with the application. He explained that the therapeutic horseback riding program, which serves the disabled, had been in operation for 19 years. He said the program was non-profit. He stated that the program was onsite accredited and nationally recognized by the North American Riding for the Handicapped Association and the all instructors were certified through the Association. He said that the lessons enabled the students to develop balance, self confidence, decision making skills, along with speech and communication skills. He submitted a petition with 1,100 signatures in support of the program.

He reported that the program met all of the requirements for Fairfax County and that they met with neighbors and addressed all of the concerns. He said that the entrance was a private drive and that there was a 50 foot easement. They planned to pave the entrance, as required by both the County and VDOT. He stated that the average traffic would be around 14 round trips per hour during the period that lessons would be conducted and that the peak traffic would be 6 cars in a 5 minute period. He said that the proposal was amended to mitigate the traffic impact. He explained that a soil and water conservation plan was being developed and that they were planning to plant 70 trees to mitigate water run-off. He said that all of the additional fencing needed would match the existing property and that the indoor riding facility would be constructed to match the existing barn.

He informed the Board that the program would pave an extra 75 feet beyond the required 25 feet to minimize dust for a neighbor and they would assume financial responsibility for road maintenance on the private road back to their driveway. He stated that traffic would not directly impact the neighbors because they were the first driveway on the private road. He stated that there was an error on the plat which indicated that they needed a commercial entrance. The County standard was that they needed a VDOT approved entrance and that they would meet the condition upon approval of the special permit.

Mr. Dively asked staff if they had reviewed the proposed condition 16 and a letter dated January 19, 1999. Ms. Wilson replied that staff had not seen any new proposed language. The letter was submitted to staff. Ms. Wilson reviewed the letter and stated that staff supported the language as proposed by the applicant.

Mr. Kelley asked if Mr. Shukis agreed that any large events could not be held on the property. Mr. Shukis stated that he agreed and he understood the restriction.

Chairman DiGiulian called for speakers.

The following people spoke in support of the application

Ms. Mary Wolf stated that she was the mother of a 13 year old boy with autism who had participated in the riding program. She related that the riding school provided needed support for disabled children and their parents.

Ms. Elizabeth Shukis stated that she also was the mother of a disabled child and she introduced a narrative video which focused on the interaction between the instructors and children at the riding school.

Ms. Rita Dunn stated that she had been an instructor for the riding school since 1984. She explained that learning to ride was therapy for the students. She introduced a video which described what disabled riders had achieved.

Ms. Tammy Wallace read a testimonial from Ms. Lynn Nelms, an adjoining home owner. She said that Ms. Nelms felt that the property was always well maintained and that the riding program was an asset to the community.

Mr. Phillip Wallace stated that he was 15 years old and a freshman at Centreville High School. He said that he had been riding with the program for six years. He said that the program allowed him to become skilled in advanced riding techniques and allowed him to compete in a sport that he loved without any limitations. Mr. Wallace explained that due to Cerebral Palsy he was not able to walk without assistive devices and that the riding therapy helped him with muscle tightness and tone, taught him how to isolate and control his muscle contractions, and that riding at the riding school was enjoyable and challenging for him. He informed the Board that every lesson had brought him closer to his ultimate goal of walking unassisted.

The following people spoke in opposition.

Mr. Randy Herbst, 10808 Henderson Road, Fairfax Station, Virginia stated that he has lived on the property since 1978. He said that he believed this was the wrong property for the riding program, the riding program would adversely effect the current and existing use of the area, that a huge development on such a small parcel would have environmental implications and that the site issue could not be solved. He stated that it was written in the Deed of Covenants that there should be no commercial enterprises on the property. He claimed there was a car count of six cars per every five minutes and he believed that was too much traffic for a private drive and that it would adversely effect the four homes that it serves.

He submitted pictures of a blind knoll at the end of the private drive and expressed his concern regarding the danger of pulling in and out onto Henderson Road and how the danger would increase with the proposed additional traffic. He informed the Board that this area of road was prone to frequent auto accidents.

He reported that all of the run-off from the applicant's property flowed through his property making gulleys at least five feet deep and wide.

He said that the proposed buildings would make it harder to contain the rainwater thus making more run-off. He reported that the property contained wetlands and that the proposals to take care of the run-off were lacking. He said that he spoke with Mary Ann Welton regarding all of his concerns and she said that she would be interested in revisiting the property to address his concerns.

Steve Fox, 10806 Henderson Road, Fairfax Station, Virginia, informed the Board that his property was directly adjacent to the subject property and that he reaffirmed all of Mr. Herbst's issues. He said that the minimum standard for commercial entrance was 90 feet of road frontage and that with the ingress and egress on Henderson Road there was only 50 feet to work with and at that time there was only 20 feet of road existing. He referred to the staff report stating that there were potentially 33 vehicles in five minute intervals using the entrance and it was his opinion that it would be a major impact on the private drive. He voiced his concerns regarding school buses picking up and dropping off children at the end of the private drive. He said that the Deed of Covenants stated that no commercial use of land was accepted on the property.

Charles H. Smith, III, 10808 Henderson Road, Fairfax Station, Virginia stated that he resides on the property and he did not want to make anyone think that he was there in opposition of what the riding school accomplished and that horses were what brought all of the families to the area and he understood the benefits of them. He said that safety of the families that live there and of the students themselves was the issue and that the Board needed more information both on the environmental side and safety side to make an informed decision against the issue.

Roland Shep Oliver, 10810 Henderson Road stated that he had lived there for the last 25 years. He explained that the property was zoned for single family detached homes on a minimum of 5 acres and that it was not compatible in zoning laws to have a commercial business located on a private drive that was 900 feet from the state road. He informed the Board that he was the owner of the private drive and the residents that lived there had a right of way or an easement. He said that his deed read that the driveway was to be

used for residential traffic only and that the entrance to the private drive was extremely dangerous. He further stated that the speed limit was reduced to 30 mph right before the entrance and the sight distance was extremely poor. He submitted photographs reflecting the poor sight distance and some accidents that had happened in the three weeks prior to the public hearing.
Mr. Oliver pointed out that Henderson Road served as a thoroughfare to Route 123 and that the business would peak at the same time that commuters would be going home from work. He stated that with the number of vehicles using the private drive would be astronomical and it would put children's lives in jeopardy.

Mr. Shukis contended that the issues regarding traffic were based on misinformation. He said that while 200 students were their longtime goal the attendance would be spread out and that they only would ride once a week. He said that the traffic would be limited to fourteen round trips per hour with a peak of six cars per five minute period, the soil and conservation plan would decrease the problem flood areas and they would be placing the seventy trees in the areas of water run-off. Mr. Shukis informed the board that the property previously was used for a commercial stable and Mr. Fox and Mr. Oliver both leased out a stable. He said that the previous commercial stable was running seventeen horses with people coming and going and doing business as a horse farm. He further said that they were not required to have a commercial entrance and that VDOT would define what measures they would have to take to make the entrance meet their standards.

Mr. Kelley asked staff if they would recommend approval if the word therapeutic were not in the title. Staff replied that approval would be recommended no matter what type of riding stable it was.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP-98-S-056. He felt that Fairfax County was an overbuilt County but that this was an appropriate place for the riding program and the transportation issues would be resolved when the conditions were met.

Mr. Kelley said he was concerned about the traffic situation and he felt that the application should be deferred until it was cleared up.

Ms. Gibb asked for clarification whether the traffic situation would be cleared up when the site plan went through. Chairman DiGiulian replied that before the site plan went through the entrance would have to meet VDOT standards.

Mr. Pammel stated that he thought that the facility was much needed in the County but he felt strongly that the residents had made a strong case with respect to transportation and that he didn't want to make a decision and endanger anyone from the condition of the intersection. He said he was afraid of the Board approving the permit only to find that meeting VDOT standards would be too costly for the applicants. However, he would feel comfortable finding out what expenses getting VDOT approval were going to be and if the applicants would be able to afford to make these changes.

Mr. Kelley agreed with Mr. Pammel and he thought the applicants could get State or Federal funding to help them with the costs.

Ms. Gibb agreed with Mr. Dively and said that she felt the traffic situation would be addressed when the conditions were met.

Mr. Hammack had concerns about the traffic situation and he did not want to approve a use that would generate more traffic. He said that he didn't want to vote against the application but he felt that it needed more work.

Ms. Gibb stated that Fairfax County was over crowded as it was, this use would preserve open space, and that serious consideration was needed before denying the application.

Mr. Dively pointed out that VDOT had already reviewed the matter and given conditions and they were made part of the conditions of the permit. The applicants had agreed to comply with the conditions.

Mr. Dively said that there already was a letter submitted by VDOT and that he didn't think they were going to get any different explanations other than what was contained in that letter.

Mr. Hammack said that the property would no longer be used for commercial use and since they were planning on converting the house into an office it would become a non-residential use. This would have an impact on the surrounding properties.

Mr. Kelley stated that he wanted clarification from VDOT whether this could be considered a school and if flashing lights could be installed to slow traffic down.

Chairman DiGiulian said that he would be satisfied with a statement from VDOT whether sight distance requirements could be met.

Mr. Pammel stated that posting the area with hidden entrance signs would not be sufficient because drivers did not pay attention.

Ms. Gibb asked if trailers would be traveling in and out on a daily basis. Mr. Shukis replied that the only trailer use would be to transport the horses to the stable initially and once a year to go to a show and that all of the horses were kept on site.

Mr. Dively asked if the only question that needed to be answered was if sight distance requirements could be met.

Mr. Kelley replied that he would like to know if flashing lights and danger signs could be posted.

Mr. Kelley moved to defer SP 98-S-056 for several weeks to have VDOT review the traffic situation and come in and answer the Board's questions.

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

Chairman DiGiulian asked staff if it was possible to continue the case in two weeks and to have a representative from VDOT come and answer questions. Ms. Langdon replied that the case would be scheduled for February 2, 1999 at 9:00 A.M. She said staff would try to get representatives from the Office of Transportation and VDOT to attend the hearing.

The Board recessed at 11:17 A.M. The public hearing resumed at 11:23 A.M.

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Page 330, January 19, 1999 (Tape 2 and 3), EDWARD P. JAPPELL AND ALICE L. JAPPELL, A 1998-DR-043

9:30 A.M. EDWARD P. JAPPELL AND ALICE L. JAPPELL, A 1998-DR-043 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is parking the tractor portion of a tractor-trailer truck on residential property in violation of Par. 16 of Sect. 10-102 of the Zoning Ordinance. Located at 11921 Fallen Holly Ct. on approx. 27,180 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-1 ((7)) 225.

Ms. Laura Clarke, Zoning Administration, presented staff's position. She stated that the appellants were parking a tractor portion of a tractor trailer at their residence. She said that the vehicle was considered a tractor portion of a tractor trailer rig and was prohibited in the R-1 District. She stated that the violation came to staff's attention via a zoning complaint late last summer and subsequent site inspections revealed that the 1964 Mack Truck was parked on the property. Although the vehicle had been modified by removing a trailer hitch mechanism and also modifying the exhaust system, it was still staff's position that this type of vehicle was in violation of the Ordinance.

Mr. Hammack asked staff if there was any provision under the Ordinance that would allow the appellants to keep the vehicle on the property and staff replied that there wasn't. Chairman DiGiulian asked if the vehicle would be considered an RV if an RV type body was attached to the rear. Staff answered that it would be allowed if it was made into a true RV vehicle.

Chairman DiGiulian asked for clarification regarding why it was in violation because of the fact that the truck had been modified so there was a plate covering the area where the receiver would go for a trailer and that it was incapable of pulling a trailer. Staff replied that the plate could be put on and taken off at any given time.

Mr. Pammel asked if the Department of Motor Vehicles (DMV) had a specific classification for this type of truck. Staff replied that they had contacted both the State Police and the Department of Motor Vehicles and State Police said that it could be classified as whatever the applicant states it as.

Alex Laufer, Attorney for the Appellants, explained that Mr. and Mrs. Jappell owned an antique 1964 Mack vehicle. He informed the Board that the vehicle had been located at their home for a period of six years, the vehicle was licensed as an antique and its use was restricted by the Virginia Code. It could not be used in commerce or as a means of general transportation; therefore, a fifth wheel could not be put on and taken off at any given time. He said that the vehicle was used for display purposes a dozen or so times a year at truck shows and these shows were charity events to raise money for sick and/or disabled children. He said that the Jappells had lost their daughter last year and that attending truck shows with her father was her favorite activity and the truck was her favorite possession. Mr. Laufer said that the truck was an emotional link between the parents and the child and it had tremendous sentimental value.

Mr. Laufer pointed out that there was no definition in the Ordinance and that it just said the tractor portion of a tractor trailer, but Virginia code defined tractor truck as every motor vehicle designed and used primarily for drawing other vehicles. He stated that the appellants would, if forced to, further modify the truck to make it look more like an RV but he was not sure if that would have any aesthetic value. He submitted photographs of the vehicle that illustrated how small it was compared to a typical tractor.

Mr. Laufer further stated that two years ago the same individual that initiated the complaint to the Zoning Administration, the Homeowners Association (HOA), was forced to bring a lawsuit against the appellants to enforce restrictive covenants against commercial vehicles and at the trial, the court ruled that it was not a commercial vehicle and was not barred by the restrictive covenants of the HOA.

The HOA, upon persistence of the same individual, then filed an appeal to the Supreme Court of Virginia, which rejected the petition. The applicants agreed to treat the vehicle as an RV for purposes of their own covenants. With the permission of the architectural committee of the HOA, the appellants modified their lot to be able to park behind their home. Mr. Laufer submitted pictures to illustrate where the truck was parked. He stated that the truck was only visible by one neighbor who was at the public hearing in support of the appellant's position.

He indicated that there were several false statements included in the initial complaint and he wanted to clarify that there were no junk vehicles being parked at the property, nor was the truck being used daily and in the winter it was not used at all. He said that during the summer it was only used to go to truck shows and that Mr. Jappell occasionally drove the vehicle to the dealership that he worked at for service and maintenance. He submitted pictures and a magazine clipping of a truck that had been turned into an RV which was another alternative that would detract from the value of the vehicle.

Ms. Gibb asked how often the truck was driven. Edward Jappell, 11921 Fallen Holly Court, Great Falls, Virginia replied that the truck was driven between the hours that people commute to and from work. He stated that he drove the truck to approximately eighteen (18) truck shows per year and that he parked the truck from late September until late March and that the truck was driven under 2,000 miles per year.

Mr. Kelley asked if the truck was bought customized. Mr. Jappell answered that the truck was purchased stock customized.

Mr. Hammack asked if removing the fifth wheel could be considered restoration or customization. Mr. Jappell replied that the truck was purchased with a rusted fifth wheel that he removed immediately and that trucks came new with no fifth wheel and that the fifth wheel would have to be installed.

Mr. Jappell stated that he never had any intention of using it for any means other than recreational and because of the circumstances regarding his daughter, the truck was used for fund raising events.

Mr. Hammack asked what the rated carrying capacity was. Mr. Jappell replied that the current rated carrying capacity for the vehicle was 10,000 lbs.

Mr. Hammack asked if a large sport utility vehicle could have been considered a commercial vehicle under the Ordinance. William Shoup, Deputy Zoning Administrator, answered that it could have been and stated that large pick-up trucks with a rated carrying capacity over 325 tons met the definition of a commercial vehicle even though they weren't licensed as a commercial vehicle.

Mr. Hammack asked for clarification of whether licensor controlled classification under the Ordinance or if it was based on definition only. Mr. Shoup replied that the type of license didn't determine if it was a commercial vehicle with the exception that it was a "for hire" vehicle, the definition specified that it would be a commercial vehicle.

Mr. Hammack stated that the only criteria, under the Ordinance, that the vehicle met for it to have been deemed a commercial vehicle was its carrying capacity. Mr. Shoup replied that they had addressed that issue in the staff report, which stated that the rated carrying capacity was reached by subtracting the empty weight from the gross weight of the vehicle and in this instance that would be a carrying capacity of only 75 lbs., which did not seem reasonable. Mr. Shoup stated that according to State Police, registrants could pick whatever gross weight they wanted on the registration form as long as it didn't conflict with the empty weight.

Mr. Hammack asked staff that if this vehicle was an antique, why did it not fall under recreational vehicle recognized as personal property and not for hire in the Ordinance. Ms. Clarke answered that the Ordinance specifically precluded tractors and tractor trailers from being parked in residential zones and that the intent was to regulate large vehicles from residential zones. Mr. Shoup stated that the vehicle was manufactured as a tractor and that it still resembled a tractor and staff felt that fact prevailed.

Mr. Dively agreed that he felt it was a tractor but he stated that he didn't think it was a commercial vehicle.

Ms. Gibb stated that when a tractor was envisioned, it was thought to be a very large vehicle and the vehicle in question was not large.

Ms. Clarke said that another part of the provision was RV's, boats and boat trailers accessory to residential use and a tractor trailer would not be unless it were used as a recreational vehicle. She stated that in the definition the other types of vehicles were clearly accessory to the residential use of the property.

Mr. Laufer explained that the same Ordinance that prohibited all tractors did allow wrecker vehicles up to 12,000 lbs and that a wrecker was not that different in appearance than tractors and most of them were actually larger than the vehicle in question.

Mr. Hammack asked staff if would be permissible for Mr. Jappell to attach a tow bar to the back of the tractor to make it similar to a wrecker. Mr. Shoup replied that it would be as long as it was under 12,000 lbs.

Chairman DiGiulian called for speakers.

Mr. John Attebury, 11923 Fallen Holly Court, Great Falls, Virginia, stated that he lived on the lot closest to the parked vehicle. He informed the Board that he felt that there was a feud going on between neighbors. He said that the vehicle was compatible with the neighborhood and that the vehicle was not as noisy as the trash trucks that came in and out of the cul-de-sac nor was it as noisy as the school busses that back up in the neighborhood. He stated that the truck was a thing of beauty and that he often showed the truck to visiting friends. He said that the neighborhood had taken on a gestapo attitude and that he believed that the Jappell family had been harassed.

Ms. Denise Taplin, 11920 Fallen Holly Court, Great Falls, Virginia, stated that she lived directly across from the neighbor that had been complaining about the vehicle and she had become dismayed by his relentless pursuit of the vehicle and the Jappells having the vehicle. She said that the vehicle was beautiful and that it had been a part of her children's life for several years and they would be disappointed to see it leave as they had emotional ties to the vehicle through the Jappell's daughter. She stated that the truck was not nearly as noisy as trash trucks, school busses and teenagers on motor scooters and that the truck was not used on a regular basis, but occasionally on weekends.

Ms. Stephanie Lax, 11922 Fallen Holly Court, Great Falls, Virginia, stated that she lived directly across from the Jappells and that they had been excellent neighbors. She informed the Board that when she first purchased her house and saw the vehicle she was worried about junk vehicles being in the yard and she later found out that was not the case. She said the truck was beautiful and that it fit into a regular parking space. She stated that she had a problem with the motivation of the complainant and felt that there was personal animosity on the complainant's part and a win at all cost case.

Mr. Ralph Cannell, 11917 Fallen Holly Court, Great Falls, Virginia, stated that he had lived at that address for 17 years. He said that he did not issue the complaint but that he was there in support of opposition to have a tractor trailer parked in an R-1 neighborhood. He stated that the Jappells had been fine neighbors and that he had deep sympathy for them in the loss of their daughter. He claimed Mr. Jappell was using the vehicle on a regular basis and that it was noisy and that it did not comply with the emission requirements that modern vehicles would have. He stated that he did not have any intent to harass the Jappells but he was opposed to having the tractor trailer parked in an R-1 neighborhood.

Mr. Thomas G. Kobus, 11919 Fallen Holly Court, Great Falls, Virginia submitted a letter of opposition from Thomas G. Virnston, 11914 Fallen Holly Court, Great Falls, Virginia. Mr. Kobus stated that he had lived at that address since 1992. He claimed in 1994 he complained to Mr. Jappell about the disturbances caused by him driving the tractor regularly and keeping it parked on the property had an adverse effect on the neighborhood. He stated that Mr. Jappell informed him that he would park it at a different location and that since that time the tractor had remained parked in front of the Jappell residence.

Mr. Kobus said that Mr. Jappell used the tractor to commute to and from work everyday, he used it as his personal transportation vehicle and Mr. Jappell removed and affixed the fifth wheel according to his needs. He said that his family members and guests were often awakened by the sound of the vehicle and he felt it was not appropriate for the vehicle to be parked in a R-1 zoned neighborhood.

He explained that he and several neighbors testified in opposition of the vehicle at a previous hearing and the Judge at the trial ruled that the tractor was not a commercial vehicle under the covenants of the HOA since Mr. Jappell claimed that it was not used as a commercial vehicle even though it was manufactured and designed as a commercial vehicle. He stated that the Judge further stated that the HOA should file a complaint with the County that the tractor violated the Ordinance. Mr. Kobus read a letter from the Board of Directors from the HOA stating their opposition.

Mr. Laufer stated in his rebuttal, that although Mr. Kobus was entitled to oppose the vehicle in question, however, he was not entitled to exaggerate the truth and that there had been a lot of hearsay statements. He explained that this matter had been the subject of a lawsuit with witnesses and the Judge specifically disbelieved the testimony concerning the daily use and found that the vehicle was not being used daily and that the speedometer readings were taken into consideration. The Judge discussed alternatives in general terms and that Mr. Kobus had distorted those comments.

Mrs. Alice Jappell, 11921 Fallen Holly Court, Great Falls, Virginia, stated that the truck was purchased as an antique and it was used as a family vehicle for purely recreational means. She said that her husband had a diesel pick up truck that he used as his every day vehicle and that she felt, because of its loudness, was misinterpreted by neighbors for the tractor. She stated that there was a lot more noise in the neighborhood other than the truck in question.

Mr. Kelley asked staff for clarification that the vehicle would not be in violation if it were converted into an RV. Mr. Shoup said that was correct as long as it functioned as a recreational vehicle. Mr. Kelley then asked staff for the same clarification regarding a tow truck. Mr. Shoup answered that it would be permitted as long as it stayed within the 12,000 lb. weight limitation.

Mr. Dively asked staff why the Judge's finding that the vehicle was not used as a commercial vehicle was not taken into consideration. Mr. Shoup replied that the vehicle did not have to be used for commercial purposes to be found in violation of the Ordinance and that in this case staff felt that it fell under the prohibited vehicle portion of the Ordinance.

Mr. Hammack asked why staff had such a reservation to say that it could have been something other than a tractor since modifications had been made so that it was incapable of towing a trailer.

Mr. Shoup replied that making modifications did not change the fact that it originally was manufactured as a tractor and that it still looked like a tractor.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to overturn the decision of the Zoning Administrator regarding A 1998-DR-043 because it was not a commercial vehicle, that it fell within the exemption in the description of a commercial vehicle, and it was similar to recreational equipment recognized as personal property and not for hire.

She stated that the whole purpose of the prohibition against commercial vehicles would be to prevent the parking of vehicles that were obtrusive or that had advertising on them for business purposes and to prevent something much larger and obtrusive than the vehicle in was in this case.

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

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Page 334, Tuesday, January 19, 1999, (Tape 3), Scheduled case of:

9:30 A.M. FIRST VIRGINIA BANK C/O RALPH B. EVANS, A 1998-DR-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is allowing the operation of a retail sales establishment on the property in an R-3 District and has allowed the erection of a freestanding sign on the property, all in violation of Zoning Ordinance provisions. Located at 1676 Chain Bridge Rd. on approx. 1.02 ac. of land zoned R-3. Dranesville District. Tax Map 30-1 ((1)) 92. (MOVED FROM 12/1/98)

William Shoup, Deputy Zoning Administrator, presented staff's position. Mr. Shoup stated that a photographic studio was doing business in an R-3 District and was located at 1676 Chain Bridge Road in a single family dwelling. He said that the photographic studio was being advertised as a photography studio with a free-standing sign in front of the structure. He stated that no one was residing at the studio and that it was solely used for business purposes.

Mr. Shoup stated that based on the retail sales establishment definition contained in the Zoning Ordinance, the photographic studio was specifically identified as an activity that constituted a retail sales establishment use and retail sales establishments were not permitted, under any circumstances, in an R-3 District. Therefore, this use was in violation of the Zoning Ordinance and since the use was not permitted, the free-standing signs could not be considered a permissible accessory use and they too, were in violation of the Zoning Ordinance.

Ms. Gibb asked staff how the complaint was made. Mr. Shoup replied that the complaint was filed by an adjoining property owner.

Mr. Johnathan Rak, Attorney for the appellant stated that citizens throughout McLean were forming coalitions to preserve Evans Farm as it was and that there were letters and columns in the daily papers asserting the community benefits of the Evans Farm operation. He explained that Mr. Ralph Evans was selling Evans Farm and had informed the employees and Jeff Lubin, the owner of the photographic studio that they would have to relocate by the end of 1999.

Mr. Rak stated that they agreed with most of the facts stated in the staff report but they disagreed with the interpretation of the Ordinance as it applied to this particular use and that the property had been a part of Evans Farm for 25 years and was purchased by Ralph Evans' father in 1975 and that the studio had been doing business at this location for ten years. He said that the portrait studio was authorized under the special permit approved by the BZA in 1956, and that the permit did not include any particular conditions that limited the use of the property. He said that it was initially issued specifically for a tea room but it had included various uses over the years.

Mr. Rak stated that this building had been leased to Mr. Lubin since 1991 when Mr. Evans asked him to come to the property after he had encountered him doing several photographic shoots in the banquet halls at Evans Farm and that Mr. Evans continued to offer services in relation to the restaurant operation. He pointed

out that there was an advertisement in the yellow pages that clearly indicated that the studio was a part of Evans Farm. He said that they disagreed that the operation was a retail sales establishment and that Mr. Lubin was a portrait artist and the characteristics of the operation were far from studios such as Olan Mills and Expressly Portraits with heavy volumes of customers going in and out. He explained that Mr. Lubin averaged less than 100 portraits per year and typically he had one or two customers per day on an appointment only basis and that he did not sell merchandise from the building.

He said that the business had a very low impact on the neighborhood and that there were no more than 50 cars visiting this property per month and the daily average was about 2 to 3 cars. Mr. Rak further explained that the signage was directional, not visible from any public street and was located on the Evans Farm property to direct customers through the Farm to the studio.

Mr. Rak submitted a petition from 12 of the surrounding property owners stating their support of the studio. He said that Mr. Lubin was aware that he would have to relocate his business as Evans Farm was being sold but due to the nature of his work, he would need time to relocate and that he was actively searching for a different location. He explained that Mr. Lubin would need a special permit or special exception for any new location due to the unique surroundings that Mr. Lubin would need for his studio.

Mr. Rak informed the Board that the complaint was filed by Mr. Mosavi, an adjoining property owner who had a dispute with Mr. Evans in the past years regarding the use and the cost of maintaining a private road that runs from Chain Bridge Road. He explained that the Fairfax Circuit Court denied Mr. Mosavi's claim last year and granted a permanent injunction that barred him from blocking the private road that served various properties. Mr. Rak stated that was a very separate issue from the one in question and that Mr. Lubin agreed to have all of his customers enter only through the Evans Farm entrance and not utilize the private drive, which passes Mr. Mosavi's property.

Mr. Rak asked the Board to reverse the decision of the Zoning Administrator and if they found that they could not reverse this decision, to modify the order to require the termination of the use at the end of 1999.

Mr. Dively asked for clarification on whether Mr. Lubin would absolutely need to leave by the end of the year regardless of what happens with zoning. Mr. Rak replied that was correct.

Mr. Dively asked staff if the issue was pressing for the County, or if there would be a problem with deferring or postponing the case. Mr. Shoup replied that it was pressing.

Ms. Gibb asked if they could take down the directional signs in Evans Farm. Mr. Rak answered that the signs were critical for people to find the studio. Ms. Gibb asked for clarification on whether or not people used the private drive to access the studio and if the property in question was part of the rezoning application. Mr. Rak replied that people did not access the private drive to get to the studio and that the property was part of the rezoning application for Evans Farm.

Mr. Hammack asked if the property was included in the contract for sale and when the projected settlement would take place. Mr. Rak answered that the property was included in the sale and it was projected for the first quarter of the year 2000 and that the farm would be closed on New Year's Eve of 2000.

Mr. Hammack asked how long it would take for Mr. Lubin to relocate. Mr. Rak replied that they were currently in the process of finding a place and that it was difficult because most locations that were suitable for his operation would require a special permit or a special exception and that was the reason for them requesting addition time to complete the search.

Chairman DiGiulian called for speakers.

Mohammed Mosavi, 1678 Chain bridge Road, Virginia stated that he had lived at that address for 30 years and that his mother lived next door. He claimed that immediately after Evans Farm bought the property they opened the wall to the private road. He said that more than 150 vehicles use the private road to get into Evans Farm.

Chairman DiGiulian asked if these vehicles were going to the portrait studio or into Evans Farm. Mr. Mosavi replied that they were going into Evans Farm. Chairman DiGiulian stated that the trucks using the private

road to deliver to Evans Farm did not have anything to do with the portrait studio. Mr. Mosavi stated that he had no objection with the portrait studio as long as Mr. Lubin's customers entered Evans Farm through the main gate and not the private road.

Chairman DiGiulian said that Mr. Lubin's attorney had assured they would do this. Mr. Mosavi requested that Mr. Evans put a barrier between Evans Farm and the private road. Chairman DiGiulian stated that the BZA could not force Mr. Evans to put up a barrier. Mr. Mosavi stated that both Mr. Evans and Mr. Lubin stated that they would not utilize the private road for deliveries, but the trucks kept coming daily.

Mr. Mosavi said that the noise of the traffic going up and down the private road wakes his elderly mother. He also said that Mr. Evans did not get permission for any signage that he has posted even though his special use permit stated he had to. Mr. Mosavi again, requested that the BZA force Mr. Evans to put up a barrier. Mr. Hammack stressed the fact that the BZA did not have jurisdiction to require a barrier and that the only thing they could do was require Mr. Lubin to remove his signage. Mr. Mosavi stated that the cars and trucks would use the private road even if the signs were gone. Mr. Hammack reiterated that the BZA had no control over this situation. Mr. Mosavi stated that he wanted Tammy Brown, Zoning Inspector, to speak regarding the barrier situation.

Mr. Shoup objected to Ms. Brown speaking as a witness for the appellant and said that she was at the hearing because she was the inspector that issued the Notice of Violation. He further stated that she had no knowledge, until Mr. Mosavi saw her at the hearing, that he wanted her to speak. Mr. Hammack said that she did not have to speak as the Board had a copy of the violation notice.

Maria Thompson, 1503 Chain Bridge Court, stated that her property line backed up to the portrait studio and that she lived at this address for 11 years. She said that he was a welcome neighbor and that the property was beautiful and well maintained. She informed the Board that she had four children and two dogs and she had never had a concern about traffic on the road and that there was normal traffic on the road. She further stated that Mr. Lubin's studio enhanced the property and was an asset to the neighborhood.

Mr. Shoup replied that it was represented that the property in question was part of the Evans Farm Inn site but the property was not included in what was originally approved by the BZA in 1956 and that it could have evolved as being a part of the Evans Farm Inn use but not legally so, and the photo studio was covered under the retail sales establishment definition not permitted in that district. He further stated that staff did not believe there was any basis to allow the use to remain.

Mr. Hammack asked for clarification regarding what building was approved for use as a tea room. Mr. Shoup replied that the property in question was not included in the approval for Evans Farm.

Mr. Rak commented that the nature of the BZA approval in 1956 was different from what was done to day and the minutes from the 1956 hearing only state that a tea room was approved and that there was a great deal of flexibility to the permit in terms of interpretation.

Mr. Hammack asked if there was a plat included in 1956. Mr. Shoup replied that there was not.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to continue the decision for a ninety day period to allow Mr. Lubin the time to obtain a new studio rather than force the issue and to allow him until the end of the year would be overly generous and that after the ninety day period Mr. Lubin could report his progress to the Board. He stated that if Mr. Lubin had to get a permit or go through an administrative process another continuance or deferral could be given.

Chairman DiGiulian said that he didn't feel that was an appropriate action for the BZA to take and that they could defer a decision for a period of time but deferring just so Mr. Lubin could find a studio wasn't appropriate.

Mr. Hammack moved to defer the decision for ninety days. Mr. Kelley seconded the motion.

Ms. Gibb suggested a longer period of time because of time consuming process of purchasing property.

Mr. Hammack moved to defer the decision for six months. Mr. Dively seconded the motion which passed by vote of 5-0. Mr. Ribble and Mr. Kelley were not present for the vote.

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Page 337, Tuesday, January 19, 1999, (Tape 3), After Agenda Item:

Approval of November 17, 1998 minutes

Mr. Dively moved to approve the November 17, 1998 minutes. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Kelley were not present for the vote.

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Page 337, Tuesday, January 19, 1999, (Tape 3), After Agenda Item:

Consideration of Acceptance for Appeal filed by Dario Davies

Mr. Kelley stated that they had heard this application before regarding the mailing incident and he asked Mr. Shoup if the certified receipt showed the date that Mr. Davies claimed. Mr. Shoup stated the receipts were dated December 30, 1998. Mr. Kelley asked when the notices were sent. Mr. Shoup answered that the notices were sent out on November 25, 1998, but the certified receipt was dated November 30, 1998 and the Thanksgiving Day holiday was the reason for the delay. He also mentioned that because the 30th day fell on Christmas, Mr. Davies had until December 28, 1998 to file. However the application for appeal was not received until December 30, 1998 therefore, it was not timely filed. Mr. Hammack said that this argument ran contrary to due process and that it was not the date that the lawsuit was filed, it was the date that it was served on someone to give them notice that they had a certain amount of time to respond. Mr. Shoup said that this issue had been addressed and upheld in the courts. Mr. Kelley asked what was done if the notice package did not reach the individual until two weeks before the deadline. Mr. Shoup replied that if the certified mail was not able to be delivered to the individual for whatever reason, and it was returned, the County had no authority to adjust the time limit. Mr. Dively moved to approve the Consideration of Acceptance for Appeal filed by Dario Davies to be scheduled for the next available public hearing date. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Kelley were not present for the vote.

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Page 337, Tuesday, January 19, 1999, (Tape 3), After Agenda Item:

Approval of January 12, 1999 Resolutions

Mr. Dively moved to approve the January 12, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Kelley were not present for the vote.

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Page 337, Tuesday, January 19, 1999, (Tape 3), After Agenda Item:

Request for Intent to Defer Appeal Application A 1998-PR-033 Renaissance Apartments

Mr. Dively moved to approve the Intent to Defer Appeal Application A 1998-PR-033 Renaissance Apartments until May 11, 1999. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Kelley were 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 1:20 p.m.

Minutes by: Lori M. Mallam

Approved on: April 6, 1999

Regina Thorn
Regina Thorn, 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 Tuesday, January 26, 1999. The following Board Members were present: Chairman DiGiulian, Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 339, January 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAT C. F. QUAN, VC 98-L-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. from rear lot line and 6.0 ft. high fence to remain in front yard. Located at 4403 Flintstone Rd. on approx. 8,482 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 5075.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Albert Nesuda, Agent, 7605 Elba Road, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested two variances. One to permit construction of a sunroom 13.4 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 11.6 feet was requested. The second variance was to allow a fence six feet in height to remain in a front yard. A maximum fence height of four feet is allowed; therefore, a variance of 2.0 feet was requested.

Mr. Nesuda, Agent, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Nesuda stated that approval from the architectural committee for the sunroom was received. Mr. Nesuda stated the sunroom, at the closest point to the rear of the property, would be 13.5 feet from the fence, however, the lot was angled and went from 13 feet to 17 feet from the rear fence. Mr. Nesuda stated that due to the yard sloping, the six foot high fence did not appear to be that high and asked the Board's approval for the construction of the sunroom and for the six foot high fence to remain.

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

Mr. Hammack moved to approve VC 98-L-134 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 19, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAT C. F. QUAN, VC 98-L-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.4 ft. from rear lot line and 6.0 ft. high fence to remain in front yard. Located at 4403 Flintstone Rd. on approx. 8,482 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 5075. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.

3. With respect to the fence, the applicant has presented testimony as to topographical conditions that exist which give the fence the appearance of being much lower than it actually is, noting it only intrudes a small amount into the front yard and doesn't cut off any site lines.
4. With respect to the sunroom addition, it is a cluster lot, the lot size itself is fairly small, the dwelling is sited on the property at an angle and the rear yard is truncated in a way that would prevent almost any addition from being constructed.
5. The construction proposed was reasonable and the variance was minimal under the 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and fence shown on the plat prepared by Richard J. Cronin IV, dated September 9, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 341, January 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. PIRIUS, VC 98-V-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structures in a front yard on a lot containing less than 36,000 sq. ft. and to permit construction of a fence exceeding 4.0 ft. in height. Located at 7910 West Boulevard Dr. on approx. 25,705 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 63. (DEF. FROM 11/3/98).

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 C. Pirius, 7910 West Boulevard Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a swimming pool and associated decking in a front yard area of a lot containing less than 36,000 square feet. The applicant also requested approval for the addition of a fence measuring 7 feet in height to a front yard area. The Ordinance limits fences in a front yard to 4 feet in height; therefore, a variance of 3.0 feet was requested.

Mr. Pirius presented the variance request as outlined in the statement of justification submitted with the application. Mr. Pirius stated that the swimming pool would be entirely behind his 100 foot long ranch style home. Mr. Pirius stated the primary reason for the 7 foot high fence was due to the pool and that the fence would come off the side of his home and believed it would be a good opportunity to block out noise from the George Washington Parkway. He said the fence would look nice and be in style with the house. Mr. Pirius stated his neighbor to the northwest requested that he put a higher than normal fence so she did not have to look at people in the pool in his rear yard. Mr. Pirius stated that the fence along the driveway would be a 4 foot high fence. Mr. Pirius stated that in the back of his property, or the front yard which bordered Lee Avenue, where the pool would be located was a 12 foot wide forsythia hedge which went all along the perimeter of his property and was 6 foot in height and impenetrable in density. He said the County had already approved this bush as a natural barrier and it could be used as part of the fence. He said that his neighbor had also requested a mesh fence around a portion of the bush that had been cut away around a telephone pole.

Chairman DiGiulian called for speakers.

Lisa Grove, 7910 Washington Avenue, Alexandria, Virginia, came to the podium and stated she was the neighbor who expressed concern regarding the forsythia hedge. She stated her support of the application and requested mesh fencing around the area of the bush located around the telephone pole in order to prevent a child from coming through the open area.

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

Mr. Pammel moved to approve VC 98-V-110 for the reasons noted in the Resolution subject to the Revised Development Conditions contained in the staff report dated October 27, 1998, as revised in an addendum dated January 11, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES C. PIRIUS, VC 98-V-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structures in a front yard on a lot containing less than 36,000 sq. ft. and to permit construction

of a fence exceeding 4.0 ft. in height in a front yard. Located at 7910 West Boulevard Dr. on approx. 25,705 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 63. (DEF. FROM 11/3/98). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The lot is irregularly shaped and has double frontage on the corner of the lot.
4. The applicant's request is within 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the in-ground swimming pool and fence shown on the plat prepared by Alexandria Surveys, Inc., dated August 19, 1998, as revised through October 22, 1998, 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 6-0-1. Mr. Ribble abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 343, January 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RONALDO AND MICHAELA PUNO, VC 98-D-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into 3 lots with proposed lots 2 and 3 having a lot width of 10.02 ft. Located at 10917 Georgetown Pi. on approx. 4.91 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 14. (Continued from 1/12/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Johnson, Agent, 12310 Pinecrest Road, Reston, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit subdivision of one lot into three lots with proposed lots 2 and 3 having a lot width of 10.02 feet each at the point where they adjoined Georgetown Pike. A minimum lot width of 150 feet is required; therefore, a variance of 139.98 feet each was requested.

Mr. Johnson, Agent, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Johnson stated the property had an exceptional shape and size and the parcel was more than 900 feet deep and 230 feet wide and contained 4.91 acres. He stated if the property were rotated 90 degrees it would have sufficient street frontage to be subdivided into 6 one acre parcels and almost enough land area to get 6 lots, but certainly enough to get 5 lots. He stated because it was zoned R-1 and due to the exceptional shape and size, the application met the standards for the granting of a variance, and asked for the Board's approval.

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

Mr. Dively moved to approve VC 98-D-126 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 5, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALDO AND MICHAELA PUNO, VC 98-D-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into 3 lots with proposed lots 2 and 3 having a lot width of 10.02 ft. Located at 10917 Georgetown Pi. on approx. 4.91 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 14. (Continued from 1/12/99). 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 January 26, 1999; and

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

1. The applicants are the owners of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The application property is unusually configured, being very narrow and long, and also much larger than the other properties in the immediate vicinity.
4. If the property is divided into 3 parcels it would be approximately the size as other parcels in the immediate vicinity; therefore, the request is reasonable.

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

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

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

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

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

1. This variance is approved for the subdivision of one (1) lot into three (3) lots, proposed Lot 2 and Lot 3 each having a lot width of 10.02 feet, as shown on the plat prepared by Charles R. Johnson, dated June 19, 1998, as revised through November 18, 1998. All development shall be in conformance with this plat as qualified by these development conditions.

2. Right-of-way measuring forty-five (45) feet from the centerline of Georgetown Pike shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County. All

required ancillary easements along the frontage of the site shall be conveyed to the Board of Supervisors at the time of dedication.

3. All lots shall access Georgetown Pike from the shared driveway, as depicted on the variance plat. The existing driveway to Lot 1 shall not be used as that lot's access.

4. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Trees designated to be saved shall be protected from damage by construction activity, as prescribed by and to the satisfaction of the Urban Forester.

Pursuant 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. Ribble seconded the motion which carried by a vote of 6-1. Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 345, January 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PEACE EVANGELICAL LUTHERAN CHURCH, SP 98-M-050 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities with columbarium. Located at 6362 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110. (MOVED FROM 12/8/98).

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 Bampfield, Agent, 2800 North Nottingham Street, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a church and related facilities to include a columbarium. The applicant also requested a modification to the transitional screening and barrier requirement on the north, east and west boundaries of the site in favor of conditions shown on the special permit plat. Staff concluded the application was in harmony with the Comprehensive Plan and in conformance with the applicable Ordinance provisions. Staff recommended approval of the application subject to development conditions.

Mr. Bampfield, Agent, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Bampfield stated the church had operated in its present location since 1957 and the purpose of the proposed project was to provide a dignified place of internment for the cremated remains of deceased members of the church and their families. He stated the columbarium would help to preserve the ancient and honorable tradition of the church yard. Mr. Bampfield stated there would be no advertising of the columbarium beyond the church membership. He said the project would also involve significant landscaping around the church property in addition to the implementation of the memorial garden. Mr. Bampfield responded to concerns such as traffic and stated the proposed use would not affect traffic because there would be no more or fewer funerals whether or not the columbarium was approved. The second concern Mr. Bampfield addressed was the effect on property value. He stated the total project would provide significant improvement to the overall appearance of the church property. Mr. Bampfield further stated there would not be a crematorium on the church property. Mr. Bampfield concluded by stating it was the applicants hope that the columbarium would provide comfort to those who had lost a loved one. Mr. Bampfield stated the applicant agreed with the conditions as contained in the staff report, with the exception of condition 10. Mr. Bampfield provided pictures to the Board of a columbarium, located at another church.

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

Mr. Ribble moved to approve SP 98-M-050 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 19, 1999, with the deletion of Development Condition number 10.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PEACE EVANGELICAL LUTHERAN CHURCH, SP 98-M-050 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities with columbarium. Located at 6362 Lincolnia Rd. on approx. 4.41 ac. of land zoned R-3. Mason District. Tax Map 72-1 ((1)) 52; 72-1 ((7)) 109 and 110. (MOVED FROM 12/8/98). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

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

1. This approval is granted to the applicant, Peace Evangelical Lutheran Church, 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), structures and/or use(s) indicated on the special permit plat prepared by Bengtson, DeBell & Elkin, Ltd., dated February, 1998, as revised through November 30,1998, and approved with this application, as qualified by these development conditions.

3. This Special Permit shall be subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

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

5. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

6. The maximum number of seats in the main area of worship shall be limited to 280 seats.

7. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 and shall be a minimum of 70 parking spaces. Parking spaces shall not number more than 104 spaces. All parking for this use shall be on site, as shown on the Special Permit Plat.

8. Transitional screening and barriers shall be modified in favor of that shown on the Special Permit Plat.

9. Parking lot landscaping shall be provided as depicted on the special permit plat. Size and species of all vegetation shall be to the satisfaction of the Urban Forester and all vegetation shall be planted prior to issuance of a Non-Residential Use Permit. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary.

10. Lighting located on the application site shall focus onto the subject property only. If necessary, appropriate lighting shields shall be installed to prevent high intensity glare from projecting onto adjacent residential property. Any new lights that may be installed on the site shall be limited to a maximum of twelve (12) feet in height.

These development 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 construction has commenced and been diligently prosecuted. Construction of the first phase of the columbarium wall structure on site shall constitute establishment of the Special Permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 February 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 347, January 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PINECREST SCHOOL, INC., SPA 77-M-312 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 77-M-312 for nursery school and private school of general education to permit a change in hours of operation. Located at 4015 Annandale Rd. on approx. 2.0 ac. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jill Gottdiener, Planner, McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow a change in hours from 9:00 a.m. to 2:30 p.m., Monday through Friday, to 8:30 a.m. to 6:30 p.m., Monday through Friday. The nursery school and private school were currently allowed a maximum daily enrollment of 120 students; however, this proposal would reduce the number to 99 students. No physical changes to the site were proposed. Staff recommended approval of the application.

Ms. Gottdiener, Agent, presented the special permit amendment request as outlined in the statement of justification submitted with the application. Ms. Gottdiener stated the application was solely for the purpose of extending the hours of operation and no other operational changes were proposed. Ms. Gottdiener stated the extended hours of operation would allow the school to offer enrichment activities while accommodating the working needs of parents. Ms. Gottdiener stated the applicant had agreed to address adjoining neighbor concerns and had agreed to supplemental plantings and the provision of a stop sign to increase safety around the school. There would be no new construction or increase in students with the application. Ms. Gottdiener stated the applicant agreed with all development conditions and asked the Board for their approval of the application.

Mr. Hammack asked the ages of the students and the activities proposed to be added during the extension of the school day.

Pam Kenney, Director of the school, stated the current enrollment was the ages of three through the third grade. She stated the extension of hours from 3:00 to 6:00 p.m. was for an after school program for only the all day students. She stated the activities would include an after school homework time, arts and crafts and some outside play on the playground. Ms. Kenney stated that in the first year she expected between 5 and 10 students and believed there would not be more than 30 students with a maximum of 59 students with a 99 student body. She stated that currently, the student body was 80, of which 40 were in the preschool and would not be involved in the program.

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

Ms. Gibb moved to approve SPA 77-M-312 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 19, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PINECREST SCHOOL, INC., SPA 77-M-312 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 77-M-312 for nursery school and private school of general education to permit a change in hours of operation. Located at 4015 Annandale Rd. on approx. 2.0 ac. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2B. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit.
3. The request was a modest change to the existing 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 Sect(s). 3-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 4015 Annandale Road (2.0 acres) and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Ralph T. Jones, Certified Land Surveyor, dated December 1982, as revised through September 21, 1998, 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 Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions.
Minor modifications to the approved special permit may permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum total daily enrollment for the nursery school and the private school of general education shall not exceed 99, ages 3-12 years.

6. There shall be 19 parking spaces. All parking shall be on-site as shown on the special permit plat.

7. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the property lines. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined above.

8. The barrier requirements shall be waived.

9. The maximum hours of operation for the nursery school and private school of general education shall be limited to 8:30 a.m. to 6:30 p.m. Monday through Friday.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 349, January 26, 1999, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. FALLS REACH LLC, VC 98-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2220 and 2228

Great Falls St. on approx. 5.29 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8 pt., 10, and 11. (Continued from 1/7/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Hazel & Thomas, PC, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Cathy Lewis, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of dwellings within an 18-lot subdivision, with proposed Lots 8 through 15 having insufficient depth in order to comply with Section 2-414 of the Zoning Ordinance which required that residential buildings be set back a minimum of 200 feet from the right-of-way of an interstate highway. Previously, staff recommended denial of the variance request because of many undetermined facts and for the reasons outlined in the staff report, dated December 22, 1998. As a result, the Board deferred the case to allow the applicant time to give staff additional data to include how much of a variance was being requested for each dwelling; who would be providing maintenance for the berm and fence; how the proposed berm would be landscaped; and noise levels in side or front yards. The applicant had provided a revised plat and letter from the noise consultant which provided this previously unknown information. Staff believed that this new information afforded the Board with enough data to decide if the application satisfied all nine of the variance standards as required by Section 18-404 of the Zoning Ordinance. The Department of Transportation continued to recommend that a VDOT noise wall be installed within the I-66 right-of-way. If it was the intent of the Board of Zoning Appeals to approve VC 98-D-094, staff recommended that the approval be subject to the proposed development conditions dated January 26, 1999, which were handed out to the Board prior to the hearing.

Mr. Lawrence, Agent, stated that one of the members of the Board, an attorney, represented one of the persons who was opposing the application. Mr. Dively removed himself from the hearing due to the fact that his father represented Mrs. Lamb, who was in opposition of the application.

Mr. Kelley asked Mr. Lawrence if he agreed with the revised development conditions dated January 26,1999, or if he was still submitting his revised conditions dated January 6, 1999. Mr. Lawrence provided the Board with a copy of the applicant's proposed revised development conditions dated January 26, 1999, and stated there were less issues than the previous conditions.

Mr. Lawrence presented the application as outlined in the statement of justification submitted with the variance application. Mr. Lawrence stated development was not permitted within 200 feet of the right-of-way of I-66 unless a variance was granted. Mr. Lawrence showed the Board where the 200 foot line fell on a copy of the plat and stated that almost half of the property would not be usable due to this limitation, even though it was zoned R-4. The owners of the property stood in the auditorium at Mr. Lawrence's request. Mr. Lawrence stated the plat had been revised to provide specific setback distances for each unit within the variance area so there was no question what the setback was if approved by the Board. Details were provided on the plat as to landscaping on the berm and also tree save areas, outside the variance area, to show how the property was proposed to be developed. Mr. Lawrence stated noise attenuation was provided to staff to meet the requirements of the standards as outlined in the development conditions. Mr. Lawrence reviewed his revised conditions with the Board.

Mr. Kelley questioned development condition 9 regarding an escrow fund for the maintenance of the fence.

Ms. Lewis stated the condition was added because, with an 18 lot subdivision, staff believed that the cost of the maintenance of the fence, as well as the landscaping on the berm, and the berm, would be excessive for 18 homes to maintain. She stated after discussions with VDOT, they had indicated the reason they no longer built wooden fences, such as the applicant proposed, was because they needed to be replaced after 15 years; therefore, staff believed there should be escrow funds to replace the fence as well as the landscaping which was holding the berm in place, as well as the berm itself.

Mr. Kelley asked staff why they believed it was within the Board's jurisdiction to do this.

Ms. Langdon stated that the applicant had chosen to put the sound wall on the properties in question and stated VDOT had asked that it be a VDOT sound wall and that it be located in the right-of-way of I-66. She stated if that were the case it would be maintained by VDOT and the individual homeowners or the homeowners association would not have to maintain it at all. Ms. Langdon stated that in some places the

fence was only 10 feet behind the back property line and to continue to meet the noise standards, they would need to keep the fence, landscaping and berm maintained; therefore, staff believed it to be integral to the application and pointed out it would be a significant cost in the future for the homeowners to maintain; whereas, if it was moved onto the I-66 right-of-way, VDOT would maintain it.

The Board discussed the issue of significant cost for the maintenance of the fence.

Mr. Hammack asked Mr. Lawrence if all the lots were covered by a homeowners association and if there would be dues collected for maintenance of the fence which would be on individual lots rather than common area. Mr. Lawrence stated the fence would be on common area and would be part of the homeowners association. He stated the development conditions required the applicant to advise purchasers of this before they bought a parcel and also to show the purchaser drawings of the noise fence and berm.

Mr. Lawrence addressed the issue of staff stating to solve the problem was to build a VDOT wall within the VDOT right-of-way and then the purchasers would not have to pay anything. Mr. Lawrence stated the VDOT wall would cost $192,000.00 which would have to be spread over the purchasers which would cost them more than the maintenance dues to maintain an $18,000.00 fence. Therefore, Mr. Lawrence stated the applicant objected to condition 10 and asked for this condition to be deleted.

Mr. Hammack asked why a VDOT wall was more expensive than the homeowners association wall. Mr. Lawrence stated the VDOT wall would have piers that would go into the ground and would be a solid structure built in the right-of-way which would make it higher. Mr. Lawrence stated that when VDOT built I-66, they determined the sound wall was not necessary; and therefore, Mr. Lawrence stated it was not economically feasible for a small subdivision of 18 units to build the VDOT sound wall.

Mr. Lawrence pointed out to the Board the people who would oppose the application were not contiguous to the variance area.

Chairman DiGiulian called for speakers.

Robert Lumsden, 13437 Yorktowne Drive, Bowie, Maryland, came to the podium to speak in support of the application. Mr. Lumsden stated he represented his brothers and sisters in the Estate of Ms. Lumsden and the owners of the property. He said the property was purchased in 1942 and said the passing of their mother forced them to settle the Estate and sell the property and all they asked for was a fair price for the property and they wanted a quality small development. Mr. Lumsden asked for the Board's approval of the variance application.

David Childs, owner of 2228 Great Falls Street, residing at 291 Collieville Lane, Reidville, Virginia, came to the podium to speak in support of the application. Mr. Childs stated his family had owned the property since 1952 and stated his belief was that it was time to move on and develop the property. Mr. Childs stated there was never any compensation for I-66 coming through his property and it would destroy the development of his parcel if the 200 foot setback was required.

Ralph Schuller, 2825 Bowling Road, Falls Church, Virginia, came to the podium to speak in support of the application. Mr. Schuller stated he was the pastor of the Faith Bible Presbyterian Church, the rear section of which joined the rear section of the subject property. Mr. Schuller stated the church was given no input on a sound barrier with the construction of I-66 and stated evergreen trees were the only source of a sound barrier provided.

Chris Colver, 1324 Quail Ridge Drive, Reston, Virginia, came to the podium to speak in support of the application. Mr. Colver stated he was an elder and trustee of Faith Bible Presbyterian Church as well as the treasurer. Mr. Colver was speaking on behalf of the church and stated part of the arrangement of the Falls Reach development was to deed over a portion of their land for the development which was not developable by the church. Mr. Colver stated in return the church would receive a new parking lot and stated the church unanimously voted in favor of the development and asked the Board for a favorable recommendation of the variance for the 200 foot setback.

Paul Terrance O'Grady, Attorney in Falls Church, representing the Lambs' and a group of citizens associations, came to the podium to speak in opposition of the application. Mr. O'Grady gave the Board a petition of 34 homeowners, which represented all of the abutting property owners, requesting denial of the

application. Mr. O'Grady stated the property would satisfy 10 to 12 homes but not 18 homes with the 200 foot setback requirement. Mr. O'Grady said the Ordinance stated the homes could not be built due to the 200 foot setback, not that they could be built if there was a sound barrier and stated the Ordinance should be followed with this variance request. Mr. O'Grady stated out of the nine criteria to be met for the granting of a variance, five were not satisfied; and therefore, asked for the Board's denial of the application.

Adrienne Whyte, representing 197 homes in the Ellison Heights/Mount Daniel neighborhoods, came to the podium to speak in opposition of the application. Ms. Whyte stated the homes were located directly across I-66 from the proposed development. Ms. Whyte said there were mature trees along the border of the I-66 right-of-way and requested those trees be preserved and said the only way to accommodate this, with the density proposed, was to build a VDOT sound wall outside the tree line and within the VDOT right-of-way. She said the developer planned to cut down the trees to build a berm. Ms. Whyte said the fence proposed would deflect noise from the proposed development and toward the Ellison Heights/Mount Daniel development. Ms. Whyte stated after discussions with VDOT representatives that the sound wall would absorb noise whereas the fence would deflect noise. Ms. Whyte stated the developer was creating the need for the sound wall and asked the Board to require the developer to build the VDOT sound wall dedicated to VDOT for maintenance which would also allow preservation of the mature trees.

Ms. Gibb asked if the applicant did not build a fence and allowed the trees to remain, would there still be opposition. Ms. Whyte replied that was true; however, stated the applicant had to build a fence to add noise mitigation for the homeowners who would live within the 200 foot setback.

Jackie Lamb, 2231 Westwood Place, came to the podium to speak in opposition of the application. Ms. Lamb presented a video to the Board showing the location of the development and the distance to I-66.

George Lily, 2229 Westwood Place, came to the podium to speak in opposition of the application. Mr. Lily stated he had lived at this property for 40 years and had always been concerned with the development that would eventually take place at this location. Mr. Lily said he had concern for the entire neighborhood and said a stockade fence would not mitigate the sound and stated a VDOT sound wall should be required to protect the neighborhood.

Mr. Pammel stated Mr. Lily was a former member of the Fairfax County Planning Commission, having served a number of years in that capacity and had always looked out for the best interest of the community.

Diane D'Arcy, McLean Citizens Association (MCA), came to the podium to speak in opposition of the application. Ms. D'Arcy stated MCA was opposed to the application because 44% of the proposed development was inside the setback and said the developer could build 10 to 13 homes without the waiver of the 200 foot setback requirement. The property could not accommodate an 18 home development; therefore, recommended the Board deny the application.

Richard Todd, 2214 Great Falls Street, came to the podium to speak in opposition of the application. Mr. Todd stated the property had been in the family since 1958. Mr. Todd said he also owned property at 2216 Great Falls Street and asked for the property to remain as it was and for the Board to adhere to the 200 foot setback by having the developer scale down the development. He said the removal of the mature trees would make the noise more audible to the homeowners.

Mr. Lawrence came to the podium to rebut the opposition. Mr. Lawrence stated the VDOT noise wall was expensive and was not necessary to provide noise attenuation for the site. Mr. Lawrence said the berm part of the noise attenuation was absorptive and was not at issue with possible reflective noise. Mr. Lawrence referred to the map in the staff report and stated the closest house was approximately 500 feet away on the other side of I-66 and the reasons the opposition gave for a VDOT noise wall were not quantified by a noise study. Mr. Lawrence said the houses, the berm and the fence, was sufficient noise attenuation and would actually benefit the neighbors on the other side of I-66. Mr. Lawrence concluded by stating the standards were set forth and said that strict application of the Ordinance would produce an undue hardship and deny the owners of the property the reasonable use of their land. He said if they could provide noise attenuation under the Ordinance then they should be able to get the use of their land.

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

Mr. Kelley moved to approve VC 98-D-094 for the reasons noted in the Resolution subject to the revised Development Conditions provided by the applicant dated January 26, 1999.

Mr. Pammel stated he did not support the motion based on the fact that it was self imposed hardship and that the applicant's knew their position and came to the Board seeking relief from the basic standards for noise attenuation. Mr. Pammel stated what was needed was a VDOT sound barrier on VDOT right-of-way which would be maintained by VDOT and would effectively control the noise and protect the existing vegetation.

Ms. Gibb stated she did not believe it was self imposed and said the applicant satisfied staff with noise attenuation and therefore, supported the motion.

Mr. Hammack stated he agreed with Mr. Pammel and said he had reservations regarding the noise attenuation measures and he could not support the motion.

Chairman DiGiulian stated he supported the motion because there was an engineers report which supported the noise requirement and also that staff had agreed with the requirement.

Ms. Langdon stated that staff withdrew their objections based on staff's proposed development conditions dated January 26, 1999, not the applicant's revised conditions dated January 26, 1999.

Mr. Ribble stated he supported the motion and agreed with Ms. Gibb.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FALLS REACH LLC, VC 98-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 2220 and 2228 Great Falls St. on approx. 5.29 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 8 pt., 10, and 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 26, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has 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 **APPROVED** with the following limitations:

1. This variance is approved for the construction of dwellings less than 200 feet from the right-of-way of Interstate 66 as shown on the plat entitled "Variance Plat, West Falls Village", prepared by B.C. Consultants and dated June 9, 1998, as revised through January 13, 1999, and as modified by these development conditions.

2. The subdivision of this property, known as Tax Map 40-4 ((1)) 10, 11, and 8 Part, shall be in accordance with Chapter 101 of the Code of Fairfax County and shall be in conformance with the approved variance plat as modified by these development conditions.

3. Prior to subdivision plan approval, the applicant shall submit a highway noise study for the review and approval of the Department of Public Works and Environmental Services (DPWES) in coordination with the Department of Planning and Zoning (DPZ). The noise study shall provide documentation that the proposed solid wood fence and berm will satisfy the following noise mitigation standards. The noise study shall clearly define the extent of the projected DNL 65-70 dBA, DNL 70-75 dBA, and DNL 75+ dBA noise impact areas for both near-ground (first story) and aboveground (second story) conditions. The following shall apply:

   A. Where aboveground noise impacts are projected to exceed DNL 75+, residential dwelling units shall be limited to one story above the ground surface.

   B. In order to achieve a maximum interior noise level of DNL 45dBA, all units located within the projected DNL 70-75 dBA noise impact area shall have the following acoustical attributes:

      - Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

      - Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than 20% of any facade exposed to the highway noise source, then the doors and windows shall have a laboratory STC rating of at least 45.

      - Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to

minimize sound transmission.

C. In order to achieve a maximum interior noise level of DNL 45 dBA, all units located within the projected DNL 65-70 dBA noise impact area shall have the following acoustical attributes:

- Exterior walls shall have a laboratory 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 exposed to the highway noise source, they shall have a laboratory STC rating of at least 39.
- Measure to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

Alternative measure to those described within Paragraphs B and C above may be pursued if the noise study demonstrates, to the satisfaction of DPWES, in coordination with DPZ, that these measures will be sufficient to attain a maximum interior noise level of DNL 45 dBA. Should the noise study show that the above described interior and exterior noise levels cannot be attained in a proposed lot, then no dwelling unit will be permitted to be built on said lot.

4. The proposed solid wood fence and berm shall be maintained by a Homeowners Association, not individual property owners. Prior to executing all sales contracts, prospective purchasers shall be informed in writing that the Homeowners Association is responsible for maintenance of the solid wood fence, the berm, and the landscaping of the berm.

5. A rendering of the view of the proposed solid wood fence and berm shall be displayed for all potential purchasers. Prior to executing the sales contracts of those lots in which a solid wood fence and berm is to be located, prospective purchasers shall be given a rendering of the view of the proposed solid wood fence and berm from the rear windows of the future house to be sited on the lot to be purchased.

6. Prior to subdivision plan approval, a landscape plan shall be submitted for review and approval by the Urban Forestry Branch, DPWES, and implemented. This plan shall include at a minimum all landscape and tree preservation areas shown on the VC Plat. Landscaping species selection and installation shall be to the satisfaction of the Urban Forestry Branch, DPWES. The landscaping proposed for the berm shall be maintained by the Homeowners Association.

7. At the time of subdivision, applicant shall provide for right-of-way dedication along the Great Falls Street frontage with curb, gutter and frontage improvements as determined by the Virginia Department of Transportation (VDOT).

8. Notwithstanding Note #11 of the General Notes of the VC Plat, dated January 13, 1999, any deviation from the proposed footprints as depicted on the VC Plat shall not result in an increase in the variance.

Pursuant 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 is recorded in 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.

Ms. Gibb seconded the motion which carried by a vote of 4-2-1. Mr. Hammack and Mr. Pammel voted nay. Mr. Dively abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 356, January 26, 1999, (Tape 2), Scheduled case of:

9:30 A.M. JOHN S. SORRELL, A 1998-SU-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected a 6.0 ft. tall fence in the front yard, is parking two commercial vehicles on the property, and has erected an accessory storage structure in the front yard of a lot which is less than 36,000 sq. ft., all in violation of Zoning Ordinance provisions. Located at 5419 Sasher Ln. on approx. 0.5 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 8. (Concurrent with A 1998-SU-007). (DEFERRED FROM 6/30/98; BZA DEF. FROM 8/25/98 AND 10/20/98).

9:30 A.M. JOHN S. SORRELL, A 1998-SU-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard and storage yard in the R-C District, has erected three accessory storage structures and a 6.0 ft. tall fence on the property, all in violation of Zoning Ordinance provisions. Located at 12224 Braddock Rd. on approx. 0.49 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 5. (Concurrent with A 1998-SU-006). (DEFERRED FROM 6/30/98; BZA DEF. FROM 8/25/98 AND 10/20/98).

Chairman DiGiulian stated there was a request for a withdrawal.

William Shoup, Deputy Zoning Administrator, stated the appellant was requesting to withdraw both appeals based on staff's agreement to give a 3 month period to bring the property into compliance. Mr. Shoup stated staff had discussed the issues with Mr. Armstrong who understood it was staff's intent to file for injunctive relief if the property was not cleared by April 26, 1999.

Mr. Dively moved to withdraw appeal applications A 1998-SU-006 and A 1998-SU-007. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 356, January 26, 1999, (Tape 2), Scheduled case of:

9:30 A.M. EMANUEL STIKAS, A 1998-PR-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's issuance of a Non-Residential Use Permit (Non-RUP) to allow the operation of a drycleaning business as a personal service establishment on the subject property. Located at 6610 Arlington Blvd. on approx. 37,373 sq. ft. of land zoned C-5 and HC. Providence District. Tax Map 50-4 ((1)) 22B.

Chairman DiGiulian stated the Board had issued an intent to defer to March 9, 1999.

Mr. Pammel moved to defer the appeal application to March 9, 1999. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 356, January 26, 1999, (Tape 2), After Agenda Item:

Approval of January 19, 1999 Resolutions.

Mr. Pammel moved to approve the January 19, 1999, Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 10:58 a.m.

Minutes by: Deborah Hedrick

Approved on: March 30, 1999

Regina Thorn, 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 Tuesday, February 2, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 359, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK R. CAIN, VC 98-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft., fence greater than 4.0 ft. in height to remain in the front yard of a corner lot and shed to exceed 200 sq. ft. Located at 1731 Gilson St. on approx. 19,880 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((4)) 77.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick Cain, 1731 Gilson Street, Falls Church, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Julie Schilling. The applicant requested variances to permit accessory structures (a shed and a treehouse) to remain in the front yard of a lot containing less than 36,000 square feet, a fence greater than 4.0 feet in height to remain in the front yard of a corner lot and a shed to exceed 200 square feet. The maximum height for a fence in a front yard is 4 feet; therefore, a variance of 1 foot was requested for the fence.

Mr. Cain presented the variance request as outlined in the statement of justification submitted with the application. He said the shed was in the wrong place and he discovered that after the fact. Mr. Cain submitted letters supporting the application from the condominium association across the street from the subject property. He asked the Board for an exception to allow the structures to remain.

Chairman DiGiulian asked the applicant to address the issues raised in a letter of opposition. Mr. Cain stated that he wasn't sure where the author of the letter received her information from, but that his shed was used for tools and storage.

Chairman DiGiulian called for speakers.

Irvin Poole came forward to speak in opposition stating that he felt the applicant should not be able to come before the Board and receive special privileges to do whatever he wanted to do.

Martha Thomson, 1731 Pimmit Drive, came forward to speak in opposition stating that she could not see the applicant's property because of the bamboo forest. She said she was concerned with what he would build there and that he did not live on the property.

Chairman DiGiulian noted that the application was not to build any new structures.

Mr. Cain stated in his rebuttal that the subject property was the only place that he owned and it was his domicile. He said he may not sleep there on a nightly basis, but that he sleeps there at least once a month.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the shed was large to be located in a front yard, but because of the vegetation, it could not be seen. He said he had no problem with the fence or the treehouse, but the shed was large and close to the adjoining property owner and more than 8 ½ feet tall. Mr. Pammel moved to approve-in-part VC 98-D-135 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK R. CAIN, VC 98-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures to remain in the front yard of a lot containing less than 36,000 sq. ft., fence greater than 4.0 ft. in height to remain in the front yard of a corner lot and shed to exceed 200 sq. ft. **(THE SHED WAS DENIED).** Located at 1731 Gilson St. on approx. 19,880 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((4)) 77. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating noncompliance with the required standards for a variance.
3. The applicant did not meet variance standards for a shed.
4. The treehouse should be permitted.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location of the treehouse and fence shown on the plat prepared by Kenneth W. White, dated October 28, 1998, 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 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 361, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CARROLL AND BEULAH JOHNSON, VC 98-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2724 Manor Haven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 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. Carrol and Beulah Johnson, 2724 Manor Haven Court, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Julie Schilling. The applicant requested a variance to permit the construction of an addition 12.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12.4 feet was requested.

Mr. Johnson presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to permit the construction of a sunroom because he had sensitivity to insects and the sun and that his profession as an artist required him to work in a solarium.

Chairman DiGiulian called for speakers.

Laura Barash, Mount Woodley Manor Homeowners Association, came forward to speak in opposition. She submitted a letter signed by the neighbors. Ms. Barash expressed concerns that the addition had not received homeowners association approval. She read a letter from Vic Citel indicating that the variance would set a precedent in the neighborhood and lower property values. Ms. Barash asked if approval from the Board would supercede the homeowners association's requirements.

Mr. Johnson stated in rebuttal, that he pursued homeowner association approval and a meeting was held, but there were no set standards for building architectural structures in the association by-laws. He said they sent a letter to the homeowners association and the majority of the neighborhood had no objection.

Mr. Dively asked the applicant if they had received a determination from the Board of Directors. Mr. Johnson said no because there were no set by-laws in place to address this type of issue.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said he had lots of sympathy for the applicants and this was a difficult application. He said the application did not meet the standards for a variance. Mr. Hammack moved to deny VC 98-V-137 for the reasons noted in the Resolution.

Mr. Dively said he disagreed with the motion because the Board customarily approved this type of an application. He said it was a reasonable request and did not supercede the covenant.
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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARROLL AND BEULAH JOHNSON, VC 98-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2724 Manor Haven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 33. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1999; and

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

1. The applicants are the owners of the land.
1. The application does not meet the required standards for a variance.
2. The property is no different than other properties in the subdivision.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-2 with Ms. Gibb and Mr. Dively voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1999.

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Page 363, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC., SP 98-S-056 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit riding and boarding stable. Located at 10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15. (Continued from 1/19/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Francis Shukis, 8937 Victoria Road, Springfield, Virginia, replied that it was.

Chairman DiGiulian noted that the application was continued from January 19, 1999, to obtain information relating to sight distance.

Mr. Shukis said the engineers had surveyed the road sight distance and determined that the required sight distance could be obtained by raising the existing gravel road. He said a determination was presented to the Virginia Department of Transportation (VDOT) and stated that John Bassett from VDOT was present to answer questions on that issue. Mr. Shukis also provided the Board with a copy of the soil and water conservation plan.

Mr. Bassett, Engineer, VDOT, stated that he had contacted the applicant's engineer and they conducted survey work concerning the vertical profile which showed that there was an existing sight distance problem. By raising the entrance, vertical sight distance should be able to be obtained in order to see over the crest of the hill. He said there was a minor problem associated with that, but it could be resolved with paving Henderson Road.

Mr. Pammel asked who would bear that expense. Mr. Bassett replied the applicant.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP 98-S-056 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTHERN VIRGINIA THERAPEUTIC RIDING PROGRAM, INC., SP 98-S-056 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit riding and boarding stable. Located at 10804 Henderson Rd. on approx. 10.7 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((5)) 15. (Continued from 1/19/99) 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 February 2, 1999; and

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

1. The applicant is the owner of the land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 10804 Henderson Road, 10.7 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by R. C. Fields, Jr. and Associates, dated September 10, 1998, as revised through December 8, 1998 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. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.

5. The hours of operation for conducting therapeutic riding sessions shall be limited to the following: 9:00 A.M. to 9:00 P.M., Monday through Saturday. No riding sessions shall be held on Sundays.

6. There shall be a maximum number of eight (8) students per class.

7. There shall be no special events/horse shows where the public or non-participants of the therapeutic riding program may attend.

8. The maximum number of horses on site at any one time shall be sixteen (16).

9. There shall be a minimum of thirty (30) parking spaces on site in the area designated on the Plat, not including any parking spaces that may be provided in the vicinity of the proposed office building. All parking shall be on site.

10. The ingress/egress entrance at Henderson Road shall meet Virginia Department of Transportation (VDOT) requirements to the satisfaction of the Department of Public Works and Environmental Management (DPWES) and VDOT, unless waived or modified by VDOT or DPWES.

11. The applicant shall pave the private access easement road to a distance of 100 feet from Henderson Road as a dust abatement measure. For the period that the Riding and Boarding Stable special permit use is conducted on the application property, the applicant shall be solely responsible for maintaining in good repair the private access easement road for the section of road beginning at the ingress/egress point at Henderson Road and ending at the entrance of the driveway serving the Northern Virginia Therapeutic Riding Program site. The applicant shall equally share maintenance responsibility and expense for the remainder of the private access easement with other responsible parties for as long as a therapeutic riding program is operated on the application site.

12. The existing vegetation and proposed landscaping as depicted on the special permit plat shall be used to meet transitional screening requirements along all lot lines. The existing fencing as shown on the special permit plat shall satisfy the barrier requirement. Planting locations of the proposed supplemental trees may be modified to maximize screening of the facility, to the satisfaction of the Urban Forester. Species of trees selected for addition to the site shall be to the satisfaction of the Urban Forester.

13. There shall be no loud speakers or amplified music on site.

14. A conservation plan outlining best management practices for the horse operation shall be developed and implemented, prior to approval of a non-residential use permit, in coordination with the Northern Virginia Soil and Water Conservation District. The conservation plan shall include management techniques for the operation, including pasture management, animal waste management, composting and nutrient management.

15. Outdoor lighting shall be minimized to the extent possible. Shields shall be installed, if necessary, to prevent light and/or glare from projecting beyond the facility.

16. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance unless waived by the DPWES. 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 facility shall be determined by DPWES. If the location requires clearing of 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 DPWES and tree replacement may be required.

17. The use of the existing dwelling on site shall be limited to office use. However, if and at such time as the Zoning Ordinance is amended to allow quarters for a caretaker/watchman as an accessory use for a riding and boarding stable, all or part of the existing dwelling on site may be converted to use as a dwelling for a caretaker/watchman and their immediate family only, without approval of an amendment to this special permit.

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

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

Mr. Ribble seconded the motion which carried by a vote of 6-1. Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 365, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAUL V. AND SALLY R. BEALAFELD, VC 98-B-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from rear lot line. Located at 8328 Briar Creek Dr. on approx. 11,331 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((7)) 269A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Bealafeld, 8328 Briar Creek Drive, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 6.8 feet from the rear lot line. A minimum rear yard of 8 feet is required; therefore, a variance of 1.2 feet was requested.

Mr. Bealafeld presented the variance request as outlined in the statement of justification submitted with the application. He said he had planned for this garage for 20 years and had watched a neighbor build a garage similar to the proposed garage. Mr. Bealafeld stated that the plan was developed in conjunction with his neighbor who was in support of the application.

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

Mr. Ribble moved to approve VC 98-B-141 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL V. AND SALLY R. BEALAFELD, VC 98-B-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.8 ft. from rear lot line. Located at 8328 Briar Creek Dr. on approx. 11,331 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((7)) 269A.
Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1999; and

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

1. The applicants are the owners of the land.
3. The siting of the house on a corner lot causes the need for a variance.
4. The variance request is minimal.
5. The lot is unusually shaped.

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 13, 1998, 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 February 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 367, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BLANCA N. GUANDIQUE, VC 98-M-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 7120 Vermillion Pl. on approx. 9,653 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17))(4) 49.

The applicant was not present at the hearing. The Chairman stated this case would be called at the end of the hearing.

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Page 367, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CRAIG S. AND MARY G. FENELEY, VC 98-H-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.3 ft. from side lot line. Located at 13604 Mountain View Ct. on approx. 22,298 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 24-2 ((3)) 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. Mary Feneley, 13604 Mountain View Court, Herndon, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicant requested a variance to permit the construction on an addition 4.3 feet from the side lot line. A minimum side yard of 15 feet is required; therefore; a variance of 10.7 feet was requested.

Ms. Feneley presented the variance request as outlined in the statement of justification submitted with the application. She said the proposed garage was for security and that many of the houses in the neighborhood had 2-car garages. Ms. Feneley said the proposed garage would be architecturally compatible with the existing dwelling and there was no opposition from the neighbors.

Mr. Kelley asked the applicant what was the distance from the nearest neighbor. Ms. Feneley replied 25 feet.

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

Mr. Kelley moved to approve VC 98-M-139 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG S. AND MARY G. FENELEY, VC 98-H-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.3 ft. from side lot line. Located at 13604 Mountain View Ct. on approx. 22,298 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 24-2 ((3)) 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 February 2, 1999; and

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

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The lot is narrow.
4. The addition is some distance from the adjacent property owner.

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

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

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

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

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by Kenneth W. White, dated October 27, 1998, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 369, February 2, 1999, (Tape 1), After Agenda Item:

Approval of October 27, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 369, February 2, 1999, (Tape 1), After Agenda Item:

Request for determination regarding scheduling of appeals for
Centreville Land Corporation and Tarmac Mid-Atlantic Inc.

William Shoup, Deputy Zoning Administrator, said the request for scheduling determination pertained to three appeals all of which involved the same property and use-a concrete batching plant. He said two of the appeals were filed in 1993, one by the property owner (Centreville Land Corporation) and one by the operator of the batching plant (Tarmac Mid-Atlantic Inc.) Those appeals challenged Notices of Violation citing the parties for expanding the concrete batching plant without special exception approval and for constructing buildings without proper permits and occupying the property without a Non-Residential Use Permit (Non-RUP). The appeals in 1993 were accepted and deferred indefinitely to allow time for a special

exception to be filed. Mr. Shoup said a special exception was filed to try and correct the violations, however, it was deferred indefinitely in 1994 and the appeals had been pending since that time. The latest appeal filed by Centreville Land Corporation pertained to staff's response to a question posed by Mr. Michew, the attorney representing the Centreville Land Corporation, as to whether certain components of the batching plant operation could be viewed independently as permissable uses. Mr. Shoup said it was staff's position that they could not, and that all the components on the various lots involved made up the overall concrete batching plant operation and constituted a violation, as cited in 1993. He said Mr. Minchew expressed a desire that the latest appeal be heard separately from the 1993 appeals. Mr. Shoup said it was staff's position that the appeals related to the same question which was whether the concrete batching plant operation had expanded on to lots for which special exception approval was not obtained. He said all three appeals should be heard concurrently on the same date and requested that the Board schedule them for public hearing on April 20, 1999, at 9:30 a.m.

Mr. Hammack asked why the special exception was indefinitely deferred. Mr. Shoup said he thought there were a number of issues to try to overcome such as road improvements. Mr. Hammack asked why the Board of Supervisors allowed the violation to continue. Mr. Shoup said he was not sure of the answer, but there had been some discussion about reactivating the special exception and that Mr. Minchew could probably address that issue.

Randy Minchew, attorney for Centreville Land Corporation, stated that he got involved in the case in May of 1998 and it was clear to him that the special exception had to move forward. He said it was his understanding that the special exception was filed and started being processed but ran into a number of transportation related questions on what road improvements on Route 29 were appropriate. The Comprehensive Plan called for Route 29 to be a four-lane divided road, most VDOT and Transportation staff said they didn't think a four-lane divided road was appropriate in that area where it funneled in to the 2-lane bridge where it crossed Bull Run and into Manassas Battlefield. That question held up the application for a long time as people tried to resolve the transportation issues. Mr. Michew said the zoning questions were in the context that special exceptions were minor compared to the larger more expensive question of what kind of road improvements were required. He said he filed three questions to the Zoning Administrator in order to process the special exception. Mr. Minchew stated that two of those questions had been answered and once he received a determination on the question related to the uses, it would be their intention to use it as the basis of fine tuning and sculpting the special exception application.

Mr. Hammack asked if staff had response to Mr. Minchew comments.

Mr. Shoup said the current appeal involved independent components of the batching plant use. He stated the issue related to what was originally determined in 1993 and those Notices of Violation dealt with expanding the concrete batching plant use and expanding components of the use onto other properties that did not have approval. Staff argued that it was pretty much the same question and for that reason they should all be heard together.

Mr. Hammack said he thought a special exception should be pursued and let the County Board of Supervisors wrestle with the facts on that and determine what they have to and then have the appeal come before the BZA.

Mr. Pammel said Mr. Minchew said he needed a decision of the present appeal in which to chart his course on the special exception. Mr. Pammel said this was what Mr. Minchew needed and it may avoid the BZA going through a protracted hearing on the 1993 cases. Mr. Pammel said he thought Mr. Minchew had placed a compelling argument that would simplify the process and would get the special exception online once the BZA made a decision on the appeal. He moved that the BZA accept the scheduling of the current appeal as set for April and defer the 1993 appeals until after the decision on the special exception if such appeals were still active.

Mr. Dively seconded the motion.

Mr. Hammack said he was of the opinion that what the BZA did in this appeal which was a later appeal could effectively preclude them from taking appropriate action on earlier appeals. He said the earlier appeals should be heard first. He said the County had placed them in a procedurally awkward position because it had not pursued the matters in a time fashion. Mr. Hammack said if the special exception could be pursued

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they could defer the subject appeal and if granted, and those issues were moot, the subject issue could become moot as well.

Mr. Dively said Mr. Minchew said the current issue was strictly a legal issue.

Mr. Hammack said Mr. Minchew was trying to narrow down something on one little parcel of land yet there was a whole operation there.

Mr. Hammack asked how long would it take to get the special exception up and running. Mr. Shoup said there had been discussions with Mr. Minchew about that issue and he didn't think it would take very long to get it scheduled and staffed, but he was not familiar with the issues.

The motion carried by a vote of 4-3. Ms. Gibb, Mr. Hammack and Mr. Kelley voted nay.

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Page 371, February 2, 1999, (Tape 1), After Agenda Item:

Additional Time Request
John Bourbeau and Dawn Yager

Mr. Dively moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date is June 19, 1999.

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Page 371, February 2, 1999, (Tape 1), After Agenda Item:

Requests for Reconsideration
Falls Reach LLC, VC 98-D-094

Ms. Langon noted that Adrienne Whyte, Mt. Daniel Civic Association, was present to speak to the reconsideration request.

Ms. Whyte said she didn't feel that this was a takings case. Even if the 200 foot setback requirement was strictly enforced, the applicants could still build 10-13 houses with cluster rezoning. She said this was definitely a reasonable use of the land.

Chairman DiGiulian interrupted the speaker, informing her that in order for the Board to reconsider there would have to be information that could not be presented at the last hearing. He said if she had any new information she would need to speak to that.

Ms. Whyte continued by stating that the only absolutely new information was that 2 days after the January 26, 1999, public hearing, a very similar application was denied by the Fairfax County Planning Commission. She said that application was in the same general neighborhood.

Chairman DiGiulian stated that the Planning Commission did not hear variance applications. Ms. Whyte said the reason the Planning Commission heard the application was due to a previous rezoning in which there were conditions that the developer was asking to be waived.

Chairman DiGiulian noted that would be an amendment to the proffered conditions.

Ms. Whyte the zoning regulations were being unevenly enforced and asked that the BZA consider that in their decision.

Bob Lawrence, Agent, said the petitioner had not presented any new evidence. He said the Planning Commission could not hear variances and a rezoning application was a totally different situation. He said under the Ordinance, if they didn't get relief, that portion of the property could not be used at all.

Mr. Pammel asked if the 200-foot restriction was in place when the applicant acquired the property. Mr. Lawrence said that restriction was in place for everyone who comes before any body and he said that was not the point.

Mr. Pammel said the applicant purchased the property with full knowledge that there was a 200-foot restriction. Mr. Lawrence said he also purchased it with the knowledge that there was a procedure to get relief from that. He said the difference was where the property was located.

Mr. Lawrence said if he understood the rules of the Board correctly, in order to have a reconsideration, one of the members on the prevailing side would have to make the motion for reconsideration and he hoped the members of the Board who supported the application originally would continue to do so.

Mr. Kelley moved to deny the requests for reconsideration, stating that he didn't hear any new information.

Mr. Dively said he would abstain.

Ms. Gibb seconded the motion which carried by a vote of 5-1-1. Mr. Pammel voted nay and Mr. Dively abstained from the vote.

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Page 372, February 2, 1999, (Tape 1), After Agenda Item:

Question about Falls Reach Development Condition

Mr. Kelley said he was the maker of the motion and he did compare the two conditions and felt that the applicant's condition was clearer and basically the same. He said testimony reflected that there were dead or dying trees on the subject property and the way he read staff's suggested condition it would be theoretically possible that the applicant would be required to put in 100 foot trees and he didn't think that was the intent of staff.

Chairman DiGiulian reiterated that Mr. Kelley's intent was to accept the applicant's condition.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that in previous discussions with the applicant, staff had discussed with and the applicant had submitted a tree preservation plan so the condition as staff had written it, also addressed the trees on the tree preservation plan, not just additional landscaping that would be planted. She said that was the difference between the two conditions.

Bob Lawrence said he was not aware of the language in Paragraph 6 of staff conditions until the morning just before the hearing. He said it was not in his development conditions because he wrote his the day before and sent them to staff the day before so they knew what his proposed conditions were. Mr. Lawrence said if everyone would feel better that they include staff's language they would do it. He said their main concern was that staff's language would suggest that they would be replacing trees that were already dead or dying and that would not be something they would be agreeable to.

Mr. Kelley said to leave the condition the way it was voted upon.

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Page 372, February 2, 1999, (Tape 1), After Agenda Item:

Approval of January 26, 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 373, February 2, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BLANCA N. GUANDIQUE, VC 98-M-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 7120 Vermillion Pl. on approx. 9,653 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17))(4) 49.

The applicant was not present at the hearing. Mr. Hammack moved to defer the application to February 16, 1999 and noted if the applicant wasn't present at that meeting the application would be dismissed. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:18 a.m.

Minutes by: Regina Thorn

Approved on: April 6, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, February 9, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; John Ribble; and James Pammel. Robert Kelley was absent from the meeting.

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Page 375, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DALE E. STEVENS, VC 98-M-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.33 ft. from side lot line and fences greater than 4.0 ft. high in a front yard. Located at 4328 Roberts Ave. on approx. 24,272 sq. ft. of land zoned R-2 and H.C. Mason District. Tax Map 71-2 ((5)) 73A. (DEF. FROM 12/1/98).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dale Eugene Stevens, 4328 Roberts Avenue, Annandale, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of a garage addition and variances to permit a 5 foot and 6 foot fence to remain in the front yard. The minimum side yard requirement was 15 feet, therefore, a variance of 4.67 feet was being requested for the garage and a 4 foot high fence was allowed in the front yard, therefore variances of 1 foot and 2 feet were being requested for the fences.

Mr. Stevens presented the variance requests as outlined in the statement of justification submitted with the application. He explained that according to the Zoning Ordinance, their backyard was their front yard and they installed the fences in what they thought was their backyard. He said that the reason for extending the garage was to enlarge their house and because of the house being constructed so close to the property line, there was no way to enlarge it without crossing the building restriction line.

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

Mr. Pammel moved to approve VC 98-M-116 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DALE E. STEVENS, VC 98-M-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.33 ft. from side lot line and fences greater than 4.0 ft. high in a front yard. Located at 4328 Roberts Ave. on approx. 24,272 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((5)) 73A. (DEF. FROM 12/1/98). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The location of the dwelling on the lot precludes expansion in any other direction than that proposed by the applicant.

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

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

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

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

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

1. This variance is approved for the location of a garage addition and six and five feet high fences shown on the plat prepared by Harold A. Logan, dated July 15, 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

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 February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 376, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MARK M. VASTOLA, VC 98-L-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in the front yard. Located at 6319 Windsor Ave. on

approx. 23,950 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 29. (DEFERRED FROM 10/6/98 and 12/8/98).

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 M. Vastola, 6319 Windsor Avenue, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6.1 foot high fence to remain in the front yard. The Zoning Ordinance permits a maximum fence height of 4 feet; therefore, a variance of 2.1 feet was requested.

Mr. Vastola presented the variance requested as outlined in the statement of justification submitted with the application. He submitted photographs of the fence, site distance from the street and pictures of the rental home next door. He informed the Board that he purchased the house in May of 1996 and shortly after moving in, his neighbor decided to rent out the house next door. He referred to the photographs submitted to illustrate the number of cars parked along his driveway. Mr. Vastola disclosed that there were around 20 people living in the home next door and due to the neighbors house sitting higher than his, they had a direct view into his home. He said he constructed the fence both for the safety of his two children from the cars coming and going, and for the privacy of his family. He further stated that the neighbors had built an extension that preceded the Zoning Ordinance, which overlooked his backyard, further minimizing his privacy.

Chairman DiGiulian asked if there was adequate sight distance for vehicles on the street. Mr. Vastola replied that there was.

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

Mr. Hammack moved to approve VC 98-L-083 for the reasons stated in the Resolution.

Mr. Pammel asked staff to investigate the adjacent property to determine if the Zoning Ordinance was being violated.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK M. VASTOLA, VC 98-L-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.1 ft. high fence to remain in the front yard. Located at 6319 Windsor Ave. on approx. 23,950 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((3)) 29. (DEFERRED FROM 10/6/98 and 12/8/98). 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, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. There are extraordinary topographical conditions that exist and the six ft. fence will grant privacy for the applicant.
4. The fence does not interfere with the sight distances along the front of the property.
5. The fence does not prove to be detrimental to the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of a 6.1 ft. high fence in the location shown on the plat prepared by Kenneth W. White, dated June 25, 1998, submitted with this application and is not transferable to other land.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 378, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ANGELA GYURKO, SP 98-P-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 permit deck to remain 15.4 ft. from side lot line. Located at 8356 Idylwood Rd. on approx. 9,180 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11))(A) 41, 42, and 43. (Concurrent with VC 98-P-144).

ANGELA GYURKO, VC 98-P-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 8356 Idylwood Rd. on approx. 9,180 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11))(A) 41, 42, and 43. (Concurrent with SP 98-P-060).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Angela Gyurko, 8356 Idylwood Road, Vienna, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit for an error in building location to permit a deck to remain 15.4 feet from the side lot line. The applicant also requested a variance to permit construction of a garage addition to be located 5 feet from the side lot line. The minimum side yard of 20 feet is required, therefore a modification of 4.6 feet was requested for the deck and a 15 foot variance was requested for the garage.

Ms. Gyurko presented the requests as outlined in the statement of justification submitted with the applications. She stated that the deck was already constructed at the time she purchased the home and she was unaware of the error in building location until she requested a variance for her garage.

Ms. Gyurko stated that she had neighborhood support and that the deck added to the landscaping and view of the property. She explained that the lot was narrow and she chose the particular area in question for the garage because it was the best location on the lot and it would require the fewest changes to the property. Ms. Gyurko informed the Board that she had neighborhood support for the construction of the garage.

Mr. Hammack asked if there were other homes with attached garages in her neighborhood and if they were on smaller lots. Ms. Gyurko replied that she had submitted photographs of three properties in her neighborhood that had detached single car garages in the back corner of the properties, but that set up would not work with her property because of the shape and because she was requesting a two-car garage instead of a one-car garage.

Mr. Hammack asked how far back the neighbors' house sat from the property line. Ms. Gyurko replied the house was located 20 feet from the property line; therefore, if the variance was approved there would be 25 feet between the garage in question and the neighbors' home.

Mr. Hammack asked if the neighbors' house sat the same distance back from the street line as her home. Ms. Gyurko acknowledged that it did.

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

Mr. Dively moved to approve SP 98-P-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANGELA GYURKO, SP 98-P-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 permit deck to remain 15.4ft. from side lot line. Located at 8356 Idylwood Rd. on approx. 9,180 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11))(A) 41, 42, and 43. (Concurrent with VC 98-P-144). 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 9, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck addition shown on the plat prepared by Robert J. Simpson, dated October 26, 1998, 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. 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 February 17, 1999. This date shall be deemed to be the final approval date of this special permit.

Mr. Dively moved to approve VC 98-M-098 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANGELA GYURKO, VC 98-P-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 8356 Idylwood Rd. on approx. 9,180 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((11))(A) 41, 42, and 43. (Concurrent with SP 98-P-060). 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 9, 1999; and

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

1. The applicant is the owner of the land.
2. The lot is small and extremely narrow.
3. The request is very reasonable and typical.

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

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

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

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

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

1. This Variance is approved for the location of a garage addition as shown on the plat prepared by Robert J. Simpson, dated October 26, 1998, 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 addition 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.

Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Hammack voted nay. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 382, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. G. J. ROMAIN, VC 98-M-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.7 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq.ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Reconsideration 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. Gregory J. Romain, 7219 Calvert Street, Annandale, Virginia, replied that it was.

Phyllis A. Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. At the public hearing on November 24, 1998, the BZA approved SP 98-M-045 but denied a concurrent variance application, VC 98-M-098. A reconsideration of the VC application was granted. The applicant requested approval to permit construction of an addition, which was to be an attached garage, 12.7 feet from the side lot line. The R-1 District requires a minimum of 20 feet side yard area, therefore, a variance of 7.3 feet was requested.

Mr. Romain presented the variance request as outlined in the statement of justification submitted with the application. He amended a statement in the original statement of justification where he had indicated that the narrowness of his land was just isolated to him. He stated that he had talked to some neighbors since the last meeting and discovered that was not the case. He submitted a petition with 20 signatures of neighbors in support of the construction of his garage. Mr. Romain announced that his application was objected to by the Annandale Civic Association President, Mr. Coleman, and that Mr. Coleman only represented 4 members of the community and none of them were adjoining property owners.

Mr. Romain submitted photographs illustrating that the adjacent property owner, Mr. Warren, had a row of twenty 20 foot tall trees which extended 2 to 3 feet within his property boundary. He informed the Board that these trees had no negative impact to his adjacent neighbors. He said that most of the homes in the development were constructed in the 1950's and he felt that it was not unreasonable to build a garage.

Chairman DiGiulian called for speakers.

Henry Warner, 7225 Calvert Street, Annandale, Virginia, said he was in objection to the application in question. He felt that Mr. Romain's application did not satisfy all of the requirements of the Ordinance and that the property did not fit any of the criteria needed to justify a variance. Mr. Warner stated that Mr. Romain had not shown any hardship, but only convenience, and that the variance, if approved, would be detrimental to his property and would inflict undo hardship on his family. He informed the Board that the garage, upon construction, would be within 30 feet of his bedroom window instead of the 40 feet required by the Zoning Ordinance. He stated that approval of this variance would set a standard for the community.

Ms. Gibb asked Mr. Warner for confirmation if his main complaint was that the garage would be too close to his bedroom window. Mr. Warner acknowledged that it was.

Mr. Pammel asked Mr. Warner if the foundation for the garage was already constructed. Mr. Warner answered that it was.

Barbara Warner, 7225 Calvert Street, Annandale, Virginia, reported that the pine trees were very tall and the first 6 to 10 feet were not part of the screening. They had been cut so they could see through them to the house and that they were only used for screening up above 6 to 10 feet. She said that Mr. Romain started construction of the garage before he was approved to build it.

Mr. Hammack asked if her objection was based on the noise from the garage being located closer as to the noise from an open carport. She answered that she felt the garage being located closer to the home would be loud and that the trees did not provide any filter as they had been trimmed. She said that she was also concerned about the resale value of their home as well as the fact that the garage would set a precedence for the neighborhood. She further stated that Mr. Romain could build his garage on another part of his property.

Walter Coleman, Annandale Civic Association President, 7324 Auburn Street, Annandale, Virginia explained that he represented all of the civic matters of the neighborhood that came before the Board. He submitted a letter to the Board reflecting all of the homes in the neighborhood with attached and detached garages. He stated that an overwhelming amount of residents in the neighborhood had achieved maximum use of their property without a variance and he felt that was possible in this case.

Mr. Hammack asked if the Civic Association had a Board meeting to discuss the matter. Mr. Coleman replied that they did have a meeting with both parties in attendance and neither party chose to speak when they were given the opportunity.

Mr. Romain voiced in his rebuttal that the variance he was requesting would not set a precedent in the neighborhood and he knew of two people in the community that were granted variances for lesser amounts than his.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-M-098 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

G. J. ROMAIN, VC 98-M-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.7 ft. from side lot line. Located at 7219 Calvert St. on approx. 31,381 sq. ft. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 13. (Reconsideration granted). 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, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The house is set at such an angle that only a portion of the addition needs 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 **APPROVED** with the following limitations:

1. This Variance is approved for an addition (extended and enclosed carport), as shown on the plat prepared by Alexandria Surveys, Inc., dated November 21, 1996, as revised through September 1, 1998, 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.

Ms. Gibb 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 February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. STEVEN WALTER SILL, VC 98-D-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1839 Cherri Dr. on approx. 15,953 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 498.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven Walter Sill, 1839 Cherry Drive, Falls Church, Virginia, replied that it was.

Phyllis A. Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an approval to construct an addition, which consisted of the enclosure of an existing carport 5 feet from a side lot line. In the R-4 District, a minimum side yard of 10 feet is required; therefore, a variance of 5.0 feet was requested.

Mr. Sill presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he had purchased the house four years ago and the carport was already constructed on the property. He reported that he was seeking to enclose the carport for security reasons, he had neighborhood support, and the house was on an up slope in front and behind, so there was no other reasonable place to construct a garage.

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

Ms. Gibb moved to approve VC-98-D-143 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN WALTER SILL, VC 98-D-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1839 Cherri Dr. on approx. 15,953 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 498. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1999; and

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

1. The applicant is the owner of the land.
2. The house is sited over to one side and that it sits on a hill so construction of a garage behind would be difficult.
3. There are exceptional topographic conditions.

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

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

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

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

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

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

1. This variance is approved for the garage addition shown on the plat prepared by Rice Associates, P.C., dated March 7, 1995, as revised/updated through November 22, 1998, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 386, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIE CRUM, SP 98-L-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.7 ft. from rear lot line, 2.7 ft. from side lot line and addition 7.3 ft. from side lot line. Located at 7115 Loisdale Rd. on approx. 8,750 sq. ft. of land zoned R-4. Lee District. Tax Map 90-4 ((6)) 54.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Willie Crum, 7115 Loisdale Road, Springfield, Virginia, replied that it was.

Phyllis A. Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, which was a detached garage, to remain 1.7 feet from the rear lot line and 2.7 feet from a side lot line. The applicant also requested a reduction to minimum yard requirements to permit an addition, which was an enclosed carport, to remain 7.3 feet from a side lot line. Therefore, the amount of error for the existing garage in the rear yard area was 11.2 feet, or 87 percent. In the R-4 District, a minimum 10 foot side yard is required. Therefore, the amount of error in the side yard for the existing detached garage was 7.3 feet, or 73 percent. The enclosed carport represented a 25 percent error in the side yard or 2.5 feet.

Mr. Hammack asked staff how far the house was from the rear lot line. Ms. Wilson replied that the information was not available.

Mr. Crum presented the special permit request as outlined in the statement of justification submitted with the application. He informed the Board that he purchased the portable two car garage in Manassas, Virginia and he had asked the company that he bought it from if he needed a permit. They told him he did not because it was a portable structure. Mr. Crum explained that he enclosed the carport in question back in the 70's and that it had been enclosed for about 20 years. He stated that having to comply with the minimum yard requirements would cause an unreasonable hardship for his family. He stated that his home was located on a main street and he needed the garage for safety purposes for his cars and tools.

Mr. Hammack asked if Mr. Crum constructed the enclosure of the attached garage. Mr. Crum answered he had about 20 years ago. Mr. Hammack asked if he had obtained a building permit. Mr. Crum replied that he hadn't because he didn't know that he was supposed to. Mr. Hammack asked when the accessory garage was constructed. Mr. Crum replied that it was constructed last year.

Mr. Hammack asked who was the contractor. Mr. Crum reported that the company's name was Leonard's, located in Manassas. Mr. Hammack asked if the garage was on a slab. Mr. Crum replied that it was. Mr. Hammack asked if there was a signed contract. Mr. Crum replied that he had submitted it to staff. Mr. Hammack asked if the contract stated that the builder needed to get a building permit. Mr. Crum answered that the contract was the receipt that he received after the work was done, that said that the customer was required to get any permits. Mr. Hammack informed Mr. Crum that the contract had no terms and conditions listed on it. Mr. Hammack asked how far away the residence directly behind him was from the property line. Mr. Crum answered 50 or 60 feet.

Mr. Crum stated that because his lot was so small, anywhere the building was put would be too close to the property line. Mr. Hammack asked if he ran electricity into his attached garage. Mr. Crum replied there was electricity running to the garage but that it was there along with the carport when he purchased the house and that all he did was enclose the side of the carport.

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

Mr. Hammack moved to approve SP 98-L-059 in part for reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIE CRUM, SP 98-L-059 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.7 ft. from rear lot line, 2.7 ft. from side lot line and addition 7.3 ft. from side lot line. **(THE ACCESSORY STRUCTURE WAS DENIED).** Located at 7115 Loisdale Rd. on approx. 8,750 sq. ft. of land zoned R-4. Lee District. Tax Map 90-4 ((6)) 54. 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, 1999; 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 **APPROVED-IN-PART**, with the following development conditions:

1. This Special Permit is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys, dated October 23, 1998, as revised through November 24, 1998, 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. 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 February 17, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 388, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. YOUR CHILD'S PLACE, INC., SPA 95-H-007 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-007 for child care center to permit change in development conditions, increase in enrollment, site modifications and increase in land area. Located at 2578 and 2580 Chain Bridge Rd. on approx. 26,037 sq. ft. of land zoned R-1. Hunter Mill District. Tax

Map 38-3 ((1)) 46A, 50. (Concurrent with VC 97-H-099). (RESCHEDULED FROM 1/27/98; MOVED FROM 4/7/98, 6/9/98, 8/4/98 and 9/29/98; DEF. FROM 2/24/98 and 11/24/98).

9:00 A.M. YOUR CHILD'S PLACE, INC., VC 97-H-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 6.0 ft. from front lot line. Located at 2580 Chain Bridge Rd. on approx. 10,983 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 50. (Concurrent with SPA 95-H-007). (RESCHEDULED FROM 1/27/98; MOVED FROM 4/7/98, 6/9/98, 8/4/98 and 9/29/98; DEF. FROM 2/24/98 and 11/24/98).

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, Agent, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The lot in question was 15,054 sq. feet and contained a Child Care Center for 35 children that was approved under SP 95-H-007. A variance to allow the existing building to remain 4 feet from the front lot line was also approved at that time.

The applicant requested approval of a special permit, amendment to incorporate the lot and existing building next door into the special permit resulting in an area of 26,037 sq. feet and an increase in the number of children from 35 to 68. A variance was also requested to allow the existing building to remain 6 feet from the front lot line. Staff had originally recommended denial of this request in the staff report dated November 17, 1998, due to a fragmented site design, awkward internal circulation, the need for a right turn lane, and the lack of a median break in order to provide access to the site.

The application was deferred at the applicant's request at the hearing of November 24, 1998, to allow staff to review a revised plat that had just been received that showed a complete redesign of the internal circulation. The addendum published by the staff on February 2, 1999, continued to recommend denial. Staff believed that the revised plat improved the internal circulation but the site still lacked a right turn lane to alleviate an inadequate turn radius for west bound vehicles turning onto an existing service drive at the adjacent site. On February 8, 1999, staff received another revised plat and a letter from Virginia Department of Transportation which indicated that this issue had been resolved with the provision of a modified right turn lane. Therefore, now staff recommended approval of the special permit amendment subject to revised development conditions dated February 8, 1999.

Mr. Haynes presented the requests as outlined in the statement of justification submitted with the applications. He stated that the case had been pending for almost 16 months with the difficulty of working out transportation issues relating to the case and they had finally reached an agreement with VDOT. Mr. Haynes informed the Board that the agreement with VDOT was an expensive one and that a right hand deceleration lane would be put in to resolve the safety issues. He said that the use of the other part of the application was a day care center for small children from infancy to 5 or 6 years old.

Mr. Haynes reported that most of the children came from the apartments next door to the site and most of them walked to the center. Forty percent of the other children would be arriving to the site by van, so there would be no impact upon the transportation system with the agreements worked out with VDOT. Mr. Haynes said they had full community support of the child care center. Mr. Haynes stated that they were in agreement with all of the conditions except for the last one. He referred to the plat that he submitted to illustrate what would happen if the set back requirements for the County were met when Route 123 was to be widened to six lanes. He stated that with all of the set backs and easements required, it would leave 37 feet total within which to put a building, therefore, if the permit was to be terminated when construction to widen Rt. 123 began, the site would be taken at that point, and the money and improvements that had been spent would be moot. He requested, that since VDOT could take the property it at any time, to remove the time limitation to terminate the permit from the last condition.

Mr. Pammel asked for confirmation that the plan for improvements on Rt. 123 did not apply to the area in question. Mr. Haynes replied that those improvements would occur further south along Rt. 123 and did not apply to the application site.

Ms. Gibb asked for clarification on how U-Turns would be avoided for traffic going north. Mr. Haynes replied that the service drive would be connected so there would be a left hand turn onto that road.

Chairman DiGiulian called for speakers.

Mr. Robert Penier stated that he was an adjoining home owner and he was in support of the application. He said that he felt the work that had been done addressed the traffic issue with minimal impact on his property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel expressed his compliments to the Sandhu's for doing an excellent job of renovating the two structures and making them an asset to the community.

Mr. Pammel moved to approve SPA 95-H-007 and VC 97-H-099 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

YOUR CHILD'S PLACE, INC., SPA 95-H-007 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-H-007 for child care center to permit change in development conditions, increase in enrollment, site modifications and increase in land area. Located at 2578 and 2580 Chain Bridge Rd. on approx. 26,037 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 46A, 50. (Concurrent with VC 97-H-099). (RESCHEDULED FROM 1/27/98; MOVED FROM 4/7/98, 6/9/98, 8/4/98 and 9/29/98; DEF. FROM 2/24/98 and 11/24/98). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 2578 and 2580 Chain Bridge Road, (26,037 square ft.), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Design Management Group, (Zia Hassan) dated September 5, 1997, as revised through February 4, 1999, 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 Article17, Site Plans, and shall obtain approval of either a site plan or minor site plan, to be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The total maximum daily enrollment shall not exceed 68 children.

6. The hours of operation shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday.

7. Fourteen (14) parking spaces shall be provided for this use as shown on the special permit plat. All parking shall be on-site. Vans shall be utilized 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.

8. Landscaping shall be provided along the northeastern and southwestern lot lines as generally shown on the special permit plat, except that supplemental landscaping shall be provided along the northeastern property boundary between the building and the side lot line to provide a more effective landscape buffer during the winter months, within a landscape area with a width extended to 25 ft. from the property boundary, subject to the review and approval of the Urban Forestry Branch of DPWES. The transitional screening requirements shall be waived along the southern property line. The barrier requirement shall be waived along all property lines.

9. Foundation plantings shall be provided around the existing buildings where feasible, and as shown on the special permit plat, to soften the appearance of the building from Chain Bridge Road, subject to the review and approval of the Urban Forestry Branch of DPWES.

10. Occupancy of the outdoor play areas shall be limited to a maximum of 21 children at any one time.

11. The applicant shall construct a right turn deceleration lane into the site entrance, as shown on the approved special permit plat, subject to the review and approval of DPWES and VDOT.

12. Four (4) parking spaces shall be reserved for the pick-up and drop-off of children, with two spaces each located closest to each building.

13. In addition to the pedestrian access shown on the special permit plat, a pedestrian walkway shall be provided across the parking lot between the two buildings. All pedestrian access walkways shall be clearly marked to be visible to vehicular traffic using parking areas and travel lanes.

14. All signs shall be in accordance with the provision of Article 12 of the Zoning Ordinance.

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

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 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 February 17, 1999. This date shall be deemed to be the final approval date of this special permit.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

YOUR CHILD'S PLACE, INC., VC 97-H-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 6.0ft. from front lot line. Located at 2580 Chain Bridge Rd. on approx. 10,983 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 50. (Concurrent with SPA 95-H-007). (RESCHEDULED FROM 1/27/98; MOVED FROM 4/7/98, 6/9/98, 8/4/98 and 9/29/98; DEF. FROM 2/24/98 and 11/24/98). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an existing building 6.0 ft. from the front lot line shown on the plat prepared by Design Management Group, dated September 5, 1997, as revised through February 4, 1999, 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. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 393, February 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID E. AND MARY T. HOWE, SP 98-P-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.0 ft. from side lot line and shed to remain 1.4 ft. from side lot line and 1.3 ft. from rear lot line. Located at 3404 Cypress Dr. on approx. 10,655 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8))(8) 3. (MOVED FROM 11/3/98)(continued from 12/8/98).

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 Howe, 3404 Cypruss Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The Board continued the hearing from December 8, 1998, to allow the applicant time to submit a revised plat showing the carport location moved so that it did not cross the lot line onto the adjacent property. Staff received the revised plat on January 19, 1999, showing the carport reduced in area to a location that allowed for between 2 and 2.5 feet from the side lot line.

Mr. Howe presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the carport was built in error based on the fence line and that they had plans to remodel it so they would be able to maintain it properly without stepping on the other property line. He stated that the shed was built before they purchased the home and that it was on a cement slab.

Chairman DiGiulian asked for confirmation of whether the carport would be 2 feet from the side property line. Mr. Howe replied that it would be and said the location in question was the only place on the lot compatible for a carport.

Mr. Ribble referred to the letters of opposition to the application and asked Mr. Howe if he had read the letter from Perry Burgess. Mr. Howe answered he had read the letter. He said that he had a vested interest in the land value and stability of the neighborhood and he had served as the president of the Board of the Civic Association in the past. He reported that Mr. Burgess had installed their front door, at that time Mr. Howe asked him for an estimate on the cost of a carport. Mr. Burgess stated that he was very busy and he would have to get back to him. However, he never produced an estimate and Mr. Howe figured he did not have time to do the job. Mr. Howe claimed that he was not notified by Mr. Burgess that he was in violation of County Ordinance but they were notified by the Enforcement Commission. He added that the carport was built in ignorance and he was not aware of violating the Ordinance.

Mr. Hammack asked if the residence had a garage originally, was the garage converted into a living space and if so, did he do the conversion. Mr. Howe answered that the garage had been converted into living space and he did the conversion himself.

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

Mr. Dively moved to deny SP 98-P-043 because the addition and the shed were too close to the property line and while the new proposal for the addition was within 2 feet, it was still too close and with the changes, it was not harmonious with the neighborhood. Mr. Pammel seconded the motion.

Mr. Pammel stated that the house and the existing carport had been expanded, the area was converted to living space and now the request was to encroach even closer to the side lot line to provide a carport. He felt that the alternative was to find a location in the rear of the lot to locate a detached structure if they wanted a carport or garage.

Chairman DiGiulian asked Mr. Howe for clarification of how long the shed had been on the property. Mr. Howe replied that it was there before they purchased the property. Chairman DiGiulian opposed the motion saying that he felt Mr. Howe had no control over the placement of the shed.

Mr. Hammack made a substitute motion to approve in part SP 98-P-043 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID E. AND MARY T. HOWE, SP 98-P-043 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.0 ft. from side lot line and shed to remain 1.4 ft. from side lot line and 1.3 ft. from rear lot line. **(THE CARPORT WAS DENIED).** Located at 3404 Cypress Dr. on approx. 10,655 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8))(8) 3. (MOVED FROM 11/3/98)(continued from 12/8/98). 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, 1999; 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;

Page 395, February 9, 1999, (Tape 1), DAVID E. AND MARY T. HOWE, SP 98-P-043, continued from Page 394

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 **APPROVED-IN-PART**, with the following development conditions:

1. This Special Permit is approved for the location of a shed shown on the plat prepared by Kenneth W. White, dated May 4, 1998 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. Pammel seconded the motion which carried by a vote of 5-1. Mr. Ribble voted nay.
Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 395, February 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RENAISSANCE APARTMENTS, L.P., AN ENTITY AFFILIATED WITH CHARLES E. SMITH RESIDENTIAL, A 1998-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected and displayed an off-site freestanding sign in violation of Zoning Ordinance provisions. Located at 7631-7659 Leesburg Pi. on approx. 106,847 sq. ft. of land zoned C-3 and H.C. Providence District. Tax Map 39-2 ((22)) A.

Chairman DiGiulian stated that the BZA issued an intent to defer on January 19, 1999, to May, 11, 1999. Mr. Pammel moved to defer A 1998-PR-033 to May 11, 1999. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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9:30 A.M. MARY K. AND KENNETH A. TOONE, A 1998-DR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a contractor's office and shop and are keeping construction equipment associated with the business on the property in an R-1 District, in violation of Zoning Ordinance provisions. Located at 6818 Georgetown Pi. on approx. 5.0 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) D. (Def. from 12/22/98)

Susan Epstein, Zoning Administration Division, presented staff's position as contained in the staff report. The application was an appeal of the determination that the appellants were operating a contractor's office and shop and were keeping construction equipment associated with the business on the property in an R-1 District in violation of Zoning Ordinance provisions.

Ms. Epstein indicated that the business in question, K. Toone and Sons, Incorporated, offered the following services: excavating, grading, stump grinding and snow removal. Zoning inspections of the property revealed that vehicles, equipment and materials related to the business, including front end loaders, bobcats, a ditch digger, dump trucks, trailers of tractor trailers, dumpsters, ladders, scrap metal, snow plows, chopped wood, logs, broken concrete, metal pipes, plastic buckets, as well as inoperable vehicles and other miscellaneous junk and debris were being stored on the site. She noted that the type and extent of the equipment and materials onsite far exceeded that which would normally be associated with a residential use and that K. Toone and Sons, Incorporated advertised the address of the business as 6818 Georgetown Pike. Ms. Epstein stated that based upon the evidence, it had been determined that the appellants' business activities on the subject property satisfied the criteria of the contractor's offices and shop definition and under Zoning Ordinance provisions, contractor's offices and shops were only permitted in the C-8, I-4, I-5 and I-6 Districts and were not permitted under any circumstances in the R-1 District.

With respect to the keeping of construction equipment, dump trucks and trailers of tractor trailers, Ms. Epstein noted that Par. 16A of Sect. 10-102 specifically precluded the parking of such vehicles and equipment in any R district and therefore, the storage and parking of these items on the property was a violation of Par. 16A of Sect. 10-102.

Ms. Epstein said the appellants raised the issue of a grandfathered right to conduct the cited activities and staff had addressed that issue in the staff report. It was staff's position that the appellants had not satisfied their burden of proof that the contractor's offices and shop or any of the commercial vehicles and construction equipment parked on the property were lawful nonconforming uses. Based upon staff's research, it was determined that there were no grandfathered or nonconforming rights regarding a contractor's office and shop and keeping of such vehicles and equipment on the appellants' property.

William Shoup, Deputy Zoning Administrator, stated the appellants presented a legal argument regarding a 1983 General District Court case related to this property. Pamela Pelto from the County Attorney's Office was present to respond to any questions the Board may have regarding the legal points raised by the appellants.

Mr. Dively asked if staff had reviewed the letter dated February 5, 1999, from Mr. Cerick. Mr. Shoup replied that they had reviewed the letter. He stated that Mr. Cerick had submitted two presentations and that staff had reviewed both of them. Mr. Dively asked for staff's response. Mr. Shoup replied that staff did not concur with the reports raised by Mr. Cerick and that they stood by the position outlined in the staff report. He said that one of the big issues was the 1983 court case and specifically Res Judicata. Mr. Shoup referred to Ms. Pelto to answer questions regarding this issue. Mr. Shoup informed the Board of staff's belief that the1983 court case did not preclude them from taking action.

Ms. Gibb asked if Mr. Toone had the same business, but somewhat smaller, on the property in 1941, would it be grandfathered. Mr. Shoup replied that if the business was operating in 1941 when the first Zoning Ordinance took effect, it would be grandfathered to the same extent that it existed. Ms. Gibb asked the same question pertaining to the year 1971. Mr. Shoup answered that would have been too late, they would have had to be in operation in 1941. He also said that the Toones began operating their business in 1971 and the Zoning Ordinance in effect at that time did not allow that type of business in a residential area.

Peter Cerick, 700 Pine Street, Herndon, Virginia, presented the arguments forming the basis for the appeal. Mr. Cerick stated the current charges were the same charges that were brought back in 1983, with the exception of operating a business in a residential area, and they should never have been brought up again

because they had already been dealt with in the past court case. He said bringing these charges again 15 years later, unless there was a change in the use, would be the same as if they had been brought a month after the it had been settled in District Court. He stated that the County had elected to take criminal action in 1983 and this time they elected to take civil action. Mr. Cerick continued to contend that the case had already been settled and there was no basis to bring the current charges.

Mr. Cerick asked Kenneth Toone, 6818 Georgetown Pike, McLean, Virginia, how the use of the property differed between 1983 and 1998 and the present time. Mr. Toone replied the use had not changed, they had always stored large equipment at the property and the only new machinery was a grinder that he used to clean up the property. Mr. Cerick asked if the number of construction pieces varied between 1983 and 1998 and the present time. Mr. Toone replied between 1983 and 1998 there were between 8 and 10 vehicles and currently there are between 8 and 14 vehicles on the property.

Mr. Cerick asked if the vehicles were stored in the same area as the past years. Mr. Toone answered that they were stored in the same area and that area had not been expanded in any way.

Mr. Cerick referred to the business applications dated back to 1972 that had been submitted and said that the business was in operation prior to the 1978 Ordinance. He pointed out that in the written submission from 1981, Mr. Toone stated the use of the property related back to 1946 and, to this date, this was still the case.

Chairman DiGiulian called for speakers.

John Heyde, 6824 Cloisters Drive, McLean, Virginia, said he had lived at this address since 1964. He said that he viewed the Toone property before purchasing his and at that time there was construction equipment on-site. Mr. Heyde stated that Mr. Toone plowed the roads every winter and he viewed the Toones as an asset to the community. He voiced his support of the Toones.

Jay Knowles, 6901 Georgetown Pike, McLean, Virginia said he and is wife also viewed the Toone property before purchasing there home and they were in support of the Toones.

Jack High, 1000 Abbey Way, McLean, Virginia said he had lived at this address since 1968 and he was in support of the Toones. He stated that the Toones had been phenomenal neighbors and they had no objection to the property in question.

Jay Grinney, 938 Douglass Drive, McLean, Virginia, stated that he was in opposition of the application. He said that the noise from the property was loud and it sometimes went on until the late evening hours and there was an enormous amount of debris littering the property. He also stated his feeling that the business could not be covered under the grandfather clause.

Victor Gobelack, 934 Douglass Drive, McLean, Virginia stated that he was in opposition of the application. He said that the other neighbors in support of the application only viewed the property the long way and that they could only see the barn and some horses. Mr. Gobelack submitted photographs illustrating the side view of the property and photographs of the construction equipment being stored on the property. He stated that there had been a grinder added to the property that shook the ground when in operation and made an enormous amount of noise. He said that equipment was brought in and out of the property on an ongoing basis. Ms. Gibb asked Mr. Gobelack the year he acquired his property. Mr. Gobelack answered November of 1991 and that he had seen changes to the use in 1991 and in 1994.

Martha Gerard, 942 Douglass Drive, McLean, Virginia said she had lived at this address since August of 1989. She stated that dust from the property flowed down on her house and porch and that the noise was very loud. She also stated that the equipment was often run at 5:00 a.m. and well after midnight and she was frequently awakened by the noise.

Tom Collucci, 6817 Sorrell Street, McLean, Virginia stated he and his wife had lived at this address since 1989. Mr. Collucci said that there was heavy industrial use going on at the property in question with noise all hours of the day and night. He said that in the history of the case it seemed a pattern developed that every time one violation was dealt with another one came up. He informed the Board that according to the aerial photographs, before 1976, all that was shown was the house, a barn and a riding ring, and that the activity

had been generated sometime in 1976 and thereafter, and that time period concurred with the beginning of the violations against the Toones.

Robert Young, 6813 Sorrel St., McClean, Virginia, said that he was building his home directly behind the Toone property and it was his belief that a "stump dump" was being operated at that residence.

Mr. Shoup responded to the issue of nonconformity by noting that there might have been a possibility of establishing some nonconforming rights to keep more than one commercial vehicle or different types of construction vehicles on the property, but this could only be allowed as an accessory use to the dwelling and not as part of any business operation.

He said that no information had been presented to establish this and he felt that the decision of nonconformity could not be open ended. He pointed out that structures had been added to the use in the 1980's and if it had been a non-conforming use, adding structures would have been a violation.

Mr. Shoup informed the Board that there was no record of the General District Court case's 1983 decision in favor of the Toone's. He urged the Board to review the documents in the staff report that led up to the court case. He stated that the parking of tractor trailers was the violation that lead to the 1983 court case. Mr. Shoup asked Ms. Pelto to address both the 1983 court case and the Res Judicata issues.

Ms. Pamela Pelto, Assistant County Attorney, stated that she did not believe Mr. Cerick presented the doctrine of Res Judicata properly and that he had attempted to stretch the definition to unrecognizable proportions. She recited the definition of Res Judicata as the same cause of action that had once been fully litigated could not be re-litigated between the same parties in a future lawsuit. She said that it only applied to the precise thing that was presented to the Judge and that in this instance, the summons clearly stated the issue was tractor trailers being parked on the property.

Ms. Pelto informed the Board that the doctrine could not be extended to matters that were in existence at the time of the hearing but were not brought before the trier of fact and that it only extended to facts and conditions that existed at the time of the trial, May of 1983, and were judicially determined in a full litigation. She stated that the Judge found that there was an agricultural use and one trailer could be used on the property, therefore this could not be extended to any and all violations that could have existed and that it could not be used as a shield to prevent pursuing any future violations. Ms. Pelto reported that this doctrine did not apply where there had been changed conditions and new facts as the aerial photographs revealed.

Ms. Gibb asked Mr. Shoup why nothing else was done after the violations in 1991. Mr. Shoup replied that the inspector indicated in his report that all of the zoning violations had been cleared except for building violations which the Department of Environmental Management was going to pursue. Mr. Shoup referred to another letter in 1991 from the Toone's which indicated compliance.

Ms. Gibb asked if Mr. Toone was getting business licenses from 1994 on. Mr. Shoup stated that at this time there was no business license issued to the Toone's and that the last recorded license was from the 1980's. He also reported that the Tax Administration Office would not release any information on the history, but only would acknowledge that there was not a current business license.

Mr. Hammack asked why Mrs. Toone was not cited for operating a contractor's office in 1991. Mr. Shoup replied that it was not known whether the inspector had enough information that there was a business being operated on the property.

Mr. Cerick rebutted that Mr. Toone had been in contact with several staff people who acknowledged that he had grandfathered rights to the property in question. Mr. Cerick informed the Board that he had attempted to trace the record of the 1983 court case and found that the warrants were written in 1982. He also represented that he felt there was too much weight being placed on the notes from the Zoning Inspector. Mr. Cerick said that some of the noise from the property related to the agricultural use on the property and when the neighbors complained to Mr. Toone, he stopped working. He said that upon review of the record the same issues were issues back in 1983 and Res Judicata did apply. He reported that staff said they were not going to use photographs because of the poor quality and this evidence was over weighed by Mr. Toone stating that the use from 1971 -1983 was essentially the same use that was occurring today.

Page 399, February 9, 1999, (Tape 1), MARY K. AND KENNETH A. TOONE, A 1998-DR-038, continued from Page 398

Mr. Toone stated that in 1946 his father bought the property and started Cherrydale Block, and since that time construction vehicles had always been parked at the property. In 1964, when the Cloisters were developed, they had one bulldozer, a farm tractor and two (2) trucks that had been stored there since the development of the company in 1946. In 1960, Mr. Toone bought three (3) different tractors, in the 1970's he bought a tractor and another truck and stopped using the Cherrydale Block trucks. He said that he had hauled over 200 loads of debris off of the property since 1995 and that sawdust was brought in on a regular basis and mixed with topsoil for the horses. Mr. Toone stated that there were trees and bushes that were stored on his property from the house next door that he had been trying to haul out over a period of time, but it was a costly process. He said that he worked on the property on Saturday and Sunday to maintain the farm and that he tried to stay within the noise Ordinance but occasionally he did violate it.

Mr. Hammack asked if Mr. Toone had a current business license. Mr. Toone replied that he did to the best of his knowledge and that he did not handle any of the administrative work. Mr. Hammack asked if he had purchased any new equipment since 1983. Mr. Toone replied that they had purchased four (4) additional pieces but that most of the equipment stayed out in the field, except that the four (4) trucks were housed on the property. He said that he never had all 28 pieces of equipment on the property at one time. Mr. Hammack asked if there was a satellite storage facility. Mr. Toone answered that there was not.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he did not believe the issue of Res Judicata, in this case, was a bar to the Zoning Administrator enforcing the Ordinance.

Mr. Hammack moved to uphold the determination of the Zoning Administrator. Mr. Pammel seconded the motion which carried by a vote of 4-2. Ms. Gibb and Chairman DiGiulian voted nay. Mr. Kelley was absent from the meeting.

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Page 399, February 9, 1999, (Tape 2), After Agenda Item:

Approval of October 6, 1999 Minutes

Mr. Pammel moved to approve October 6, 1999 Minutes. 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 399, February 9, 1999, (Tape 2), After Agenda Item:

Additional Time for Edmund J. Averman, III, VC 96-M-027

Mr. Dively moved to approve the request for Additional Time for Edmund J. Averman, III, VC 96-M-027 to June 12, 1999. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 399, February 9, 1999, (Tape 2), After Agenda Item:

Request for Reconsideration for Carroll and Beulah Johnson, VC 98-V-137

Mr. Pammel moved to approve the Request for Reconsideration for Caroll and Beulah Johnson, VC 98-V-137. The application was scheduled for March 16, 1998 at 9:00 AM. Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Ribble voted nay. Mr. Kelley was absent from the meeting.

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Approval of February 2, 1999 Resolutions

Mr. Dively moved to approve February 2, 1999 Resolutions, except for variance application VC 98-V-137, Carroll and Beulah Johnson. Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 11:30 p.m.

Minutes by: Lori M. Mallam

Approved on: April 13, 1999

Regina Thorn, 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 Tuesday, February 16, 1999. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Pammel; and John Ribble. Robert Dively and Robert Kelley were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 401, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHANTILLY, INC. T/A CHANTILLY NATIONAL GOLF AND COUNTRY CLUB, SPA 72-S-117-2 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 72-S-117 for country club to permit change in development conditions, building additions, site modifications, and change in permittee. Located at 14901 Braddock Rd. on approx. 214.35 ac. of land zoned R-C and WS. Sully District. Tax Map 43-4 ((1)) 4. (MOVED FROM 2/9/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kendrick Sanders, Agent, 3905 Railroad Avenue, #200, Fairfax, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit amendment for a country club to permit site modifications and building additions that include a 1,430 square foot addition to the clubhouse, a 10,000 square foot storage building, and two outdoor restrooms within the golf course. The request also included a change to development conditions to increase the number of family memberships from 600 to 678, increase the hours of operation from 7:00 a.m. to 11:00 p.m. daily to 6:00 a.m. to 2:00 a.m. daily and a change of permittee to Chantilly Inc. T/A Chantilly National Golf and Country Club. In staff's evaluation, all land use, environmental and transportation issues were addressed with the adoption of the development conditions included in the staff report dated February 9, 1999, which serve to also bring the existing clubhouse closer into compliance with current standards for operation of the course in an environmental quality corridor and with Comprehensive Plan provisions for widening along Braddock Road. Ms. Schilling noted that on Thursday, February 11, 1999, staff received correspondence from the applicant regarding the proposed changes to the development conditions for the clubhouse. The applicant proposed changes to conditions 7, 9, 11, 14, 15 and 16.

Mr. Sanders presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Sanders stated that the applicant had been in its location and basic configuration since 1960. Mr. Sanders said the club's requests were minimal and were invisible to the neighborhood except for the 2 proposed restroom facilities located on the golf course. He said the main purpose of the application was to expand the grill room for the club by 1,400 square feet, of which much of the expansion was to be located within the footprint of the building, to add 2 feet of decking around the tennis courts, and two rest room facilities, of which there currently were none, which would be vandal proof and lockable. Mr. Sanders stated the requests from staff in the development conditions would render it impossible to serve the current membership and said the request to widen Braddock Road were not appropriate because there was no need caused by the application request. He said traffic was generally on weekends and always during non-peak hours.

Mr. Pammel asked what were the total memberships requested for the club. Mr. Sanders stated it would be 425 full time golf family memberships.

Mr. Pammel asked if there were presently turning lanes into the club. Mr. Sanders replied there was not and there had never been any problems without the turning lanes because most of the traffic was off peak.

There were no speakers present to speak in support of the application.

Jack Harrell, Bowdel Drive, Centreville, Virginia; Edwin Roessler, 15208 Honsena Drive, Centreville, Virginia; and, Dave Costic, 5439 Clubside Lane, Centreville, Virginia, came to the podium to speak in opposition of the application. Their main concern of the proposed changes to the application was the rest room facilities and the issue of vandalism and aesthetics.

Mr. Sanders stated there were 4 potential locations for rest rooms on the plan. He said that the applicant would use the primary locations only for the proposed rest rooms which would satisfy the opposition complaints.

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

Mr. Pammel moved to approve SPA 72-S-117-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 9, 1999, with revisions to staff proposed development conditions deleting condition requirements for a 10 foot separation between the parking lot and Braddock Road since that was now reflected on the special permit plat, and deleting the requirements for right-of-way dedication and provision of left and right turn lanes. Mr. Pammel noted that the applicant had agreed to provide the restrooms only in the primary locations and not the alternate locations.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHANTILLY, INC. T/A CHANTILLY NATIONAL GOLF AND COUNTRY CLUB, SPA 72-S-117-2 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 72-S-117 for country club to permit change in development conditions, building additions, site modifications, and change in permittee. Located at 14901 Braddock Rd. on approx. 214.35 ac. of land zoned R-C and WS. Sully District. Tax Map 43-4 ((1)) 4. (MOVED FROM 2/9/99). 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 16, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant has presented testimony before the Board indicating compliance with special permit standards.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 14901 Braddock Road (214.35 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William H. Gordon and Associates Inc., dated August 20, 1998, as revised through January 26, 1999, 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 Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of employees shall not exceed 90.

6. The maximum number of memberships shall not exceed 678.

7. Parking shall be provided on the site in accordance with Article 11 of the Zoning Ordinance, in the locations shown on the approved special permit plat. All paved parking areas shall meet interior and peripheral parking lot landscaping requirements in accordance with the provisions of Sects 13-201 and 13-202 of the Zoning Ordinance.

8. The hours of operation shall be limited to 6:00 a.m. to 2:00 a.m. daily.

9. Transitional Screening Type I shall continue to be provided along the lot line between the clubhouse parking lot, and the northern property boundary of Section 11 of the Country Club Manor subdivision. The barrier requirement shall be waived, except that the applicant may construct a barrier fence with a height not to exceed 6 feet at such time as the applicant deems necessary to provide additional screening for the benefit of adjacent residences. Landscaping shall also be provided within a landscaped strip with a width of 10 feet adjacent to the swimming pool parking lot adjacent to Braddock Road between the northeast corner of the parking lot and the combined main entrance to the clubhouse, in order to screen the view of the swimming pool and clubhouse from adjacent residential neighborhoods.

10. There shall be no encroachment or disturbance within any area of the RPA without prior approval by both DPWES and DPZ. All stockpiled soil, gravel or any other materials including debris, above ground fuel storage tanks and/ or other hazardous materials shall be removed from the area within the RPA, and the area within the RPA shall be kept free from trash, debris and/or hazardous materials at all times.

11. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Flatlick Branch watershed shall be implemented for this use. This program and plan shall provide for periodic monitoring and adjustment that demonstrates an intent to reduce the amount of nutrient, phosphate, and pesticide applied to the property over time. The design of this program and all monitored parameters shall be prepared in accordance with the Virginia Cooperative Extension Pest Management Guide and be reviewed by the Virginia Cooperative Extension, Fairfax County Office, as determined by DPWES prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept, and shall be made available to county staff on demand. To provide added protection for the Flatlick Branch Watershed, all on-site structural detention ponds shall be maintained to provide a length of detention and type of filtration necessary to remove pollutants which may be generated by turfgrass management.

12. All lights on the property shall be shielded and directed downward. All lightpoles shall be limited to that shown on the approved special permit plat. Parking lot lights that are replaced shall be replaced with lightpoles that do not exceed 12 feet in height.

13. The Environmental Health Department of the Fairfax County Health Department shall be notified before any pool waters are discharged during drainage or cleaning operations so that proper neutralization can be ensured.

14. If a waiver of the dustless surface requirement is not approved by the Director of DPWES, the parking lots and driveway shall be paved in accordance with PFM Standards, and landscaped in accordance with the requirements of Article 13 of the Zoning Ordinance for interior and peripheral parking lot landscaping.

15. All signs on the property shall be in accordance with the provisions of Article 12 of the Zoning Ordinance.

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

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 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 404, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JEFF AND AMY WILCOX, VC 98-D-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.1 ft., 13.2 ft. and 12.0 ft. from side lot line. Located at 1709 Forest Ln. on approx. 11,240 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 2.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Foster, Architect, 9517 Thornhill Road, Silver Spring, Maryland, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a porch and room additions to be located 12.1 feet, 13.2 feet and 12.0 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, variances of 2.9 feet for the porch and 3.0 feet for the second story attic dormer and 1.8 feet for the two-story addition and family room were requested.

Mr. Foster presented the variance request as outlined in the statement of justification submitted with the application. Mr. Foster stated that the applicants' had young children and required the improvements for more space for their family. Mr. Foster said that moving the front porch to be concurrent with the existing house made it more architecturally compatible with the house, which would maintain the current setbacks of the house from the property with the two additions to the front and the rear.

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

Mr. Hammack moved to approve VC 98-D-147 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFF AND AMY WILCOX, VC 98-D-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.1 ft., 13.2 ft. and 12.0 ft. from side lot line. Located at 1709 Forest Ln. on approx. 11,240 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 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 February 16, 1999; and

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

1. The applicants are the owners of the land.
2. The applicant has met the nine required standards for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location of a porch and room additions as shown on the plat prepared by John C. Manganello, dated November 16, 1998, 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 porch and room 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 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 406, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BARCLAY T. AND LORITA H. RESLER, SP 98-D-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 3.1 ft. from rear lot line. Located at 7721 Crossover Dr. on approx. 20,680 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((11)) 15.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barclay T. Resler, 7721 Crossover Drive, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a modification to the minimum yard requirements based on an error in building location to permit an accessory structure, a playhouse, to remain 4.6 feet from the side lot line and 3.1 feet from the rear lot line. A minimum side yard of 20 feet is required and a minimum rear yard of 14 feet is required; therefore, variances of 15.4 feet and 10.9 feet were requested.

Mr. Resler presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Resler stated that the playhouse was in a heavily wooded area away from anyone's site and would need to be completely dismantled in order to bring it down. Therefore, he asked for the Board's approval of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-D-063 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BARCLAY T. AND LORITA H. RESLER, SP 98-D-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.6 ft. from side lot line and 3.1 ft. from rear lot line. Located at 7721 Crossover Dr. on approx. 20,680 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((11)) 15. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 16, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory structure (playhouse) as shown on the plat prepared by C. B. DeLashmutt, Land Surveyor, dated May 15, 1998, submitted with this application and is not transferable to other land.

Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Kelley were absent from the meeting. Mr. Hammack was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 407, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BLANCA N. GUANDIQUE, VC 98-M-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 7120 Vermillion Pl. on approx. 9,653 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17))(4) 49. (Def. from 2/2/99 by BZA)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Blanca Guandique, 7120 Vermillion Place, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing carport to be located 6.1 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 3.9 was requested.

Ms. Guandique presented the variance request as outlined in the statement of justification submitted with the application. Ms. Guandique said she wanted to enclose the existing carport to have more space for her children to play inside the house and said only a portion of the carport was to be enclosed.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 98-M-139 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 26, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BLANCA N. GUANDIQUE, VC 98-M-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.1 ft. from side lot line. Located at 7120 Vermillion Pl. on approx. 9,653 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((17)) (4) 49. (Def. from 2/2/99 by BZA). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has met the nine required standards for the granting of a variance.
3. The request is a modest request being only 6.1 feet from the side lot line of a corner 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition (enclosure of existing carport) shown on the plat prepared by Kenneth W. White, dated September 12, 1996, 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 4-0. Mr. Ribble was not present for the vote. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 409, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TUNG DUC NGUYEN AND LOAN THI DANG, SP 98-M-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 permit addition to remain 6.0 ft. from side lot line. Located at 7120 Woodley Ln. on approx. 10,098 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 250. (Concurrent with VC 98-M-145).

9:00 A.M. TUNG DUC NGUYEN AND LOAN THI DANG, VC 98-M-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft from rear lot line. Located at 7120 Woodley Ln. on approx. 10,098 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 250. (Concurrent with SP 98-M-061).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bao Then Nguyen, Agent, 7418 Add Drive, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow reduction to the minimum yard requirements based on an error in building location to permit an enclosed carport to remain 6.0 feet from a side lot line. A minimum side yard of 10 feet is required, representing a 40% error. The applicant also requested approval of a variance to permit the construction of an addition 20.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5.0 feet was requested.

Mr. Nguyen presented the special permit and variance requests as outlined in the statement of justification submitted with the applications.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 98-M-061 and VC 98-M-145 for the reasons noted in the Resolutions subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TUNG DUC NGUYEN AND LOAN THI DANG, VC 98-M-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft from rear lot line. Located at 7120 Woodley Ln. on approx. 10,098 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 250. (Concurrent with SP 98-M-061). 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 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for the granting of a variance.
3. The lot has double front yards requiring the addition to be located in the rear of the property.
4. The addition does not exceed any further into the setback than the existing house.
5. There would be no additional impacts on the community.
6. The house is located at a diagonal 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition as shown on the plat prepared by D. M. Maher and dated October 23, 1952, and certified by Bao T. Nguyen on November 20, 1998, 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. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TUNG DUC NGUYEN AND LOAN THI DANG, SP 98-M-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 permit addition to remain 6.0 ft. from side lot line. Located at 7120 Woodley Ln. on approx. 10,098 sq. ft. of land zoned R-4. Mason District. Tax Map 50-3 ((4)) 250. (Concurrent with VC 98-M-145).
Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 16, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of the addition (enclosed carport located on east side of dwelling) as shown on the plat prepared by D. M. Maher and dated October 23, 1952, and certified by Bao T. Nguyen on November 20, 1998, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 412, February 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID WAYNE AND ANNMARIE CLARK, SP 98-B-062 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 roofed deck to remain 18.4 ft. from rear lot line. Located at 5240 Herzell Woods Ct. on approx. 13,778 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((11)) 45. (Concurrent with VC 98-B-146).

9:00 A.M. DAVID W. AND ANNMARIE CLARK, VC 98-B-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from rear lot line. Located at 5240 Herzell Woods Ct. on approx. 13,778 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((11)) 45. (Concurrent with SP 98-B-062).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David W. Clark, 5240 Herzell Woods Court, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow an existing roofed deck to remain 18.4 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, the amount of error was 26% or 6.6 feet. The applicant also requested a variance to permit the construction of an addition 13.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 11.8 feet was requested.

Mr. Clark presented the variance and special permit requests as outlined in the statement of justification submitted with the applications. Mr. Clark stated the deck was existing when the house was purchased and requested the approval of the special permit application. He said the addition was requested for a dining room and asked for approval of the variance application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-B-146 and SP 98-B-062 for the reasons noted in the Resolutions subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID W. AND ANNMARIE CLARK, VC 98-B-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.2 ft. from rear lot line. Located at 5240 Herzell Woods Ct. on approx. 13,778 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((11)) 45. (Concurrent with SP 98-B-062). 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 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have met the nine required standards for the granting of a variance.
3. The lot is a pipestem lot and the location of the structure does not afford the applicant space to put the addition in any other location on the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;

F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition as shown on the plat prepared by Alexandria Surveys, Inc., dated July 28, 1998, 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 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID WAYNE AND ANNMARIE CLARK, SP 98-B-062 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 roofed deck to remain 18.4 ft. from rear lot line. Located at 5240 Herzell Woods Ct. on approx. 13,778 sq. ft. of land zoned

R-2 (Cluster). Braddock District. Tax Map 69-3 ((11)) 45. (Concurrent with VC 98-B-146). 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 16, 1999; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of the roofed deck as shown on the plat prepared by Alexandria Surveys, Inc., dated July 28, 1998, submitted with this application and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JEFFREY A. SHINROCK, SP 98-H-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.8 ft. from rear lot line. Located at 2632 Black Fir Ct. on approx. 18,697 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) 202.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeffrey A. Shinrock, 2632 Black Fir Court, Reston, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit an accessory structure, a playhouse with a storage loft, measuring 17.7 feet in height, to remain 0.8 feet from a rear yard lot line. A minimum rear yard of 17.7 feet is required; therefore, the amount of error was 16.9 feet or 95%.

Mr. Shinrock presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Shinrock stated that he had attempted to locate the playhouse as far away as possible from his two adjoining neighbors. Mr. Shinrock said the swim and tennis club facility was approximately 300 feet away from his accessory structure. He said the playhouse was built for his children and all materials used were similar to the house to include windows, horizontal siding and shingles to make it fit in with the site as much as possible. Mr. Shinrock presented pictures to the Board. Mr. Shinrock said it would be too expensive to remove the structure, which was prefabricated and could not be modified. Mr. Shinrock asked for the Board's approval to allow the structure to remain in its current location.

Ms. Gibb asked who had complained of the accessory structure. Mr. Shinrock replied the Fox Mill Swim and Tennis Club had made the complaint.

There were no speakers present to speak in support of the application.

Mr. Peter Kendrick came to the podium to speak in opposition of the application. Mr. Kendrick stated he was currently a member of the Board of Directors of the Fox Mill Swim and Tennis Club, the facility whose property line was within approximately 6 inches of the playhouse structure. Mr. Kendrick stated that the Board of Directors had fiduciary responsibility to its members to protect and preserve the assets and property of the club. Historically, Mr. Kendrick stated the Board of Directors had consistently protected the club from infractions of County and State regulations and Ordinances, particularly those which represented potential legal or liability threats. Mr. Kendrick said upon discussions with insurance representatives, it was revealed that the club increased its potential to be drawn into costly litigation if a child were to injure themselves by falling off the playhouse onto the club's property. He said if the Board did not oppose the approval of the violation of County Zoning Ordinances, it would subject itself to being questioned in its fiduciary responsibility. Mr. Kendrick said that moving the playhouse closer to the Shinrock residence would reduce the club's potential liability, support the Board's fiduciary responsibility and bring the structure into closer compliance with the County regulations rather than the 95% violation which existed currently.

Ms. Barbara Lowry came to the podium to speak in opposition of the application. Ms. Lowry stated she was currently a member of the Board of Directors of the Fox Mill Swim and Tennis Club and said the playhouse was 50 feet away from the applicant's home and asked that the playhouse be moved closer to the Shinrock home. She stated it would not constitute a hardship and would not impact the neighbor's property.

Mr. Mark Hubal came to the podium to speak in opposition of the application. Mr. Hubal stated he was currently a member of the Board of Directors of the Fox Mill Swim and Tennis Club and said the playhouse was clearly in violation of the Zoning Ordinance. He said it was not a small divergence from the allowable size of any structure along a property line, but was a major difference between what was allowable and what had been constructed. Mr. Hubal said by nature of its size and location in proximity to the property line, the playhouse impacted the club and said it was not the first time the club had to protect its common boundaries with the Shinrocks. Mr. Hubal expressed his concerns that allowing the structure to remain would set a precedent to community members that the club would not oppose Zoning Ordinance violations.

Mr. Shinrock came to the podium to rebut the opposition's statements. He stated as part of the club's special permit amendment process they also sought a variance to allow a pavilion, deck and a fence to be built within 3 feet of their property line. He said he did not oppose their variance application. He stated he put the playhouse in its location so as not to be obtrusive to any of his neighbors.

Mr. Ribble asked Mr. Shinrock if he knew he was in violation when he had the playhouse built. Mr. Shinrock stated he did not because he had thought the easement was a County owned easement and stated he was told by his contractor that a building permit was not needed and the playhouse could be located within that space. Mr. Shinrock presented a picture to Board showing the view of the playhouse from the swimming pool facility in the winter time.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 98-H-064 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY A. SHINROCK, SP 98-H-064 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.8 ft. from rear lot line. Located at 2632 Black Fir Ct. on approx. 18,697 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) 202. 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 16, 1999; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of the playhouse and storage accessory structure shown on the plat prepared by Rice Associates, P.C., dated November 12, 1998 and certified on November 18, 1998, submitted with this application and is not transferable to other land.

Ms. Gibb seconded the motion which carried by a vote of 4-1. Mr. Hammack opposed the motion. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 418, February 16, 1999, (Tape 2), Scheduled case of:

9:00 A.M. COSCAN WASHINGTON, INC., SP 98-L-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 26.7 ft. from front lot line. Located at 5933 Dorothy Bolton Ct. on approx. 13,397 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((46)) 17.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to minimum yard requirements based on an error in building location to permit an existing dwelling to remain 26.7 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, the amount of error was 3.3 feet or 11%.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated the request was necessary due to a three-tenth of a foot error in the field which caused the building to be closer than it should have been. He said if the error had been 1% less, it could have been taken care of by an administrative proceeding, however the three-tenth of a foot made the difference which required the special permit application and asked for the Board's approval of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 98-L-066 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

COSCAN WASHINGTON, INC., SP 98-L-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 26.7 ft. from front lot line. Located at 5933 Dorothy Bolton Ct. on approx. 13,397 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((46)) 17. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

Page 419, February 16, 1999, (Tape 2), COSCAN WASHINGTON, INC., SP 98-L-066, continued from Page 418

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1999; 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 **APPROVED** with the following development conditions:

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by Charles P. Johnson & Associates, dated November, 1998 and certified on November 25, 1998, submitted with this application and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively 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 February 24, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 419, February 16, 1999, (Tape 2), Scheduled case of:

9:30 A.M. FRANK RINALDI, A 1998-BR-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that 3 lots identified as Tax Map Ref. 68-3 ((1)) 10A, 11A, and 12A are not

buildable lots under Zoning Ordinance provisions. Located at on the E. side of Ox Rd., approx. 200 ft. S. of its intersection with Portsmouth Rd. on approx. 1.99 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 10A, 11A, and 12A.

Chairman DiGiulian noted a letter received from Kendrick Sanders, Agent for the Appellant, requesting a one week deferral of the public hearing.

Diane Johnson-Quinn, Zoning Administration Division, stated the appellant only requested a one week deferral and due to the fact the appeal application was not a violation, staff did not oppose the deferral request.

Mr. Ribble made a motion to defer the appeal application to February 23, 1999, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were absent from the meeting.

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Page 420, February 16, 1999, (Tape 2), After Agenda Item:

Approval of October 13, 1998 Minutes

Mr. Pammel made a motion to approve the October 13, 1999 Minutes. Mr. Ribble approved the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were absent from the meeting.

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Page 420, February 16, 1999, (Tape 2), After Agenda Item:

Approval of February 9, 1999 Resolutions

Mr. Pammel made a motion to approve the February 9, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were absent from the meeting.

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Sheehy Investment, Inc.
A 1997-LE-028

Chairman DiGiulian noted a letter was received from Hazel & Thomas requesting a deferral of the Sheehy Investment Appeal application.

Jack Reale, Zoning Administration Division, stated a letter was received from Robert Lawrence, Agent for the Appellant, requesting a deferral of approximately 3 months. Mr. Reale stated the appellant's engineer had submitted a minor site plan and there had been indications from the Department of Public Works and Environmental Services that the minor site plan was near approval. There were currently negotiations on going between the appellant and Metro to agree to share a drainage facility permit. Mr. Reale stated it may take a couple of months to finalize; however, the agent was confident that the approval would be forthcoming and therefore staff would support the deferral.

Mr. Ribble made a motion to defer the appeal application to June 8, 1999, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively and Mr. Kelley were absent from the meeting.

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Page 421, February 16, 1999, (Tape 2), continued from Page 420

As there was no other business to come before the Board, the meeting was adjourned at 11:03 a.m.

Minutes by: Deborah Hedrick

Approved on: April 27, 1999

Regina Thorn, 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 Tuesday, February 23, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 423, February 23, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN AND RUTH OTT, VC 98-D-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 12.1 ft. from side lot line and roofed deck 11.8 ft. from side lot line. Located at 1711 Forest Ln. on approx. 10,667 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 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. Frances Hoopingarner, Agent, 6711 Lee Highway, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition to be located 12.1 feet from a side lot line and a front porch to be located 11.8 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, variances of 2.9 and 3.2 feet were requested respectively.

Mr. Pammel said he noticed that the garage in the rear left hand corner of the property was 13 feet high and very close to the property line and asked if this was non-conforming or something that was overlooked. Mr. Bernal responded that on page 2 of the staff report it indicated there was a building permit issued November 29, 1962, for the garage, which predates the current Ordinance.

Ms. Hoopingarner, the applicant's agent, presented the variance requests as outlined in the statement of justification submitted with the application. She said the applicant's were in need of more space and this was the only location in which to build because of the narrowness of the lot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 98-D-148 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN AND RUTH OTT, VC 98-D-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 12.1 ft. from side lot line and roofed deck 11.8 ft. from side lot line. Located at 1711 Forest Ln. on approx. 10,667 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a roofed deck (porch) and second story addition as shown on the plat prepared by William E. Ramsey, Certified Land Surveyor, dated November 12, 1998, 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 porch and second 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THOMAS A. TYLER, VC 98-B-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 7418 Axton St. on approx. 14,765 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2))(17) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Tyler, 7418 Axton Street, Springfield, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 8.9 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 3.1 feet was requested.

Mr. Tyler presented the variance request as outlined in the statement of justification submitted with the application. He stated that the request was to construct a family room. Mr. Tyler said the house was built in 1956 and he would like to expand to have more usable space. He said the neighbors were in support of the application and there were similar additions in the area.

Chairman DiGiulian called for speakers.

Joseph Fisk, 5501 Joplin Street, came forward to speak on behalf of his grandfather indicating their support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 98-B-149 for the reasons noted in the Resolution.

Mr. Hammack said this was a close case. He said the variance was minimal and the lot was not unusual in the neighborhood. He said the photographs indicated that there were alternative locations where an addition of that size could be located within the setback. Mr. Hammack stated that the variance was for convenience and was a self-imposed hardship. He opposed the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS A. TYLER, VC 98-B-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line. Located at 7418 Axton St. on approx. 14,765 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2))(17) 20. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The narrow width of the lot precludes the addition from any other location 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the one-story addition shown on the plat prepared by Charles R. Johnson, dated September 21, 1998, 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 5-1. Mr. Hammack voted nay and Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SANG OH & COMPANY, INC. D/B/A VIRGINIA GOLF CENTER AND ACADEMY, SPA 85-S-059-2 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 85-S-059 for golf driving range and golf course to permit change in development conditions and change in permittee.

Located at 5801 Clifton Rd. on approx. 59.73 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 13B. (RESCHEDULED FROM 9/22/98, 11/10/98, and 12/8/98).

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 Baker, Agent, Paciulli, Simmons and Associates, 11212 Waples Mill Road, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a change in development conditions and a change in permittee. The proposed amendments to the previously approved development conditions include extending the deadline for the use of the temporary clubhouse trailer for an additional two (2) years; reducing the maximum size of the proposed permanent clubhouse; and, revising language which specifies that a private septic system will be used to language which specifies the site will be served by the public sewer system. Staff recommended approval in accordance with the development conditions contained in the staff report.

Mr. Baker, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said the current applicant purchased the property with the intent of constructing the facility shown on the plat. As the applicant went through the process of site review, and working with DPWES, various items were requested to be clarified from the plat; therefore, interpretations were pursued where appropriate in order to move forward with the plan review and ultimate construction of the project. It was through the construction process that the applicant had discovered through testing the private septic system that it was going to be inadequate and not viable for the intended use. From working with various agencies, the applicant was able to work out a solution that met the applicable zoning and PFM requirements. Therefore, the applicant needs the sanitary sewer for this site and it became prudent to revise the development condition. Because of the construction process, the construction of the clubhouse has been delayed; therefore, there is a need to extend the use of the temporary trailer. The applicant has diligently worked to honor the commitment of each development condition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SPA 85-S-059-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANG OH & COMPANY, INC. D/B/A VIRGINIA GOLF CENTER AND ACADEMY, SPA 85-S-059-2 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 85-S-059 for golf driving range and golf course to permit change in development conditions and change in permittee. Located at 5801 Clifton Rd. on approx. 59.73 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 13B. (Moved from 9/22/98, 11/10/98, and 12/8/98). 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 23, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application seems to be more housekeeping than anything substantive.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-C03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 5801 Clifton Road (59.73 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Frank M. Kea, RLA, dated April 19, 1993, and certified by Peter J. Rigby, Jr., PE, on January 25, 1999, 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 Article17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance

5. A maximum of nine (9) holes for the golf course, one hundred-twenty (120) tees for the driving range, twenty-four (24) putting greens and five (5) chipping target shall be provided, all as shown on the Special Permit Plat.

6. A total of 160 parking spaces shall be provided. All parking for this use shall be on site and in the locations shown on the Special Permit Plat. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

7. There shall be no more than twenty-one (21) employees on site at any one time.

8. All lights illuminating the driving range, the putting greens and chipping targets, and the parking lot shall be connected to an automatic cut-off device which will turn the lights off at 10:00 P.M. daily. All lights used on-site shall be Quartz Halogen, Metal Halide or equivalent. Illumination of the driving range tee boxes shall be with no more than a total of twenty-seven (27) poles, each light pole no higher than twenty-five (25) feet high. Illumination of putting greens and chipping targets shall be with no more than a total of seventeen (17) poles, each light pole no higher than twelve (12) feet high. No light poles shall be located within the 100-foot building restriction line along Clifton Road. Illumination of the parking lot areas shall be on standards not to exceed twelve (12) feet in height. All lights shall be focused inward and shielded to prevent the projection of light or glare onto adjacent properties and roadways.

   There shall be no illumination of the nine-hole golf course.

9. The hours of operation of the golf course, driving range, putting greens, chipping areas and any related uses shall be limited to 7:00 A.M. to 9:30 P.M. seven days a week.

10. A 100-foot wide wooded area to remain as an undisturbed buffer shall be maintained along the eastern, southern and the eastern half of the northern property boundaries. The 100-foot wide buffer indicated on the Special Permit Plat dated April 19, 1993, revised through January 25, 1999 may be placed under a conservation easement granted to Fairfax County for BMP calculation purposes if so approved by the Director, DPWES.

Transitional Screening 2 shall be modified along the western and the northwestern property lines as shown on the Special Permit Plat. A landscaped berm with a 1:3 slope shall be used to satisfy a portion of the transitional screening requirement along Clifton Road as shown on Sheet 2 of 2 of the Special Permit Plat, labeled the Transition Yard Landscaping Exhibit as approved by the Urban Forestry Branch of DPWES. In addition, twenty-one (21) transplanted or new evergreen trees with a minimum caliber of two (2) inches, a minimum of ten feet high and fourteen (14) transplanted or new deciduous trees a minimum of twelve (12) feet high shall be planted between the two-tiered Tees and the Stormwater Management/BMP pond located along Clifton Road. The purpose of these trees shall be to satisfy a portion of the modified transitional screening requirement and to soften the visual impact of the two-tiered tees. All transitional screening shall be provided in accordance with the Transition Yard Landscaping Exhibit submitted with the Special Permit Plat and as approved by the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES), and shall be deemed to fulfill the transitional screening requirements of the Zoning Ordinance. Provision of the modified Transitional Screening along Braddock Road as shown on Sheet 2 of 2 of the Special Permit Plat, to include a planted four (4) to ten (10) foot high berm, may be delayed until such time as construction begins on the applicable segment of the Braddock Road improvement project.

The barrier requirement shall be waived along the entire periphery of the property.

11. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

12. The limits of clearing and grading shall remain consistent with the limits designated on the SP Plat. A limits of clearing and grading and a tree preservation plan shall be submitted to the Fairfax County Urban Forestry Branch for review and approval prior to Site Plan approval. The tree preservation plan shall incorporate large groups of trees into the preservation areas and shall be configured to integrate the transitional habitat areas. No modifications to the limits of clearing and grading from what is shown on the Special Permit Plat shall be made at site plan approval for any trails not shown on the Fairfax County Trails Plan, additional golf paths, utility easements or other golf course related facilities. The areas on-site which have been cleared without a clearing and grading permit shall be restored as deemed appropriate by the County Urban Forester.

13. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual shall be provided as approved by the Director, DPWES. The proposed stormwater management ponds shown on the special permit plat shall be designed as wet ponds, except for the proposed pond adjacent to the new maintenance building which is to be a dry pond, and shall provide all stormwater management and BMP requirements for this development as approved by the Director, DPWES. The proposed VDOT stormwater management dry pond shown in the northwestern corner of the site shall provide all stormwater management and BMP requirements for the applicable improved portions of Braddock Road unless otherwise agreed to by VDOT and the applicant. This special permit shall become null and void should the site not be designed in such a way that all uses on the property are adequately served by the BMP ponds provided on the site as approved by the Director, DPWES.

14. Transitional Habitat Areas shall be provided as a part of each fairway as shown on the Special Permit Plat. In addition, a portion of the perimeter of all of the stormwater management/BMP ponds shall be graded to form a 10 to 20 foot wide shallow bench designed to enhance the growth of emergent aquatic vegetation, to provide an area for sediment deposits near the inflow channel, and to allow the establishment of a shallow marsh area.

    At least two (2) hardy primary wetland species shall be planted over at least 30% of the shallow marsh bench area. These species shall be planted in three or four mono-specific stands around the perimeter of the marsh bench. Three secondary wetland species shall be randomly interdispersed with the primary species. The wetland species are designed to enhance natural propagation of the marsh and provides additional assurance that the marsh will be successfully established. The selected wetland species shall be approved by the

Urban Forestry Branch and shall be in substantial accordance with the Landscaping Guide for Stormwater Management Areas, Table 9.2, Chapter 9 of the Metropolitan Washington Council of Governments (COG) document entitled Controlling Urban Runoff: A practical Manual for Planning and Designing Urban BMPs.

15. The applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides which shall be submitted to the Director, DPWES, prior to site plan approval. The IPM Plan shall be developed using principals consistent with the guidelines established by the Virginia Cooperative Extension Service Pest Management Guide (PNG) and shall be designed to manage the application of fertilizer, herbicides and other chemical to protect water quality in the Occoquan Watershed and to encourage the application of nutrients in the reservoir are less sever. 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, Department of Planning and Zoning.

16. In order to prevent groundwater contamination, all impervious surfaces used for chemicals, machines, vehicle storage, cleaning and maintenance, and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile or clay liner designed to remove contaminants and pollutants and shall be approved by the Director, DPWES. A written maintenance plan for the system shall be developed by the applicant and shall be approved by the Director, DPWES. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substance stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

17. The site shall be served by public sewer approved by Fairfax County. The site shall be served by private well and/or public water as approved by Fairfax County. If a private water irrigation system is used to irrigate the golf course, driving range and putting area, the irrigation system shall be designed to include utilization of the wet ponds that are to be developed as part of this development and its design shall be developed and submitted to the Health Department for approval. A written irrigation plan shall be developed demonstrating the specific volumes of well and irrigation pond water necessary to sustain turf maintenance operations during periods of drought. The plan shall demonstrate that the specific well water volumes use for turf irrigation shall not deplete the minimum acceptable volume of well water necessary to achieve a satisfactory operation level as approved by the Fairfax County Health Department.

18. Right-of-way along the site's frontage on Braddock Road shall be dedicated in accordance with VDOT Project # 0620-029-117 in order to provide a six-lane divided roadway. The right-of-way shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever first occurs.

    Right-of-way along the Clifton Road frontage as shown on the special permit plat shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever occurs first.

19. Ancillary easements, deemed necessary for road improvement purposes by DPWES or VDOT, shall be provided for Braddock Road and for Clifton Road along the full frontage of the property upon demand by the Director, DPWES, or VDOT.

20. Prior to the issuance of any Non-Residential Use Permit (Non-RUP), a left-turn deceleration lane shall be provided at the site's entrance on Clifton Road as approved by the Director, DPWES, and VDOT.

21. All signs associated with this use shall meet the requirements of Article 12, Signs, of the Zoning Ordinance.

22. The clubhouse shall not exceed 6,900 square feet in area and shall not exceed two stories within the area shown on the special permit plat for the clubhouse. Said clubhouse may be established in a temporary trailer at the location shown on the special permit plat and the trailer shall be removed upon issuance of the Non-Residential Use Permit for the newly constructed clubhouse facility or two (2) years from the date of approval of this special permit amendment, whichever occurs first.

23. All chemical for intensive turf maintenance shall be stored in the maintenance building. No materials shall be stockpiled outdoors.

24. A water source, such as a faucet or a shower, shall be provided at the location of the maintenance building.

These development conditions supersede and incorporate all previous development conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

It should be noted that the Department of Public Works and Environmental Services has indicated that the subject property is not currently served by public sanitary sewer. Approval by the Board of Zoning Appeals of SPA 85-S-059-2 in no way guarantees that public sanitary sewer is or will be available to serve this site at any time in the future, or that approval by Fairfax County is guaranteed for a sanitary sewer system that may be constructed and submitted for approval by the applicant.

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. If the development is phased, the last phase of construction shall begin no later than five (5) years from the date of approval of the special permit amendment. The Board of Zoning Appeals may grant additional time to establish the use or 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 431, February 23, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GOLF PARK, INC. AND HUNTER MILL EAST, LLC, SPA 91-C-070-3 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for a golf driving range to permit a commercial golf course, baseball hitting cages, miniature golf course ancillary to a golf driving range, change in permittee, building additions, change in development conditions, hours of operation and site modifications. 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, 3, 4, and 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to SP 91-C-070 for a golf driving range to permit the following additions and site modifications: a commercial golf course, a baseball hitting cage, a 36-hole miniature golf course, 4 short game practice areas, 2 indoor training buildings with a total of 18,000 square feet in gross floor area, a two-story covered tee structure and an increase in tees from 100 tees to 193 tees, with an unspecified number of grass tees; an increase in the size of the clubhouse to 25,000 square feet, a 5,000 square foot maintenance

building, 2 control buildings, 2 additional gazebos, an increase in parking from 131 space to up to 300 spaces, construction of an earthen berm and a reduction of the tree save area required to be preserved within the eastern portion of the site by the current special permit. The applicant also requested increases in lighting permitted on the site. The applicant requested an increase in the hours of operation. The applicant requested that the use run with the land rather than being granted to the applicant only and requested numerous modifications to the development conditions. Those include an illuminated sign along the toll road, allowing the use of loud speakers on the site, allowing food preparation on the site and allowing arcade games on the site as an accessory use. The site was the subject of Notices of Violation and an appeal that was heard on November 24, 1998. The application was submitted in part to address violations of the development conditions of the current special permit. Staff noted that there were additional violations on the site and that the applicant was made aware of them. Staff concluded that most aspects of the subject application were too intense for the site and were not in harmony with the Comprehensive Plan. Staff believed that some of the proposals could be compatible with surrounding residential areas and in harmony with the Plan, as a final expansion of the site these include the construction of a two story tee structure, provision of a one-story 5,000 square foot clubhouse within a building envelope of 25,000 square feet, two short game practice areas, and two gazebos with limited accessory activities as listed in the development conditions. Staff's recommendation was predicated only on the adoption of the development conditions dated February 19, 1999. On February 17th, staff received a revised special permit plat, showing a more detailed design for the commercial golf course, a more specific design for the parking lot with a total of 300 spaces, additional lighting for the proposed 36-hole golf course, and the location of existing landscaping that more accurately reflects current conditions. Staff didn't have sufficient time to thoroughly review the revised plat, but noted that it continued to depict uses that were too intense for the site and did not address most of the issues identified in the staff report. The development conditions were based on the original plat submission evaluated with the staff report.

Mr. Dively asked staff to indicate where the competing County facility was located on the map. Barbara Byron, Director, Zoning Evaluation Division, responded by stating that the facility referenced by the applicant was not shown on the locator map but she believed the applicant was referencing the facility near the intersection of Jermantown Road and Route 123.

Mr. Dively asked staff to tell him the differences between the subject facility and the County facility as far as proposed uses were concerned. Ms. Byron said she could not fully answer that question, but she knew the County facility was a recreation facility which included a building with indoor and outdoor recreation, but to the full nature and extent she couldn't answer.

Mr. Dively asked what procedure the County has to follow when building a recreational site. Ms. Byron said there was a process that used to be called a 456 process by which the Planning Commission reviews it for conformance with the Comprehensive Plan. She said it was not unlike the special exception or special permit process other than the fact that it is approved by the Planning Commission.

Mr. Hammack asked if the applicant submitted any trip generation studies that dealt with the increase in the number of tees. Ms. Schilling replied that staff was not aware of any trip generation study.

Mr. Hammack asked did the applicant, in his request to allow a day care center to be established, set forth any numbers of children which would be there at any given time, how long during the day they would be there, or any criteria for operation of the facility. Ms. Schilling said there was not a specific number identified. The applicant mentioned that the use would be limited only to the patrons of the site and the employees, which was noted in the development conditions.

Ms. Byron said the condition was limited to up to 10 children at any one time and further limited that the children be children of the patrons or employees of the golf club.

Mr. Hammack asked how that condition could be enforced if you had 193 tees and the applicant was going to advertise that there was daycare available.

Ms. Byron said it was potentially difficult to enforce and the applicant would have to indicate that he would not take children above that number. She said she realized that was a trust factor and potentially a problem, but it was not dissimilar to when we put a maximum daily enrollment on any child care center. They were obligated to meet those requirements.

Mr. Hammack asked staff how long the applicant had been in non-compliance. William Shoup, Deputy Zoning Administrator, stated that in regard to the golf repair truck and the telescoping temporary light standards in the parking lot, they were made aware of that in October, 1998.

Mr. Hammack asked if staff was asking the BZA to make a finding that the applicant was in non compliance. Mr. Shoup said that by imposing that condition, it makes it clear for the record, that those are uses that are not to be provided on the site. Staff believed the applicant was in violation of their most recent approval and feels that they need to be removed from the site fairly quickly.

Mr. Hammack said if staff feels that these uses are in non-compliance why wasn't a Notice of Violation issued. Mr. Shoup responded that staff was first made aware of the two violations in October, and since the appeal hearing was imminent it was decided that rather than issue a written notice of violation, staff spoke with Mr. Thoburn and advised him of these violations, in hopes that he would take action to clear them. Mr. Shoup said the applicant did not and indicated that he would appeal any notice that was issued on those items. Staff did not issue a Notice because the subject special permit application was going to be heard within a couple of months.

Mr. Hammack said he asked because with Development Condition #23, it was suggested that the Board have some authority where they could suspend the Ordinance if a person is in violation for a period of time to allow them to come into compliance. He asked if that was staff's position.

Mr. Shoup replied that Condition #23 relates to the berm that the applicant was required to construct by August 1998, and in the subject application, the applicant requested to move the berm further east. Staff's position was yes, he could continue to operate with the lights for six months, thinking that was a reasonable time frame to get through the process and get the berms built, otherwise the lights would have to be turned off until the new berms get built.

Mr. Hammack said the applicant was still not satisfied the interpretation request about removal of the fixtures. Mr. Shoup said the applicant had complied with the part of that interpretation that the extra light fixture on each pole had to be turned off, but he was required to remove the extra light fixture on each pole by January 11th and that had not been done.

Mr. Pammel said he was going to raise one specific issue to obtain clarification. He said on page 9 of the staff report, the accessory uses that are permitted were discussed and at the end of the paragraph it states "*and a snack bar with cooking facilities*" and in parentheses described in the notes as an eating establishment, staff notes that an eating establishment is a commercial use that is not permitted in the RE District. On to page 14 there is further discussion on which staff makes the statement that certain aspects of this proposal are acceptable, including a snack bar with limited cooking facilities. They had discussed in the past that this was not part of the original permitted use. He said he wanted to know what staff was talking about. He said this was subject to various interpretations and the applicant was operating a facility with cooking facilities that the staff said was not acceptable, and now we're talking about limited cooking facilities. Mr. Pammel said they needed specific parameters or it would be subject to individual interpretation and the applicant could establish a restaurant or something similar and say it had limited cooking facilities.

Mr. Hammack also had that question and asked about the video games. He asked how many were they talking about and what was incidental to a golf driving range.

Ms. Byron stated that Development Condition #18 attempts to address the issue in regard to the eating facility. She said previously the applicant was limited to essentially the types of items that came to the site pre-packaged and he was subsequently cited for grilling hot dogs and selling Pepsi. She said in reviewing other golf driving ranges that had come through the process, many of those had been approved with accessory food service functions and staff felt that it would not be inappropriate to allow the applicant to have that same potential.

Mr. Hammack said a grill room not exceeding 1500 square feet was fairly large. Ms. Byron said that was the same size as Woody's Golf Driving Range grill room. She said part of the problem was, absent parameters from the applicant, staff had to impose parameters.

Mr. Hammack stated that back in the appeal, they were discussing not allowing him to cook hot dogs. Ms. Byron said that was correct, because the development condition at that time prohibited him from selling anything that he had to prepare on site. She said from looking at other golf driving ranges, they were allowed to prepare food, and staff thought in this case, it may not be inappropriate if it was solely accessory to the golf driving range, which meant it wouldn't have separate signage and that it was limited in size.

Mr. Dively said pursuant the subject request and other driving ranges, what were the differences with the requested uses.

Ms. Byron said the conglomeration of uses that the applicant had requested were more intense than the others. She said in Appendix 9, staff tried to provide a comparison of the other driving ranges in the County.

Mr. Dively asked how did staff think they differed and how did they match up. Ms. Byron said staff's view was that they did not match up positively. She said what the applicant requested was much too intense.

Mr. Dively asked for more details. Ms. Byron replied that staff did not know what the applicant was requesting because he was overlaying so many uses on top of one another. She said everyone else who had been approved by the BZA or the Board of Supervisors had supplied staff with a plat where they could determine what was going to be where. She said that was not the case in this application. In addition, Ms. Byron stated the applicant's request for indoor training facilities is not allowed in the district because it is a commercial recreation use.

Mr. Hammack asked what would happen if the applicant increased parking spaces to 300. Ms. Byron replied that the increase would increase the trip generation enough to recommend denial of the application.

Mr. Dively asked how many similar County facilities had eating establishments. Ms. Byron said that the comparison of special permits was provided in the staff report.

Mr. Hammack noted that the BZA had never compared private uses to public uses before.

Mr. Dively said he didn't want to prefer County uses to private uses.

Mr. Thoburn presented the special permit request as outlined in the statement of justification submitted with the application. He said he had met with staff off and on for about a year and staff made it clear that they had no problem with adding miniature golf on the site but that under no circumstances should he request a baseball batting cage. He said staff felt it would not be an appropriate use at the site. Mr. Thoburn said in 1991 when he filed the original application he was informed that the requested use was not in conformance with the Comprehensive Plan. He said staff felt that based on the Plan, it would be too much to have the three uses, a 9-hole Par 3, a golf driving range and a baseball batting cage. He said he was told at the time that he could pick one use on the site. Mr. Thoburn said he went to Supervisor Dix and said of course he had to go for the golf driving range because he had to generate the revenue to pay the $100,000 a year in real estate taxes. He told Supervisor Dix that he knew he was concerned about recreation for kids and asked him to support him in keeping the baseball batting cage. Mr. Thoburn said Supervisor Dix wouldn't do it because he was afraid of political retribution. He said as a tax payer, he paid an extra $2500 in real estate taxes so that they could have recreational opportunities, but apparently as part of a family that owns 100 acres at a freeway interchange, he's not allowed to provide those recreational opportunities himself. He said that was not fair. He said, in effect, he was at an interchange on the Beltway. He said staff didn't want to give him credit for where he was located because they kept wanting to go back to the Comprehensive Plan; RE zoning. Mr. Thoburn said Oak Marr Recreation Center was situated on land that was planned for the same density as his land. He distributed a booklet which he presented to the Board and is contained in the file.

Mr. Kelley asked if Mr. Thoburn dedicated his property to the Park Authority, what would he have to do to get facility such as the one he's requesting. Ms. Byron replied that the Park Authority would go through a Park Master Planning Process which included public participation and public hearings and ultimately the Park Authority would decide what they would propose and then they would have to complete the 22/32 process through the Planning Commission.

Chairman DiGiulian called for speakers. The following came forward to speak in opposition.

Carol Dowd, 1529 Crowell Road, Bruce Bennett read a letter from Jack Mansfield of the Hunter Mill Defense League, John Gilstrip, Bernie McGuire who finished reading the letter from Jack Mansfield, Brian McMillan, 10302 Brittenford Drive, John Kerns, 10300 Brittenford Drive, Christine Luckshider, Colvin Run Estates, Paul Zukis, 10301 Forest Maple Road, Robert Fulbridge, 1709 Broadville Lane, Frank Knock, President, Richland Hunt Community Association, Julia Rhodes, Crowell Corner, Keith Harrison, 10306 Forest Maple Road, Elliot Eder, 1616 Crowell Road, Jodie Bennett, Hunter Mill Defense League, Felicia Kepler, Shawn Harrison, John Marsh, 1620 Crowell Road, Mickey Rosen, Rosann Fricke, 10503 Hunting Crest Lane who read a letter from Ron Stanton, Jeanette Twomey, 1504 Brookmeade Place and Timothy McCormick, 10302 Forest Maple Road.

The speakers expressed concerns relating to the lowering of property values, traffic concerns, uses incompatible with a low density residential area, the numerous violations, lighting, and the proposed intensity of the use.

Mr. Thoburn addressed the speakers' concern in his rebuttal, stating that the proposed use was a minimal use of the land and that he would submit a light study. He said the violations arose out of a misunderstanding of the conditions.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said the application was a tough one. She prefaced her motion by stating that she was not swayed by the violation issues and she personally thought it was a good use for the property. She said an aspect such as the child care facility was an asset to the site for the employees. Ms. Gibb said she didn't think the miniature golf course or the golf course was a problem and there were a lot worse uses that could be on the property zoned as it was. She said the BZA was constrained by the Ordinance, which stated that they must rigorously review the size and scale and see that it wouldn't adversely impact adjacent land uses. She said she didn't feel Mr. Thoburn adequately addressed many of those issues. Ms. Gibb said his presentation would have been more appropriate for amending the Comprehensive Plan, which was not something the BZA could do. Ms. Gibb moved to deny SPA 90-C-070-3 for the reasons noted in the Resolution.

Mr. Hammack seconded the motion.

Mr. Kelley opposed the motion, stating that he agreed with most of what was stated in the motion but he thought the issues of miniature golf, child care, snack bar and some other parts of it should be approved, but the applicant needed to clean up his act. He said there were some things that needed to be taken care of and that the subject application should do it. Mr. Kelley said he would make a subsequent motion to come up with a solution and work out the development conditions.

Mr. Dively opposed the motion stating that he didn't know what would be the best motion or the best way to resolve the situation. He said no matter how they voted it didn't really resolve the situation. He said it was a prime piece of property at a very busy interchange and there would continue to be pressure for more financial use from it. Mr. Dively said he understood the community had its problems, and he wished there was a way to more effectively mediate between the community and Mr. Thoburn. He said he agreed with Mr. Kelley.

Mr. Pammel said he traveled through the application area on a regular basis. He said the only way to ease traffic concerns would be an extension of Crowell Road. Mr. Pammel said his primary concern was that the applicant did not desire to do the required analysis and that the Board needed specifics as to what he was designing to ascertain the impact. He said the applicant presented half, at best what the Board needed to make a decision. He said he would support the motion.

Mr. Hammack said he felt the Board had been presented with a conceptual development plan, in essence. He said there were no supporting studies or trip generation studies to justify the Board expanding the uses and find that the uses proposed were in compliance with the applicable standards. Mr. Hammack said he respectfully disagreed with staff that what he had put forth justifies doubling the number of tees or adding day care. He said some of the proposals were acceptable if they were justified properly. Mr. Hammack said the BZA should not have to pick and choose among which were acceptable uses in the absence of justification. He said if the applicant came back with justification he might be granted some of the proposals, but based on

the current application, the Board's narrow function was to find that the uses were compatible with the Comprehensive Plan and with the neighborhood. Mr. Hammack supported Ms. Gibb's motion.

The vote was 3-3 with Mr. Dively, Mr. Kelley, and Chairman DiGiulian voting against the motion which failed for lack of 4 affirmative votes. The application was denied.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GOLF PARK, INC. AND HUNTER MILL EAST, LLC, SPA 91-C-070-3 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for a golf driving range to permit a commercial golf course, baseball hitting cages, miniature golf course ancillary to a golf driving range, change in permittee, building additions, change in development conditions, hours of operation and site modifications. 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, 3, 4, and 5. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

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 Sect(s). 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Hammack seconded the motion which failed by a vote of 3-3 with Chairman DiGiulian, Mr. Dively and Mr. Kelley voting nay*. Mr. Kelley moved to waive the 1-year refiling period. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1999.

*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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The Board recessed at 11:32 a.m. and reconvened at 11:45 a.m.

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Mr. Thoburn requested that the time to refile be waived. Mr. Kelley moved to waive the 1-year refiling period. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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9:30 A.M. HUNTER MILL EAST, LLC, GOLF PARK, INC., JINDO & YOUNGHEE KIM, A 1997-HM-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants have established uses authorized by SPA 91-C-070-2 without a Non-Residential Use Permit (Non-RUP), and that the uses are not in compliance with Special Permit Conditions 7, 9, 16 and 20, all in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.29 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, and 5. (RESCHEDULED FROM 3/10/98; DEFERRED FROM 7/7/98 and 8/25/98; RECONSIDERATION OF TREE ISSUE ONLY GRANTED ON 12/8/98).

William Shoup, Deputy Zoning Administrator, said the issue in the reconsideration hearing was limited to the violation regarding the absence of screening and plantings on site. He said the violation dealt with a deficiency of 303 plantings as outlined in the November 13, 1998, memorandum from Cecilia Lammers, Chief, Urban Forestry Branch. Mr. Shoup said there was distinction between landscaping plantings and trees. He said it was identified that 124 shrubs were missing and that pertained to landscape plantings in the parking lot and around the building. The other two areas of concern were trees that were not planted around Lot 22, and trees along the Dulles Toll Road side of the property. Mr. Shoup said the reconsideration hearing was scheduled to coincide with the special permit amendment application (SPA) based on the representation that the SPA would address those issues, but given the action on the SPA, there was no reason why the plantings should not be provided. Therefore, staff asked that the BZA uphold the position of the Zoning Administrator.

John Thoburn, the appellant, asked the Board to defer the appeal to coincide with the next special permit amendment application that he would file within 30 days. He said he didn't have money to burn planting trees along the Dulles Toll Road where they would like to add berming. Mr. Thoburn said he spent over $120,000 on 700 trees which were planted along Crowell Road to screen the community. He said the whole violation arose from a misunderstanding or a disagreement over what the condition meant. Mr. Thoburn asked that the Board find him in compliance on the tree issue or defer. He said to do anything other than that would require him to spend tens of thousands of dollars planting trees in an area that was previously approved for additional berming. He said it was hard to develop a site in a coordinated way when you don't know what you will ultimately be allowed to build.

Mr. Hammack asked Mr. Thoburn if he saw the memorandum pertaining to the landscaping that he was deficient in. Mr. Thoburn said there was a disagreement as to the whether those deficiencies exist. He said there was an honest disagreement on the meaning of the condition.

Mr. Hammack said he raised the subject of a berm along the Dulles Toll Road, but many of the items were on Crowell Road, Hunter Mill Road and in his parking lot. He asked if Mr. Thoburn was conceding that staff was correct with respect to all of those trees.

Mr. Thoburn said if they put those little shrubs in, they were just going to be torn out again. It was throwing money away. He said there weren't any trees missing along Crowell Road.

Mr. Hammack said it was very hard to reconcile Mr. Thoburn's statements with what the staff had provided. Mr. Thoburn encouraged Mr. Hammack to come out and see the site.

Mr. Thoburn said Mr. Shoup and a representative from Supervisor Dix's office walked the site and verified the fact that there were major misrepresentations made in that memorandum and by Ms. Lammers relative to the landscaping that was existing on site. He said they planted the required landscaping. Mr. Thoburn said this was nothing more than an attempt by Jodie Bennett to make them spend money that they didn't have.

Mr. Hammack said he didn't think Ms. Bennett controlled the staff when they counted trees. He said if Mr. Thoburn had a disagreement with what was on his original plan, he wished he would inform the Board. Mr. Hammack said the applicant just gave generalizations that were very hard to pin down.

Mr. Thoburn said 80 out of the 700 trees they were required to plant had died. He said primarily the trees that had died were located along the Dulles Toll Road. Mr. Thoburn said there was also an issue with Ms. Lammers about the location of trees. He said a reasonable compromise would be that he be given a reasonable amount of time to plant 80 or 100 trees in those areas that were not scheduled for future construction.

Mr. Kelley moved to defer the appeal for 60 days to make sure the new application was filed. He said he hoped that Mr. Thoburn would begin planting trees that were not in contention.

Mr. Dively seconded the motion.

Ms. Gibb asked staff if they agreed with Mr. Thoburn's compromise.

Mr. Shoup said staff did not agree. He said it was not true that there were major problems with the memorandum. Mr. Shoup said Mr. Thoburn did provide more plantings in some locations on site than what was shown on the site plan, but Condition #9 requires landscaping to be in compliance with the site plan approval. He said those plantings were not there in great number in some locations.

Ms. Gibb asked if there was any policy with respect to people amending their plans and not putting in when they're going to have to take out. She asked what was the appellant's recourse.

Mr. Shoup said that was part of the problem. He said staff didn't know when those berms along the Toll Road side were going in. He said to keep this open ended was not appropriate. Mr. Shoup said Mr. Thoburn had been using the lights for a long time without all the plantings being put in on that side of the property.

Ms. Gibb asked if the plantings were to soften the impact of lights. Mr. Shoup said the condition was imposed in the application that requested the lighting, and he would surmise that those plantings should be in.

The motion carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted against the motion.

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Page 438, February 23, 1999, (Tape 1), Scheduled case of:

9:30 A.M. FRANK RINALDI, A 1998-BR-047 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that 3 lots identified as Tax Map Ref. 68-3 ((1)) 10A, 11A, and 12A are not buildable lots under Zoning Ordinance provisions. Located at on the E. side of Ox Rd., approx. 200 ft. S. of its intersection with Portsmouth Rd. on approx. 1.99 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 10A, 11A, and 12A. (Deferred from 2/16/99)

Diane Johnson-Quinn, Zoning Administration, stated that the application was an appeal of the Zoning Administrator's determination that the appellant's three parcels were not buildable lots under Zoning Ordinance provisions. As noted in the staff report, the property consists of 3 parcels: Lots 10A, 11A and 12A. Each parcel is at least 150 ft. wide, but less than the minimum required lot area of 36,000 square feet for the R-1 District. The fact that the lots did not meet the current minimum lot area requirement prompted the initial inquiry for a determination as to whether the lots were buildable under the Zoning Ordinance. An extensive review of County records was undertaken to determine the circumstances under which the lots were created. This research revealed that the lots in question were created by metes & bounds descriptions contained in deeds recorded during the late 1940s and early 1950s; the property was zoned Agricultural; the minimum requirements for lot area and lot width in the Agricultural District at that time were one acre and 150 feet, respectively. Each lot met the lot area and lot width requirements in effect at the time each lot was recorded; and in 1979 & 1980, the Virginia Department of Transportation (VDOT) acquired in their entirety the lots in question, as well as an adjoining lot, the remnant of which is Lot 9A. In 1987, VDOT sold the remnants of those parcels, now identified as Lots 9A, 10A, 11A and 12A, to Mr. Rinaldi and his wife.

After gathering this information, staff sought advice from the Department of Public Works and Environmental Services (DPWES) as to whether the lots satisfied the requirements of the Subdivision Ordinance in effect at the time of the recordation of the lots. DPWES advised that the Subdivision Ordinance in effect during the late 1940s and early 1950s required County approval for the creation of these lots. DPWES further advised that since there was no evidence that the requisite approvals were obtained, these lots were not considered buildable.

Based upon the information found in the County records, the determination from DPWES concerning compliance with the Subdivision Ordinance, and the provisions set forth in Par. 1 of Sect. 18-603, which requires compliance with the Subdivision Ordinance before any Building Permits may be issued, staff concluded that the lots were not properly created, and therefore, not buildable lots under the provisions of the Zoning Ordinance.

Ms. Gibb asked what was the evidence of whether a subdivision was approved. Ms. Johnson-Quinn said it would be the recorded plat containing the County signature for approval.

Ms. Gibb asked had it always been that way. Ms. Johnson-Quinn replied yes, that was her understanding.

Ms. Gibb asked about the 1950s plat that was submitted by the appellant. Ms. Johnson-Quinn replied that plat only depicted the properties in question as reference points. She said that plat actually was a subdivision plat for Lot 1 on Zion Drive.

Ms. Gibb asked how one knew that a subdivision plat had to be approved during that time period. Ms. Johnson-Quinn said that was based on the advice given from DPWES and a copy of the memorandum was contained in the staff report. Ms. Johnson-Quinn added that a subdivision Ordinance had been in effect since the 1920's.

Ken Sanders, the appellant's agent, presented the appellant's arguments forming the basis for the appeal. He said the case was basically summed up in the staff report. He said the case was strange and misfortunate for Mr. Rinaldi. Mr. Sanders said it was a technical case and there was no advantage being gained by anyone. He stated that there were houses on all of the lots at one time and they were created from 1948 on, so there were building permits issued. Mr. Sanders referenced Attachment 2 of the staff report which recited the two Zoning Ordinance sections involved. He said if you have a lot recorded prior to the effective date of the Ordinance and the lot met the requirements at that time, such lot may be used for any use permitted in the district in which it was located. Mr. Sanders said the lots did meet the Zoning Ordinance requirements at that time. He said he wanted to reiterate that it didn't say it had to meet the requirements of the Subdivision Ordinance but of the Zoning Ordinance in effect at the time.

Ms. Gibb asked how long Mr. Rinaldi owned the property. Mr. Sanders said the appellant purchased the property in 1987.

Ms. Gibb asked if VDOT advertised the lots as buildable lots. Mr. Sanders said he didn't know whether VDOT used that term, but they didn't say they weren't buildable lots.

Mr. Hammack said the staff report indicated that all the lots had houses on them at one point and that VDOT removed the houses. Ms. Johnson-Quinn said every lot had houses on them when VDOT acquired them and then they were removed.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb said the zoning staff really did their homework and said she appreciated their efforts. She said it was not hard to read the Ordinance and the lots were recorded prior to the effective date of this Ordinance and they met the requirements of the Zoning Ordinance at the time in which they were recorded, and therefore, they may be used for a permitted use in the zoning district. Ms. Gibb said she felt it was not a case that would set a dangerous precedent or harm anyone. She moved to overrule the Zoning Administrator. Mr. Hammack seconded the motion.

Mr. Hammack said it was hard to reconcile the fact that there were buildings constructed on the lots at one point and building permits were obviously issued at some point in the past and the County had determined that they were buildable lots.

The motion carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 440, February 23, 1999, (Tape 1), After Agenda Item:

Approval of November 10, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 440, February 23, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Korean Nazareth Church, SP 98-Y-009

Mr. Pammel moved to approve the request for additional time. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was January 16, 2000.

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Page 440, February 23, 1999, (Tape 1), After Agenda Item:

Approval of February 16, 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 440, February 23, 1999, (Tape 1), After Agenda Item:

Additional Time Request
William B. and Julie M. Howard, VC 96-V-060

Mr. Kelley moved to approve the request for additional time. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was January 31, 2001.

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Page 440, February 23, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Seven Corners Animal Hospital, VC 95-M-066

Mr. Dively moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date was February 1, 2000.

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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: Regina Thorn

Approved on: September 21, 1999

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John H. 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 Tuesday, March 2, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel.

Chairman DiGiulian called the meeting to order at 9:04 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case

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Page 441, March 2, 1999 (Tape 1), Scheduled case of:

9:00 A.M. GREATER ANNANDALE RECREATION CENTER, INC. D/B/A ANNANDALE SWIM AND TENNIS CLUB, SPA 74-A-022 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-A-022 for swimming and tennis club to reduce land area. Located at 7530 Little River Turnpike on approx. 7.80 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-1 ((1)) 75.

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, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Cathy Lewis, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. Ms. Lewis stated that the subject property is located at 7530 Little River Turnpike in the Mason District. The existing swim and tennis club is located on a 7.86 acre lot and contains approximately 5,624 sq. feet of gross floor area. On March 2, 1999, staff submitted revised development conditions. These conditions contained one change to Development Condition #9, which related to the barrier requirements. The new development conditions were dated March 2, 1999. Ms. Lewis informed the Board that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Therefore, staff recommended approval of the application subject to the Proposed Development Conditions dated March 2, 1999.

Mr. Martin stated that the application property was the subject of an Annual Plan Review item in 1997, wherein the Mason District Task Force recommended to the Board of Supervisors (BOS) and the BOS adopted site specific language to allow approximately one acre of the Annandale Swim and Tennis club to be converted to commercial retail use. He said that there was a rezoning application and a special exception application pending and that both of these applications were to be heard by the Planning Commission on April 15, 1999.

Mr. Martin acknowledged that the sole purpose of this application was to delete the 1.11 acre property that was subject to the rezoning and special exception applications from the overall acreage that was subject to the special permit. He stated that the swim club needed the funds, from leasing the acre of land to improve the club, seek new members and maintain their membership. He informed the BZA that Planning Commissioner Hall had suggested that a 6 foot high fence be provided along the western property line to further screen the neighborhood along Woodland Road. Mr. Martin pointed out that the Comprehensive Plan had site specific language regarding a decorative wall and landscaping and he referred to the plat contained in the staff report, which showed significant screening within the 1.11 acre, along with a decorative wall on three sides of the property to provide double screening for the neighborhood. He stated that the closest neighborhood that would be affected by the application was Woodland Road, located across the property and separated by an existing parking lot.

Mr. Martin concluded by saying the applicants agreed to the Revised Development Conditions dated March 2, 1999.

Mr. Pammel asked Mr. Martin if there was any linkage for pedestrian traffic between the pool property and the fast food restaurant. Mr. Martin replied that a gateway for pedestrian travel had not been proposed but the fast food restaurant could be easily accessed from the club. Mr. Pammel stated that it was a convenience that should be looked at.

Chairman DiGiulian called for speakers.

Cindy Pratt, 4021 Woodland Road, Annandale, Virginia stated that she was an adjacent homeowner of the swim club. She pointed out that the residents of Woodland Road had been attending the Planning Commission meetings and were opposed to the development of the Wendy's. She said that the particular block of Little River Turnpike had not been developed like the rest of the road and it was very disturbing to have a late night fast food restaurant in the neighborhood. She said there was a significant traffic concern that had not been adequately addressed regarding whether the Virginia Department of Transportation (VDOT) was going to approve cut throughs on Little River Turnpike. Ms. Pratt stated that as long as this was still an issue, it would be impossible to decipher what the impact on the traffic was going to be and the traffic studies that were conducted by the applicant were based on VDOT approval of cut throughs on Little River Turnpike.

Mr. Hammack asked Ms. Pratt what was the distance along Little River Turnpike that had not been developed. Ms. Pratt replied that it was a one block area on Little River Turnpike opposite Woodland Road.

Mr. Martin, in his rebuttal, stated that one of the mitigation measures the homeowners in opposition were concerned about was the impact at the intersection of the service drive and Woodland Road. He said that VDOT had approved on February 26, 1999, a right- in right-out curb cut from Route 236 into the service drive near the entrance to the 1.11 acres, which would provide relief to the traffic at the Woodland Road intersection.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that though he was not an enthusiast of fast food restaurants, in this instance, the appropriate actions had been taken to establish the facility, the applicant had gone through the plan review process, and the Comprehensive Plan had been amended to reflect the reclassification of the property for the fast food restaurant. He stated the reduction of the area would not do any damage to the operation of the swim club and that they would be able to operate as they had been in the past. Mr. Pammel stated that having Wendy's lease this acre of land would provide the swim club with the funds needed to make major renovations to the facility.

Mr. Pammel referred to his earlier request that the applicants for the fast food franchise give serious consideration to some sort of pedestrian access into the swim club property.

Mr. Pammel moved to approve SPA 74-A-022 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GREATER ANNANDALE RECREATION CENTER, INC. D/B/A ANNANDALE SWIM AND TENNIS CLUB, SPA 74-A-022 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 74-A-022 for swimming and tennis club to reduce land area. Located at 7530 Little River Turnpike on approx. 7.86 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-1 ((1)) 75. 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 2, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. Appropriate actions have been taken to establish the facility.
3. The applicants have gone through the plan review process.
4. The reduction of the area will not do any damage with respect to the operation of the club.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 7530 Little River Turnpike (6.75 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by D.A. Bryant, P.C. dated January 27, 1999, 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 Article17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. A minimum of 145 parking spaces shall be provided in the location shown on the special permit plat. All parking shall be on-site.

6. Pool operating hours shall be limited to 9:00 AM to 9:00 PM, daily, May through September.

7. All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

   - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged, and filtered prior to discharge.

   - Pool water shall be discharged slowly at a constant rate to prevent adverse impacts to the sanitary sewer drain and/or receiving streams.

8. Landscaping and existing vegetation along the north, east, and west property lines as shown on the Special Permit Plat shall be deemed to satisfy the transitional screening requirements. Existing vegetation and landscape plantings shall be maintained in good health and replaced as necessary with like-species plantings.

9. The barrier requirements shall be waived along the north and east property lines. A six-foot high solid wood fence shall be provided along the western property line, adjacent to Lots 25, 26, and 27 and connect to the existing chain link fence.

10. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.

11. Any existing or 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 light shall be a low-intensity design which focuses the light directly on the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

12. Membership at the club shall not exceed 400 family memberships.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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 the subdivision plats recorded in the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to establish the use or 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 special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 444, March 2, 1999 (Tape 2), After Agenda Item:

Letter from Brian McCormack regarding Furnace Associates, Inc. Writ of Certiorari Appeal

Mr. Dively moved to support the recommendation to join in the settlement dismissing the appeal. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 444, March 2, 1999 (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request for TRU Properties, Inc., VC 99-L-022

Mr. Kelly asked staff when was the earliest possible date to schedule the application. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the case currently was scheduled for April 20, 1999 and there was one opening available on April 13, 1999.

Mr. Kelly moved to approve the Out-of-Turn Hearing Request for VC 99-L-022. The application was scheduled for April 13, 1999, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 445, March 2, 1999 (Tape 2), After Agenda Item:

Approval of November 3, 1998 Minutes

Mr. Pammel moved to approve the November 3, 1999 Minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 445, March 2, 1999 (Tape 2), After Agenda Item:

Approval of February 23, 1999 Resolutions

Mr. Pammel moved to approve February 23, 1999 Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:18 a.m.

Minutes by: Lori M. Mallam

Approved on: April 6, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, March 9, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:23 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 447, March 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. OK CHA HA, SPA 96-M-030 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 96-M-030 for beauty salon to permit continuation of use. Located at 4103 Woodland Rd. on approx. 16,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-3 ((12)) 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. Ok Cha Ha, 4103 Woodland Road, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit amendment to permit continuation of the previously approved use. On November 20, 1996, the BZA approved SP 96-M-030 subject to development conditions, including development condition number 11 which stated that the beauty parlor was approved for a period of 2 years. That period of approval expired. For the two years that the approved beauty parlor use operated, no violations or complaints were recorded by the Zoning Enforcement Branch. Subject to the proposed development conditions in Appendix 1 of the Staff Report, staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SPA 96-M-030, subject to proposed development conditions dated March 2, 1999.

Ms. Cha Ha made no verbal presentation on the application.

Mr. Hammack asked staff if the only change was to use the residential property for use as a beauty parlor without term. He asked staff if there were any changes in the Comprehensive Plan that would preclude against granting the application for an unlimited term. Ms. Wilson stated that the request was in compliance with the Comprehensive Plan and the Zoning Ordinance and recommended approval.

Mrs. Crites, 4101 Woodland Road, Annandale, Virginia, came to the podium to express her support of the application and asked the Board to allow the use to remain.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SPA 96-M-030 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OK CHA HA, SPA 96-M-030 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 96-M-030 for beauty salon to permit continuation of use. Located at 4103 Woodland Rd. on approx. 16,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-3 ((12)) 30. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the general standards for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 4103 Woodland road (16,000 square feet), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A. Logan, Land Surveyor, dated July 10, 1996, 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. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 804 of the Zoning Ordinance.

5. The area dedicated to the beauty parlor shall not exceed 160 square feet.

6. The facility shall be limited to that necessary to accommodate no more than one patron at a time.

7. The hours of operation shall be limited to 8:45 A.M. to 5:00 P.M., Monday, Wednesday, Thursday, Friday and Saturday.

8. The applicant shall be the only employee and may retain this privilege only while she resides in the dwelling.

9. All parking shall be on site.

10. There shall be no signs associated with this use.

These development 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, twelve (12) months after the date of approval* unless a Non-Residential Use Permit has been obtained. 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. Pammel seconded the motion which carried by a vote of 4-0. Ms. Gibb and Mr. Kelley were not present for the vote. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 449, March 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. SHEEHY INVESTMENTS ONE LIMITED PARTNERSHIP, A 1997-LE-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has not obtained a Non-Residential Use Permit required to establish the use as authorized by the approval of SEA 86-L-053-1, and therefore is in violation of Sect. 18-701 of the Zoning Ordinance. Located at 6727 Loisdale Rd. on approx. 117,411 sq. ft. of land zoned C-8 and SC. Lee District. Tax Map 90-2 ((1)) 51A. (DEFERRED FROM 11/11/97; MOVED FROM 6/2/98, 9/29/98 AND 12/1/98).

Chairman DiGiulian noted the Board had issued an intent to defer to June 8, 1999, on February 16, 1999. Mr. Pammel moved to defer the appeal application to June 8, 1999, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 4-0. Ms. Gibb and Mr. Kelley were not present for the vote. Mr. Ribble was absent from the meeting.

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Page 449, March 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD D. JURGENS, A 1998-HM-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence in the front yard of a through lot exceeding 4.0 ft. in height, in violation of Zoning Ordinance provisions. Located at 1322 Millfarm Dr. on approx. 75,000 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-2 ((19)) 2. (CONTINUED FROM 12/22/98 Z.A. UPHELD 1/5/99) (RECONSIDERATION GRANTED 1/12/99).

Chairman DiGiulian called the appellant to the podium.

William Shoup, Deputy Zoning Administrator, stated the appellant was not sure when he would arrive to the hearing due to traffic.

Chairman DiGiulian stated they would hear the application after the After Agenda Items.

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Page 449, March 9, 1999, (Tape 1), After Agenda Item:

Approval of November 24, 1998, December 8, 1998, and December 15, 1998 Minutes

Mr. Pammel made a motion to approve the November 24, 1998, December 8, 1998, and December 15, 1998 Minutes. Mr. Hammack approved the motion which carried by a vote of 4-0. Ms. Gibb and Mr. Kelley were not present for the vote. Mr. Ribble was absent from the meeting.

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Page 450, March 9, 1999, (Tape 1), After Agenda Item:

Approval of March 2, 1999 Resolutions

Mr. Pammel made a motion to approve the March 2, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 4-0. Ms. Gibb and Mr. Kelley were not present for the vote. Mr. Ribble was absent from the meeting.

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Page 450, March 9, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer for the following appeal applications:
Heritage Citgo and Groveton Auto Care currently scheduled for March 23, 1999, and
Annandale Hardware and Dawson's Auto Care currently scheduled for March 30, 1999

William Shoup, Deputy Zoning Administrator, stated staff would object to any further deferral. He stated that the Notices of Violation on all of the appeal applications were issued in June, 1995 and stated a public hearing was held on one of the appeals, at which time it was deferred, requesting the Board of Supervisors to consider amending the Ordinance to allow these types of uses in commercial districts. Mr. Shoup stated that in November, 1997, an amendment was adopted which allowed truck rental establishments as a special exception use in the C-5 through C-8 Districts. He said when the Board of Supervisors adopted the amendment, staff was asked to give the appellants an additional six months to get the necessary special exception process completed, if that was the route they had chosen to take. Mr. Shoup stated in July, 1998, special exception applications were submitted; however, they were substantially deficient. He said after several meetings with the engineer and a representative from U-Haul, who was handling the special exceptions, and after receiving a revised plat, there were still significant deficiencies in all of the applications and the applications were no closer to acceptance than in July, 1998. Mr. Shoup said that staff believed it was time to move forward on the appeal applications and said they have had plenty of time since the November, 1997, to get a special exception application perfected and heard by the Board and therefore, staff did not support any further deferral.

Jane Kelsey, Agent, Jane Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, stated she understood staff's position; however, she had provided a letter to the Board outlining the reasons for the deferral and stated it would be reasonable. She said the Dawson's Auto Care and Groveton appeal applications were in revitalization districts and therefore, could not meet many of the submission requirements. Ms. Kelsey stated she could not get all four appeal applications ready by the current hearing dates due to the fact that she had only represented the appellants in all cases since February, therefore, she requested a deferral of 30 to 45 days, to allow time to meet with revitalization staff.

Mr. Hammack made a motion to approve the request for intent to defer appeal applications A 95-V-044, Paul G. Douglas, and A 95-B-045, Heritage Citgo to May 25, 1999; and A 96-M-034, Annandale Hardware & Supply Co., and A 95-M-048, Harold Dawson/Dawson's Auto Care to June 1, 1999. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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Page 450, March 9, 1999, (Tape 1), After Agenda Item:

Additional Time to Commence Construction Approved by Variance VC 96-Y-073,
Junita M. Haydel, 3405 Valewood Lane, Tax Map 46-1 ((8)) 94, Sully District

Mr. Dively made a motion to approve the request for additional time to February 14, 2000. Mr. Hammack seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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Page 451, March 9, 1999, (Tape 1), After Agenda Item:

Additional Time to Commence Construction Approved by Variance VC 96-S-008,
James W. Swing, 5807 Hill Street, Tax Map 77-1 ((1)) 11, Springfield District

Mr. Dively made a motion to approve the request for additional time to February 13, 2000. Mr. Hammack seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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Page 451, March 9, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer for Khoroso and Cheryl Farahani, VC 98-D-138

Mr. Dively made a motion to approve the request for intent to defer the application to March 30, 1999. Mr. Hammack seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

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Page 451, March 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. EMANUEL STIKAS, A 1998-PR-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's issuance of a Non-Residential Use Permit (Non-RUP) to allow the operation of a drycleaning business as a personal service establishment on the subject property. Located at 6610 Arlington Blvd. on approx. 37,373 sq. ft. of land zoned C-5 and HC. Providence District. Tax Map 50-4 ((1)) 22B. (Def. from 1/26/99)

William Shoup, Deputy Zoning Administrator, stated the appeal application was scheduled for January 26, 1999, and was deferred to March 9, 1999. He stated staff had inadvertently failed to move the case onto the March 9, 1999, agenda, therefore, it was not advertised and the property was not posted nor were notifications sent to adjacent property owners. Mr. Shoup stated the appellant had agreed to move the application to March 30, 1999, and stated staff would prepare notifications and insure it would be advertised.

Mr. Hammack moved to defer the appeal application to March 30, 1999, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb was not present for the vote. Mr. Ribble was absent from the meeting.

Mr. Pammel requested staff to request Mr. James Lowry, Department of Public Works and Environmental Services, to be present at the hearing to provide additional information on the application.

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The Board recessed at 9:42 a.m. to allow time for Mr. Jurgens to appear at the hearing.

The Board reconvened at 9:56 a.m.

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Page 451, March 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD D. JURGENS, A 1998-HM-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence in the front yard of a through lot exceeding 4.0 ft. in height, in violation of Zoning Ordinance provisions. Located at 1322 Millfarm Dr. on approx. 75,000 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-2 ((19)) 2. (CONTINUED FROM 12/22/98 Z.A. UPHELD 1/5/99) (RECONSIDERATION GRANTED 1/12/99).

Chairman DiGiulian stated staff had suggested the application be deferred to March 23, 1999, at 9:00 a.m.

Mr. Kelley made a motion to defer A 1998-HM-034 to March 23, 1999, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:59 a.m.

Minutes by: Deborah Hedrick

Approved on: June 8, 1999

Regina Thorn, 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 Tuesday, March 16, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 453, March 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KHOSRO AND CHERYL FARAHANI, VC 98-D-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line such that side yards total 38.6 ft. Located at 1111 Morningwood Ln. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11.

Chairman DiGiulian noted that an intent to defer had been granted on March 9, 1999 to March 30, 1999. Mr. Kelley moved to defer the subject application to March 30, 1999. Mr. Hammack 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 453, March 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. LAURA BOTELER AND GERALD BUTCHKO, VC 99-B-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in front yard to remain and construction of a deck 3.2 ft. from the rear lot line and addition 9.0 ft. from rear lot line. Located at 8737 Shadow Lawn Ct. on approx. 8,693 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 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. Jane Treacy, Agent, 3335 Connecticut Avenue, NW, Washington, D.C., replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a 6.0 foot high fence to remain in the front yard and to permit the construction of a deck 3.2 feet from the rear lot line and an addition 9 feet from the rear lot line. The maximum height allowed for a fence in a front yard is 4 feet; therefore, a variance of 2 feet was requested for the fence. A minimum rear yard of 25 feet is required; therefore, a variance of 16 feet was requested for the addition. A minimum rear yard of 5 is required for the deck; therefore a variance of 1.8 feet was requested.

Ms. Treacy, the applicant's agent, presented the variance requests as outlined in the statement of justification submitted with the application. She said the shape of the lot was odd and that the additions were not allowed by right. Ms. Treacy stated that there would be 40 feet of open space behind the addition and it would not affect adjacent property owners. She indicated that the fence was there when the applicants purchased the property and they would like to keep it for screening.

Mr. Hammack asked if there were other 6 foot fences on that street. Ms. Treacy replied no.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-B-003 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAURA BOTELER AND GERALD BUTCHKO, VC 99-B-003 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit 6.0 ft. high fence in front yard to remain and construction of a deck 3.2 ft. from the rear lot line and addition 9.0 ft. from rear lot line. Located at 8737 Shadow Lawn Ct. on approx. 8,693 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 59-3 ((22)) 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 March 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant met the required standards for a variance.
3. The lot is shallow and has an unusual configuration.
4. The rear yard is very minimal.
5. There is no other functional location on the house for the addition.
6. The deck is close to the rear lot line but fairly to close the ground.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck, addition, and fence shown on the plat prepared by Kenneth W. White, L.S., dated November 30, 1998, 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 and 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 6-0-1. Mr. Dively abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 455, March 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CARROLL AND BEULAH JOHNSON, VC 98-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2724 Manor Haven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 33. (Reconsideration Granted on 2/9/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carroll and Beulah Johnson, 2724 Manor Haven Court, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The subject variance request was heard on February 2, 1999, and was denied. The BZA granted the request for reconsideration by the applicant on February 9, 1999. The applicant requested a variance to construct a sunroom over a portion of the existing deck 12.6 feet from the rear lot line. A minimum rear of 20 feet is required; therefore, a variance of 7.4 feet was requested. Ms. Schilling noted that when the variance request was previously heard, the staff report incorrectly noted the required minimum rear to be 25 feet, but it had been correctly noted in the current staff report.

Mr. Johnson presented the variance request as outlined in the statement of justification submitted with the application. He thanked the BZA for granting the reconsideration. Mr. Johnson stated that the majority of the community was in support of the application. He explained the need for the sunroom was due to his sensitivity to the sun. He stated that the townhouses were staggered from the rear property line and that their townhouse was constructed closer to the rear lot line than most of the other homes.

Mrs. Johnson said she would like for their home to satisfy their needs and afford every convenience permissible.

Mr. Hammack asked the applicants if they had seen the letter in opposition filed by one of the neighbors. The Johnsons replied that they had not.

Mr. Hammack asked whether the applicants had circulated a petition and if they would like for it to be entered into the record. The applicants replied yes they had circulated a petition and would like to enter it into the record. Ms. Johnson stated she wanted to also enter the letters they received from neighbors in support of the application.

Mr. Hammack asked the applicants how many units were closer to the property line than their unit. Ms. Johnson replied there were 2 that were closer and 4 that were the same.

Chairman DiGiulian called for speakers.

Harry Klein, 7835 Mount Woodley Place, came forward to speak in support of the application. He stated that the applicants presented their request at a community meeting which reflected overwhelming support for the application. Mr. Klein stated that the sunroom would not cause an obstruction of view.

Chairman DiGiulian closed the public hearing.
Mr. Pammel stated that the applicants were justified in their request and moved to approve VC 98-V-137 for the reasons noted in the Resolution.

Mr. Kelley said the application did not meet the requirement of hardship and he thought the sunroom would be an eyesore.

Ms. Gibb said she felt that it met the standards.

Mr. Hammack said he previously made the motion to deny, but the request did not impact other property owners. He said the request was not an unreasonable use and the BZA should not treat the property any different than a single family home.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CARROLL AND BEULAH JOHNSON, VC 98-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. from rear lot line. Located at 2724 Manor Haven Ct. on approx. 1,453 sq. ft. of land zoned R-12. Mt. Vernon District. Tax Map 102-1 ((37)) 33. (Reconsideration Granted on 2/9/99). 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 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a sunroom addition shown on the plat prepared by Kenneth W. White, dated July 14, 1998, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The sunroom addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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.

Ms. Gibb seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Ribble and Mr. Kelley voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 23, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 457, March 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EGBERT B. CLARK III, VC 99-V-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 3.0 ft. from rear lot line and to permit construction of carport 2.7 ft. from side lot line. Located at 8410 Crossley Pl. on approx. 10,599 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5))(15) 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. Egbert Clark, 8410 Crossley Place, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a roofed deck to remain 3 feet from the rear lot line and to permit the construction of a carport 2.7 feet from the side lot line. A minimum rear yard of 8 feet is required; therefore a variance of 5 feet was requested for the accessory structure. A minimum side yard of 12 feet with a permitted extension of 5 feet is required for the carport; therefore, a variance of 4.3 was requested.

Mr. Clark presented the variance requests as outlined in the statement of justification submitted with the application. He said the deck was 1 foot off the ground and the roof was a minimal structure. Mr. Clark said the deck was 25 years old and unobtrusive. He said the proposed carport was to put a roof to match the roof line. Mr. Clark said the next door neighbor supported the request.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-V-004 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EGBERT B. CLARK III, VC 99-V-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 3.0 ft. from rear lot line and to permit construction of carport 2.7 ft. from side lot line. Located at 8410 Crossley Pl. on approx. 10,599 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5))(15) 6. 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 March 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has taken time and care in making sure that architectural harmony would be maintained.
3. There was a carport addition 3.23 feet from a side lot line and another one 4.6 feet from the side lot line and as far
4. The structure in the back is so unobtrusive that only the County found a problem with it.
5. The adjacent residences affected are 27 and 40 feet from the shared 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a carport addition and roofed detached deck shown on the plat prepared by Richard J. Cronin IV, dated December 15, 1998, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The carport addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 459, March 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT EMORY AND CAROL J. LAMBERT, VC 99-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the front yard of a lot containing less than 36,000 sq. ft. Located at 2402 Stryker Ave. on approx. 18,918 sq. ft. of land zoned R-2. Providence District. Tax Map 37-2 ((25)) 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. Carol Lambert, 2402 Stryker Avenue, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a swimming pool in a front yard of a lot containing less than 36,000 square feet. The second variance was for a 6 foot high fence to remain in the front yard of a corner lot. The maximum height for a fence in a front yard is 4 feet; therefore, a variance of 2 feet was requested.

Mr. Dively asked what was the fence height requirement in the back yard. Mr. Bernal replied 7 feet.

Ms. Lambert said the fence was constructed before settlement on the property and she did not know that a 6 foot fence was not allowed. She said the lot was unusually shaped and there was no other location for the pool. Ms. Lambert stated that the pool would not be visible from the road and that the adjacent neighbor was in support of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 99-P-010 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT EMORY AND CAROL J. LAMBERT, VC 99-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the front yard of a lot containing less than 36,000 sq. ft. and permit existing 6.0 ft. high fence to remain in the front yard of a corner lot. Located at 2402 Stryker Ave. on approx. 18,918 sq. ft. of land zoned R-2. Providence District. Tax Map 37-2 ((25)) 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 March 16, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the standards for a variance.
3. The lot has a double front yard with an exceptional shape and topographical conditions.
4. The pool is in the lower part of the yard towards the rear 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.

Page 461, March 16, 1999, (Tape 1), ROBERT EMORY AND CAROL J. LAMBERT, VC 99-P-010, continued from Page 460

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an accessory structure (pool) and a fence as shown on the plat prepared by Glenn C. Ball, Jr., dated November, 1998, signed January 20, 1999, 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 March 24, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 461, March 16, 1999, (Tape 1), After Agenda Item:

Approval of December 22, 1998 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 461, March 16, 1999, (Tape 1), After Agenda Item:

Approval of March 9, 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.
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Page 462, March 16, 1999, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel

Mr. Dively moved to retain Brian McCormack as Legal Counsel to represent them in the court case for VC 98-D-094, Falls Reach LLC. Mr. Ribble seconded the motion which carried by a vote 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 9:49 a.m.

Minutes by: Regina Thorn

Approved on: June 8, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, March 23, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 463, March 23, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD D. JURGENS, A 1998-HM-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence in the front yard of a through lot exceeding 4.0 ft. in height, in violation of Zoning Ordinance provisions. Located at 1322 Millfarm Dr. on approx. 75,000 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-2 ((19)) 2. (Continued from 12/22/98 Z.A. Upheld 1/5/99. Reconsideration Granted 1/12/99. Deferred from 3/9/99).

William Shoup, Deputy Zoning Administrator, informed the Board that after a consultation with the County Attorney's Office, it was determined that the staff had erred by deeming the appellant's lot a through lot and determined that the fence was located in the front yard. As a result, the notice of violation that was issued was rescinded and the appeal had been administratively withdrawn.

Mr. Shoup stated that Mr. Jurgens requested the opportunity to present information to the Board to make it part of the record. Chairman DiGiulian said that the request was moot, since the Zoning Administrator had withdrawn their determination.

Mr. Pammel moved to concur with the Zoning Administrator's decision to administratively withdraw A 1998-HM-034. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 463, March 23, 1999, (Tape 1), Scheduled case of:

9:30 A.M. PAUL G. DOUGLAS, A 95-V-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental, and Intent service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 6737 Richmond Hwy. on approx. 27,705 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 93-1 ((17)) 1A. (DEF. FROM 11/14/95 FOR NOTICES. MOVED FROM 10/1/96, 2/11/97, 5/13/97, 7/22/97, 10/28/97, 2/3/98, 6/9/98; DEF. FROM 8/4/98) (moved from 1/5/99)

9:30 A.M. HERITAGE CITGO, A 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service Intent establishment (U-Haul vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx.10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/3/98 AND 6/9/98; DEF. FROM 8/4/98)(moved from 1/5/99)

Chairman DiGiulian stated that the Board issued an intent to defer on March 9, 1999.

Mr. Pammel moved to defer A 95-B-044 and A 95-B-045 to May 25, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 463, March 23, 1999, (Tape 1), After Agenda Item:

Approval of December 1, 1998 and January 5, 1999 Minutes

Page 464, March 23, 1999, (Tape 1), After Agenda Item, continued from Page 463

Mr. Pammel moved to approve the December 1, 1998 and January 5, 1999 minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 464, March 23, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request, Hassan Sedaghatpour, SP 99-H-015

Mr. Ribble noted that the request was based on financial reasons. Mr. Ribble moved to deny the Out-of-Turn Hearing Request. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 464, March 23, 1999, (Tape 1), After Agenda Item:

Approval of March 16, 1999 Resolutions

Mr. Pammel moved to approve the March 16, 1999 Resolutions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 464, March 23, 1999, (Tape 1), After Agenda Item:

Additional Time Request VC 94-D-040, Michael Hancher

Mr. Pammel moved to approve the additional time request for VC 94-D-040. The new expiration date is January 6, 2002. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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The Board recessed at 9:05 a.m. The Board reconvened at 9:07 a.m.

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Mr. Hammack requested that the Board of Supervisors approve an increase in the per meeting pay from $125.00 to $200.00. He said it was appropriate to make this request at this time, during which the County was considering the FY' 2000 budget. Mr. Hammack justified the request by stating that the BZA had not had a pay increase since 1990; there had been significant changes in the complexity of the cases being heard by the BZA; the appeal cases had become much more involved; and, at times, there was a significant increase in workload.

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As there was no other business to come before the Board, the meeting was adjourned at 9:11 a.m.

Minutes by: Lori M. Mallam

Approved on: June 22, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, March 30, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 465, March 30, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CLAUDE A. AND BETTY J. WHEELER, VC 99-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit lot with a lot width of 23.5 ft. Located at 5933 Old Rolling Rd. on approx. 14,644 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 99A1. (MOVED FROM 4/13/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, Agent, Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an outlot to be a buildable lot with a lot width of 23.5 feet. The minimum lot width for an interior lot in the R-3 District is 80 feet. The outlot was created by the applicant with the subdivision of property at the terminus of Nedra Avenue into one lot and two outlots; the first was the application property and the second is a small strip of land identified as parcel A, which currently provided access for lot 3 to Old Rolling Road.

John McBride presented the variance request as outlined in the statement of justification submitted with the application. Mr. McBride stated the lot size, dimensions, density and minimum yard setbacks for all 4 lots in the Wheeler 1.4 acre subdivision met the R-3 Zoning Ordinance requirements and were similar to the adjacent subdivision along Nedra Avenue. He stated there were no other waivers, modifications or variances requested or required to make the outlot into a buildable lot. Mr. McBride stated that 3 of the 4 lots were already constructed as home sites. Mr. McBride submitted a letter of support submitted by Mr. Ricner, an adjacent property owner. He said the application met all nine required standards under the Zoning Ordinance for the granting of a variance and that there was no identifiable public interest raised by staff.

Chairman DiGiulian called for speakers. There were no speakers present to speak in support of the application.

Cynthia Tower, 5927 Old Rolling Road, Alexandria, Virginia, came to the podium to speak in opposition of the application. Ms. Tower stated her property was directly adjacent to the proposed home site and was purchased in 1996. She stated that she was told by her realtor that there was a 100 year floodplain in the vicinity of the proposed home site and was assured there would be no building allowed due to wetlands and wildlife. She expressed concern regarding wildlife issues, water drainage, a ditch that was created when Mr. Wheeler started to construct on the property, a fence that was to be erected between the property line, paving of her driveway, and the installation of shrubbery. She said none of these issues had been addressed and asked the Board to request shrubbery if the variance was to be approved.

Vicky Kadalak, 5408 Nedra Avenue, Alexandria, Virginia, came to the podium to speak in opposition of the application. Ms. Kadalak asked staff for a definition of reverse frontage.

Ms. Schilling stated a reverse frontage lot was a residential through or corner lot intentionally designed so that the front lot line faced a local street rather than facing a parallel major thoroughfare. She said in the instance of the application property on lot 3, they were not reverse frontage lots.

Ms. Kadalak asked for clarification regarding a connection to Nedra Avenue. She expressed concern regarding water drainage and said the houses did not fit in with the adjacent Sumner Road neighborhood.

Mr. McBride came to the podium to rebut the opposition and stated that a privacy fence would be installed and said lot 3 already had a privacy fence along the common property line and that the new lot would have the same, as well as landscaping around the fence. Mr. McBride stated a vast majority of the drainage

issues had already been addressed by Mr. Wheeler during subdivision plan review and the applicant had expended money for off-site improvements to fix this problem.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-L-008 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 23, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLAUDE A. AND BETTY J. WHEELER, VC 99-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit lot with a lot width of 23.5 ft. Located at 5933 Old Rolling Rd. on approx. 14,644 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 99A1. (Moved from 4/13/99). 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 March 30, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The law and public policy favors the economical use of land and to treat this land as unbuildable is inappropriate under the law and the Constitution.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for Tax Map Number 81-4 ((1)) 99A1, with a minimum lot width of 23.5 feet along Nedra Avenue, as shown on the plat prepared by Thomas Surveys (K.D. Thomas, Land Surveyor), dated December 17, 1998, submitted with this application and is not transferable to other land. These conditions shall be recorded among the land records of Fairfax County for this 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. 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. Kelley 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 April 7, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 467, March 30, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KHOSRO AND CHERYL FARAHANI, VC 98-D-138 Appl. under Sect(s). 18- 401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line such that side yards total 38.6 ft. Located at 1111 Morningwood Ln. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11. (Deferred from 3/16/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, Agent, Jane Kelsey & Associates, Inc., 14368 Nandina Court, Centreville, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a variance to permit construction of an addition 8.6 feet from the side lot line, such that the side yards total 38.6 feet. A minimum side yard of 12 feet is required; therefore, a variance of 3.4 feet was requested. As side yards must total a minimum of 40 feet, a variance of 1.4 feet on total side yards was requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She stated that the application property had been before the Board in 1995 in which the applicants had requested a variance to the minimum side yard requirement. A motion was made and seconded to approve the application but the motion to approve failed by a vote of 3-3 with one member abstaining. Ms. Greenlief stated there were three basic points; first, the differences between the previous request and the current request; second, to address the concerns that were raised at the hearing in 1995; and, third, to address the applications compliance with the standards for approval of a variance.

Ms. Greenlief stated that within Appendix 4 of the staff report was a copy of the plat which accompanied the 1995 variance request. One of the differences was that in 1996, the applicants added a small addition to the rear of the existing garage to house a laundry room off of the kitchen. The 8 foot long addition was built by-right without the need for a variance. Therefore, the plat submitted showed a slightly longer addition so that the proposed new construction would line up with the laundry room addition built 3 years ago. Since the total width of the proposed garage was only 20 feet, which was on the narrow side for a two car garage, the

added length would be some additional storage area for lawn equipment which could not be accommodated within the garage. The major difference, Ms. Greenlief stated, was that the previous request was for a two-story addition which would bring approximately 26 feet of the addition to within 8.6 feet of the lot line. The current application had been reduced to a one story addition with a maximum height of 12 feet. Ms. Greenlief stated, in 1995, there were several concerns raised by the adjacent neighbor. The same neighbor, Mr. Meunier, had submitted a letter listing some concerns with the current application. Ms. Greenlief said the applicant would not bring the application before the Board again without attempting to address those concerns. One of the concerns raised in 1995 by the neighbor was the clarity of the plat. She said it was unclear as to exactly what was existing and what was proposed and the actual width of the addition was not shown. She said the applicant hired a different engineer and the plat had been cleaned up. With the new plat, it showed a 14.07 foot wide existing one-car garage, a 6 foot wide addition and a resultant side yard of 8.6 feet. Ms. Greenlief stated the applicants purchased the property in good faith in 1988. The applicants had contemplated adding a garage in 1995 for several reasons: increased crime in the neighborhood; the destruction of the finish on their cars by the sap from the many trees in the area of the driveway; and, the moving in of the applicant's mother who is elderly and disabled. She said the subject property had exceptional narrowness and a topographic condition in the rear which made it difficult to construct a bay of a garage behind the house, and a septic field in the front which would prohibit construction of a garage bay there. She stated one of the findings of fact in the last application was that the house was skewed on the property with a large southern side yard of 30 feet and a much narrower side yard on the side of the house where the original garage was built. This condition and the intended use was not a general or recurring condition and the hardship was not shared generally by other properties in the vicinity. Ms. Greenlief stated the variance request was minimal as the applicants' garage would be 20.07 feet in width. The addition would not be out of character with the neighborhood, would not change the character of the zoning district and would be in harmony with the Ordinance. Ms. Greenlief submitted 5 letters of support to the Board.

Ms. Langdon stated the applicant had submitted a revised plat prior to the hearing which included the requested addition to be 8 feet longer than the plat submitted with the staff report.

Chairman DiGiulian called for speakers.

John Brundage, 1112 Morningwood Lane, Great Falls, Virginia; Bendy Viragh, 1119 Morningwood Lane, Great Falls, Virginia; Shadi Wegerich, 1107 Morningwood Lane, Great Falls, Virginia; Jonathan Butler, 1108 Morningwood Lane, Great Falls, Virginia; Gary Rittinger, 1165 Kettle Pond Lane, Great Falls, Virginia, came to the podium to speak in favor of the application. All speakers stated they supported the request for the following reasons: All houses currently had 2 car garages and the approval of the request would make the applicant's home consistent with the neighborhood; the addition would not be detrimental to adjacent properties; there had been vandalism of vehicles parked on the street or in the driveways; the addition would add to property values in the neighborhood; and, the request was a reasonable request of nominal impact.

Tony Meunier, 1109 Morningwood Lane, Great Falls, Virginia, came to the podium to speak in opposition of the application. Mr. Meunier stated he was directly impacted by the addition. He stated he was in opposition to the application for the following reasons: The applicant knew they could not have a two car garage when they purchased the property; the house was skewed on the lot which made the lot smaller than it actually appeared to be; the addition of a deck had already exceeded the minimum side yard requirements; the applicant had refused to sign an agreement he had drawn up with an attorney to address some of these concerns; the Board had already denied the request with a previous application, and the mathematics of the plat were contradictory.

Ms. Greenlief came to the podium to rebut the opposition and stated the house was skewed on the property; however, it was not skewed with respect to the side lot lines. Ms. Greenlief stated that the house was skewed with respect to the difference between the side yards and said there was a 30 foot side yard on one side and only a 14.7 foot side yard on the other side. She said the proposed agreement submitted by Mr. Meunier, containing terms for his support, requested landscaping not only around the addition but also along the entire side and frontage of the driveway to the proposed addition and also placed restrictions on other parts of the property not included in the application, which was not acceptable to the applicants. Ms. Greenlief stated a condition for screening around the addition would be acceptable.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 98-D-138 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated March 9, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KHOSRO AND CHERYL FARAHANI, VC 98-D-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line such that side yards total 38.6 ft. Located at 1111 Morningwood Ln. on approx. 20,800 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 11. (Deferred from 3/16/99). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 30, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The placement of the house on the lot is such that it is skewed, and makes this modification from the previous filings on the property appropriate to support.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by SDE, Inc., dated October 7, 1998 revised through March 18, 1999, 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 to the existing dwelling.

4. The applicant shall plant and maintain six (6) evergreen trees between the new addition and the adjacent property 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. Kelley 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 April 7, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 470, March 30, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ANNANDALE HARDWARE & SUPPLY CO., INC.--POONG IM, A 96-M-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul Rental Vehicles) in violation of Zoning Ordinance provisions. Located at 4709 Backlick Rd. on approx. 20,007 sq. ft. of land zoned C-5. Mason District. Tax Map 71-1 ((1)) 123. (MOVED FROM 1/29/96, 2/11/97, 5/13/97, 7/22/97, 10/28/97, 2/10/98, 6/30/98, 8/11/98 and 1/12/99).

Chairman DiGiulian stated the Board had approved an intent to defer for the subject appeal application to June 1, 1999.

Mr. Hammack moved to defer Appeal A 96-M-034 to June 1, 1999, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were not present for the vote. Mr. Pammel was absent from the meeting.

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Page 470, March 30, 1999, (Tape 1), Scheduled case of:

9:30 A.M. HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 5930 Leesburg Pi. on approx. 34,970 sq. ft. of land zoned C-5, R-3, HC and SC. Mason District. Tax Map 61-2 ((1)) 23. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/10/98,

6/30/98 and 1/12/99).

Chairman DiGiulian stated the Board had approved an intent to defer for the subject appeal application to June 1, 1999.

Mr. Hammack moved to defer Appeal A 95-M-048 to June 1, 1999, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Ribble were not present for the vote. Mr. Pammel was absent from the meeting.

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Page 471, March 30, 1999, (Tape 1), Scheduled case of:

9:30 A.M. EMANUEL STIKAS, A 1998-PR-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's issuance of a Non-Residential Use Permit (Non-RUP) to allow the operation of a drycleaning business as a personal service establishment on the subject property. Located at 6610 Arlington Blvd. on approx. 37,373 sq. ft. of land zoned C-5 and HC. Providence District. Tax Map 50-4 ((1)) 22B. (Def. from 1/26/99 and 3/9/99)

Jack Reale, Zoning Administration Division, made staff's presentation as contained in the staff report. Mr. Reale stated the subject of the appeal was the decision to issue a Non-Residential Use Permit to Dryclean Depot, a dry cleaning business which occupied the entire 7,920 square foot building at the subject property.

He said the appeal involved two key issues; was Dryclean Depot operating in conformance with the criteria set forth in the Zoning Ordinance definition of Personal Service Establishment which limited the cleaning and processing component of such use to 3,000 square feet of net floor area; and, should Dryclean Depot be allowed to occupy the subject building which contained 6,000 square feet of gross floor area. On the first issue, staff had found that Dryclean Depot devoted less than 3,000 square feet of net floor area for cleaning and processing and believed that Dryclean Depot was operating in compliance with the area limitation which was set forth in the personal service establishment definition. This determination was based on several inspections of the subject property and on certified floor layout drawings and statements that had been provided by Dryclean Depot. Mr. Reale said staff believed that only those activities and functions that were clearly associated with the cleaning and processing of a garment should be subject to the 3,000 square foot floor area limitation. Additional activities and functions, such as those that occur before the cleaning process was started or those that occur after the garment became a finished product, should not be subject to this limitation.

The second issue was with regard to whether Dryclean Depot should be allowed to occupy the subject building which exceeded 6,000 square feet of gross floor area. Mr. Reale stated the C-5 District regulations, which came into effect with the adoption of the current Ordinance in 1978, first established a use limitation under Sect. 4-505, which provided in pertinent part that no separate business establishment shall occupy more than 6,000 square feet of gross floor area. The continued use of the entire building for a separate business establishment was a legal nonconformity once the current Ordinance was adopted. The nonconforming feature in this case was the ability to use the entire structure for a separate business establishment of more than 6,000 square feet of gross floor area in the C-5 District.

The former use at this property was a retail sales establishment, a permitted use before and after the implementation of the 6,000 square foot limitation, and therefore, did not make it nonconforming. Contrary to the appellant's argument, because the use limitation dealt with the size of a business, the type of business use in this instance is not at issue. When the retail sales establishments vacated the property, any separate business establishment that would otherwise be permitted in the C-5 District could occupy this building in continuation of the nonconformity. Occupancy of the subject building by Dryclean Depot as a separate business establishment is a proper continuation of a legal nonconformity.

Chairman DiGiulian asked staff why the colored layout which was passed out just before the hearing was different from the layout that was submitted to Mr. Congleton by D&R Equipment Company.

William Shoup, Deputy Zoning Administrator stated that the colored layout, which was the same layout in staff report, represented what was there today. He stated what was actually established and the building

plan that was referred to did show a different depiction on the layout of the equipment. However, they were not bound by that layout on the building plans and staff made the determination on the 3,000 square feet based on how it was actually laid out.

Chairman DiGiulian asked if it was the Zoning Administrator's position that only the area used for cleaning and processing was what came under the 3,000 square feet. Mr. Shoup replied that was correct and stated that it was specifically taken out in the definition of a personal service establishment.

The Board discussed at length the issue of the definition of a personal service establishment, specifically the meaning of the word etcetera.

Mr. Grayson Hanes, Attorney representing the appellant, stated what was currently taking place in the C-5 neighborhood retail commercial district violated the Ordinance and the definition of a personal service establishment. He stated the use exceeded 3,000 square feet in every way because processing continued and included something more than just the pressing and the cleaning. Mr. Hanes referred to photographs taken by Mr. Stikas. Mr. Hanes explained the history of the application going back to 1997 when Mr. Stikas had written a letter indicating his request of a retail use, that he would not bring any other clothes from other stores and that everything necessary would be things coming in under a retail manner. Mr. Hanes referred to shirts coming in from the Laurel, Maryland store to the Fairfax store and stated that this was not what was anticipated to be in the C-5 Zoning District under the purpose and intent and also under the representation made by the applicant. He said that staff suggested in their interpretation of nonconforming uses that in the district, if you have a nonconforming use and go to another use in that district, that you can do the same thing. He stated the character of the use needed to be taken into consideration and said if the use was a different and more intense use and the character changed, then that would be a violation of the nonconforming use. He stated the structure was not in conformance with the zoning district requirement, and that the use was more than 3,000 square feet and that the evidence he provided would show more than what was shown by the most recent measurement taken by County staff. Mr. Hanes stated that the appellant's main issue was that Dryclean Depot had a store consisting of 8,000 square feet and explained that they were only using 3,000 for the processing and cleaning and said the photographs taken by Mr. Stikas would prove that this was not the case. Mr. Hanes provided the Board with an affidavit from the operator of the Kinney Shoe Store and stated in comparison that what was going on with the use today was not the same and stated it was a change in the character of the use, without applying the nonconforming use issue, and said if the use had come in today, the Ordinance would not allow the use of 8,000 square feet; however, it could be used for general merchandise, a drug store, a food store, but not for this use.

Chairman DiGiulian called for speakers.

John Stevens came to the podium to speak in support of the appeal application. He stated he was a representative of Wink Davis Equipment Company, which was the largest distributor of dry cleaning and laundry equipment in the United States. He stated his company specialized in industrial laundries and also dry cleaning facilities and his responsibility with the corporation was to design the dry cleaning facilities throughout the East Coast. He said that with his experience in Fairfax County over the last 12 years, with approximately 40 dry cleaning plants, in his opinion, as was depicted on the plans, without assembly and packing, garments could not go to storage, and he believed the storage area was misrepresented and asked for a definition of storage.

Mr. Hammack asked staff what was considered processing. He questioned if assembly was a part of processing.

Mr. Shoup stated that any activities after the garments had been cleaned to the point where they become a finished clean product was not considered processing and that was why bagging of the garments would not be considered processing. He further stated that pressing of the garments would be included and anything special that might be done to the garment before it became a finished product.

Emanuel Stikas, 3039 Graham Road, Falls Church, Virginia, stated that he operated a family dry cleaning business that had operated in Fairfax County since 1946. Mr. Stikas distributed to the Board documentation from various dry cleaning publications for their review. Mr. Stikas stated that Webster's defined processing as a systematic series of actions directed toward some end. He said the end was when a customer came to pick up their cleaning and that the process began as soon as the garments were taken in from the customer. Mr. Stikas explained each of the four photographs taken to the Board. He stated Dryclean Depot had an

unfair competitive advantage and thought the intent of the Zoning Ordinance was to limit the size and scope to neighborhood uses, of which he did not consider this use a neighborhood use.

Mr. Frank Stearns, attorney representing Dryclean Depot, came to the podium to state his support of the Zoning Administrator's interpretation. Mr. Stearns stated that he believed there were two issues before the Board as outlined in the staff report. An existing structure allowed a single neighborhood business use of over 6,000 square feet. When the Ordinance was changed, that business moved out and another business moved in. He said it was probably as standard a nonconforming situation as one would find. Mr. Stearns stated the real issue appeared to be the 3,000 square foot issue. He noted that they had met with County staff, requested an official opinion, which was received and received government approval to do what they said was going to be done. That government approval led them, in good faith, to spend money and they believed they had a vested right. He stated that Mr. Stikas had said he wanted to use the building for a dry cleaning operation and was told that he couldn't by a consultant he hired, not by somebody from the County. He said that because of that he didn't go forward with the request and if Mr. Stikas had a complaint, his complaint should be with the consultant who told him he couldn't use the building, instead of proceeding further to ascertain whether or not it could be done, which is what Dryclean Depot did. Mr. Stearns referred to the appeal, talking about equity and stated the equities were clearly on the side of the diligent party and not on the party that did not pursue the issue any further than they had. Mr. Stearns stated what was really at issue was competition and the concerted effort to try and drive this particular business out of this region. Mr. Stearns stated that Mr. Stikas' dry cleaners located at 3039 Graham Road, was a building constructed in 1960, it was 4,000 square feet and was being entirely used as a dry cleaner, just on the first floor, and if the basement was counted in the square footage, it would be over 4,000 square feet of a single entity that was being used as a dry cleaners. Mr. Stearns told the Board that staff had investigated Dryclean Depot without warning on numerous occasions and found that Dryclean Depot was doing what they said they were going to do. Mr. Stearns said that what governed were the officials that monitored the Zoning Ordinance, their particular interpretation of it and stated it should be given great weight. He said the statement that Dryclean Depot was not doing what they said they were doing had proven to be incorrect.

Mr. Dively asked what if both parties were correct. That Dryclean Depot did have a vested right, based on what the County did, however, the County made a faulty interpretation, and asked Mr. Stearns what was the remedy under the circumstances.

Mr. Stearns stated under the new Zoning Ordinance, unless you can prove fraud, that particular decision stands even if it was made in error.

Mr. Dively asked if the Circuit Court would be the appropriate process in making that decision. Mr. Stearns agreed.

Randy Levin, 6610 Arlington Boulevard, founder of Dryclean Depot stated the term "processing" was taking a garment, cleaning it and pressing it. Mr. Levin stated upon discussing with the County the word etcetera, the interpretation was that the County did not want a big industrial plant bringing clothes from the outside. He stated their use was a retail use and that they were set up to be retail and were retail. Mr. Levin referred to the customer service area and said they had the square footage available and had made use of it by putting in a nice counter area for their customers and that most of their other stores had even larger customer areas.

Mr. Shoup stated that regarding the issue of garments coming in from elsewhere, the appellant did not explain how that would violate and conflict with the definition of personal service establishment and said that staff did not believe it did. He said that as long as the use could meet the 3,000 square feet limitation, garments could come in from other locations. Mr. Shoup said that if you look strictly at the words in the personal service establishment definition, there was nothing that precluded that kind of activity. As far as the nonconforming issue, Mr. Shoup asked the Board to focus on what was the nonconformity in this case and stated that the non conformity wasn't the specific uses involved, the nonconformity was the use of a building that exceeded 6,000 square feet by a separate business establishment. Mr. Shoup referred to a case as cited by Mr. Hanes talking about change in character of the use and stated staff did not believe there had been any change because previously there was a separate business establishment occupying more than 6,000 square feet and now the use remained a separate business establishment occupying more than 6,000 square feet. Mr. Shoup stated that if the appellant's logic was applied, that would mean there would have to be another retail store similar to a shoe store that could have gone in the existing building and nothing else, which would preclude a number of other permitted uses in the C-5 District. For instance, an eating establishment, a restaurant, a bank or a veterinary hospital. He said that staff did not believe that was

consistent with the way the Ordinance was intended to be administered. Regarding the 3,000 square foot issue, Mr. Shoup stated the way it was measured by using the carpeted area of the store as a guide and the reason for that was there was no equipment on the carpeted area and the activities that were occurring there did not constitute cleaning and processing. Mr. Shoup stated that staff's position of what constituted an end product was that it had been cleaned and pressed. He concluded by stating that to count the customer service area, the bagging and storage and garment storage area as part of the 3,000 square feet was not consistent with what the limitation was supposed to do and was not consistent with the meaning of the words cleaning and processing.

Mr. Hanes stated that the suggestion of a vested right would not protect Dryclean Depot, and said they would not find a lot of reception from the Circuit Court for claiming a mistake. Mr. Hanes referred to pictures Mr. Stikas had taken and stated they were taken on March 27 during operation hours. Mr. Hanes referred to an engineers reports which showed the processing area of almost 3,000 square feet and stated that if any one of the other areas were added, it would exceed the 3,000 square foot limitation.

Mr. Hammack asked staff what was done when someone wanted to open a dry cleaning store. He asked if a permit would be issued or would they have to supply a plat to show what the process was and how much would be devoted to dry cleaning processing.

Michael Congleton, Deputy Zoning Administrator, replied that on some occasions, what most likely happened was that it was usually a change of use from another type of operation and that typically they would need a tenant layout building permit. At that time staff would review the location of the facilities, the cleaning processing, the washing machines, the dry cleaners. Therefore, staff would request a drawing or set of building plans in which to base the determination.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated he had some discomfort in making a motion because it was unusual that the Board would hear a case concerning an operator of one business challenging the right of a competing business to operate because of an alleged violation of the Zoning Ordinance when the Zoning Administrator had issued a permit and had taken the position that the operator was in compliance with the County Ordinance. He stated that he believed that this type of application opened Pandora's Box in some ways for anyone that had a disgruntled competitor to come in and use the zoning process as a way to possibly put competition out of business. Mr. Hammack said that in considering the testimony and the exhibits that had been placed before the Board, he believed that the Zoning Administrator was too narrow in his definition of processing and the Ordinance itself, the word etcetera was part of the definition and would seem to preclude establishments of this type which exceeded 3,000 square feet of cleaning, processing and certain related activities, however, stated it did not define what the related activities were, customer service, office or garment storage. He said that when you're dealing with a margin of between 2,912.50 square feet which the staff stated was all that was devoted to cleaning and processing and if any of the other areas were included, it would violate the 3,000 square feet. Therefore, Mr. Hammack made a motion to overrule the opinion of the Zoning Administrator on the issue of whether the use constituted a personal service establishment under the definition. With respect to the nonconforming use issue, he said he was not concerned with that so much and made a motion to uphold the decision of the Zoning Administrator. He concluded by stating he did not believe there had been any real convincing testimony that led him to think that allowing this use to use this particular property was in of itself a violation.

Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Pammel was absent from the hearing.

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Page 474, March 30, 1999, (Tape 1), After Agenda Item:

Approval of January 7, 1999, January 12, 1999 and January 26, 1999 Minutes

Mr. Hammack made a motion to approve the January 7, 1999, January 12, 1999 and January 26, 1999 Minutes. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

Minutes by: Deborah Hedrick

Approved on: June 22, 1999

Regina Thorn
Regina Thorn, 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 Tuesday, April 6, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 477, April 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID E. PULLMANN, VC 99-D-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 33.0 ft. and 8.0 ft. from front lot lines and 11.0 ft. and 18.9 ft. from side lot lines. Located at 6351 Linway Ter. on approx. 7,172 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 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. David Pullmann, 6351 Linway Terrace, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition 33 feet and 8 feet from the front lot lines and 11 feet and 18.9 feet from the side lot lines. A minimum front yard of 40 feet is required; therefore, variances of 7 feet and 32 feet were requested, respectively. A minimum side yard of 20 feet is required; therefore, variances of 9 feet and 1.1 feet were requested, respectively.

Mr. Pullmann presented the variance requests as outlined in the statement of justification submitted with the application. He indicated that the house was in need of numerous repairs without the variance request. He explained to the Board their intentions and reasons for the second story addition. Mr. Pullmann noted that the improvements would be beneficial to the neighborhood and increase the property value.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-D-005 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID E. PULLMANN, VC 99-D-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 33.0 ft. and 8.0 ft. from front lot lines and 11.0 ft. and 18.9 ft. from side lot lines. Located at 6351 Linway Ter. on approx. 7,172 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 38. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a second story addition as shown on the plat prepared by Larry N. Scartz, dated November 18, 1998, 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 5-0-1. Mr. Dively abstained from the vote and 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 April 14, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SANG Y. AND KYUNG SHIN, VC 99-H-006 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 10855 Grovehampton Ct. on approx. 6,473 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 85.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sang Y. and Kyung Shin, 10855 Grovehampton Court, Reston, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of an addition 17.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 7.8 feet was requested.

Mr. Shin presented the variance request as outlined in the statement of justification submitted with the application. He said the builder built the house with a sliding glass door that led to nothing, which was the reason for the request of a sunroom addition.

Mr. Hammack asked if the applicant needed a variance for the deck. Mr. Bernal replied that the deck did not need a variance.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 99-H-006 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SANG Y. AND KYUNG SHIN, VC 99-H-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 10855 Grovehampton Ct. on approx. 6,473 sq. ft. of land zoned PDH-2. Hunter Mill District. Tax Map 12-3 ((17)) 85. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The lot is irregularly shaped.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a sunroom addition shown on the plat prepared by Laura L. Scott, dated December 2, 1998, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. 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 April 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 480 , April 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JERRY LEE AND JENNIE S. LISTON, VC 99-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 19.5 ft. Located at 1155 Kettle Pond Ln. on approx. 20,011 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 59.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jerry Liston, 1155 Kettle Pond Lane, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 6 feet from a side lot line such that the side yards total 19.5 feet. A minimum side yard of 12 feet is required; therefore, a variance of 6 feet was

requested. Total side yards of 40 feet is required; therefore, a variance of 20.5 was requested.

Mr. Liston presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to convert the current one car garage to a room for his mother to live. He said his neighbor had no objection to the application and the homeowners' association also supported the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-D-007 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JERRY LEE AND JENNIE S. LISTON, VC 99-D-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line such that side yards total 19.5 ft. Located at 1155 Kettle Pond Ln. on approx. 20,011 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 12-3 ((5)) 59. 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 6, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The proposed garage is not too large under the circumstances.
3. Despite the fact that there is still plenty of room on the side yard, the fact that it abuts an easement makes this a simple issue.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a garage addition shown on the plat prepared by Joseph J. Bollato, dated January 6, 1999, 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. 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 April 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 482, April 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. NANETTE L. SALVAGGIO, VC 99-Y-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of lot containing less than 36,000 sq. ft. and 6.0 ft. fence to remain in a front yard. Located at 12903 Harrington Ct. on approx. 10,243 sq. ft. of land zoned PDH-3. Sully District. Tax Map 35-1 ((9)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nannette Salvaggio, 12903 Harrington Court, Herndon, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure, a swimming pool, in a front yard of a lot containing less than 36,000 square feet. The applicant also requested a variance to permit a 6 foot high fence to remain in a front yard. The maximum height for a fence in a front yard is 4 feet; therefore, a variance of 2 feet was requested.

Ms. Salvaggio presented the variance requests as outlined in the statement of justification submitted with the application. She said the fence was constructed by the builder when she purchased the property. Ms. Salvaggio stated that she did not know the property contained two front yards and said the primary purpose for purchasing the lot was to build a pool. She said the neighbors were in support of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 99-L-099 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NANETTE L. SALVAGGIO, VC 99-Y-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of lot containing less than 36,000 sq. ft. and 6.0 ft. high fence to remain in a front yard. Located at 12903 Harrington Ct. on approx. 10,243 sq. ft. of land zoned PDH-3. Sully District. Tax Map 35-1 ((9)) 16. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot has two front yards.
4. The lot is small and the proposed pool will be located in the most logical place for it.
5. The proposed pool could not be located in the other front yard because of an easement.
6. It is logical to have a 6-foot fence around a pool and it was there when the applicant purchased 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a swimming pool and 6 foot high fence shown on the plat prepared by Kenneth W. White, dated November 23, 1998, as revised through January 13, 1999, 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 April 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 484, April 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM J., III AND CAROLYN H. PETERS, SP 98-B-067 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 4713 Eddystone St. on approx. 15,001 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7))(7) 3. (Moved from 3/2/99).

9:30 A.M. WILLIAM J. PETERS III AND CAROLYN H. PETERS, A 1998-BR-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are keeping 7 dogs on a lot containing 15,001 sq ft. of land in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 4713 Eddystone St. on approx. 15,001 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7))(7) 3. (Def. From 12/8/98).

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the notices were not in order. She said the applicant had severe health problems and suggested a deferral date of October 5, 1999.

Mr. Pammel said that date was much too long and would prefer an earlier hearing date.

Mr. Kelley moved to defer the subject applications to October 5, 1999. Ms. Gibb seconded the motion.

Mr. Pammel made a substitute motion to defer for 3 months. Mr. Dively seconded the motion which failed for a lack of four votes.

The original motion carried by a vote of 7-0 and the applications were deferred to October 5, 1999.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Approval of January 19, 1999, February 2, 1999 and March 2, 1999 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Status Report, A 1998-MV-042
Kathleen G. Pace

William Shoup, Deputy Zoning Administrator, stated that the appellant had filed a special permit application and they were waiting for the affidavit from the County Attorney's office.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Approval of March 30, 1999 Resolutions

Mr. Hammack moved to approve the Resolutions. There was no second. The motion carried by a vote of 6-0-1. Mr. Pammel abstained from the vote.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Approval of Meeting dates for the last six months of 1999

Mr. Pammel stated that he would like to add Tuesday, August 17, 1999. He said if the Board of Zoning Appeals did not have business they could always take it off, but he would rather have it on there as a regular meeting. He said they may have to add another meeting, but at this point, he would be satisfied with just adding the one meeting. Mr. Pammel moved to approve the meeting dates for the last six months of 1999 with the addition of August 17, 1999. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Karharias Inc., SPA 95-S-069

Mr. Ribble moved to approve the Additional Time Request. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new expiration date is July 19, 1999.

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Page 485, April 6, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer
Nellie V. Herring, Woodrow Herring Jr., and Willow Springs Towing & Recovery
A 1998-SU-002

Mr. Pammel moved to approve the request for intent to defer. Mr. Dively seconded the motion which carried by a vote of 7-0. The application was scheduled for May 25, 1999 at 9:30 a.m.

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As there was no other business to come before the Board, the meeting was adjourned at 9:40 a.m.

Minutes by: Regina Thorn

Approved on: June 29, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, April 13, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel.

Chairman DiGiulian called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 487, April 13, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer
Kass Realty
SP 99-D-002

Robert Lawrence, Hazel & Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, requested that the application be deferred to either May 18, 1999 or May 25, 1999. Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that both May 18, 1999 and May 25, 1999, hearings were full and the next available hearing would be June 1, 1999. Mr. Lawrence stated that the application was very straight forward and an earlier hearing date would be appreciated, as June 1, 1999, would be a substantial delay. Ms. Langdon stated that the notices had to go in the paper three weeks before the public hearing, the date had to be changed on them and there were other things that had to be checked to be sure the notices were correct. She reiterated to the Board that May 25, 1999, was full therefore, June 1, 1999, was the next available date.

Mr. Kelley asked staff how full was May 25, 1999. Ms. Langdon replied that there were ten cases and that several of them were appeals.

Mr. Kelley moved to approve the intent to defer for SP 99-D-002 to May 25, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 487, April 13, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WALTER B. COLE, JR. AND POCAHONTAS SPEEDON, VC 99-H-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.0 ft. from side lot line. Located at 12368 Brown Fox Wy. on approx. 6,483 sq. ft. of land zoned PDH-4. Hunter Mill District. Tax Map 26-1 ((23)) 69.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Walter B. Cole, 12368 Brown Fox Way, Reston, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to construct a deck 3.0 feet from the side lot line and the Zoning Ordinance requires a minimum side yard of 5 feet; therefore, a variance of 2 feet was requested.

Mr. Cole presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the salesman had misrepresented the size of his property line and when he had set up the deck, it was apparent that he would be in violation of the Zoning Ordinance. He explained that the lot was very unique, with a dry pond on one side and Homeowner's Association (HOA) land on the other side. Mr. Cole stated that the deck was designed to furnish the most usable deck space while providing his family and neighbors with privacy. He said that the deck provided extending living area to his family and added value to the property and to the HOA. Mr. Cole referred to a letter submitted by the HOA that recommended approval of the application and that he had no opposition from the neighbors. Mr. Cole requested that the Board waive the eight day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-H-001 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER B. COLE, JR. AND POCAHONTAS SPEEDON, VC 99-H-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.0 ft. from side lot line. Located at 12368 Brown Fox Wy. on approx. 6,483 sq. ft. of land zoned PDH-4. Hunter Mill District. Tax Map 26-1 ((23)) 69. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the deck shown on the plat prepared by Franklin E. Jenkins, Land Supervisor, dated November 6, 1998, 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 6-0. Mr. Hammack moved to waive the eight day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 489, April 13, 1999, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE J. AND CYNTHIA A. BLASKO, VC 99-P-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. and covered stoop 23.0 ft. from street line of a corner lot. Located at 2425 Hurst St. on approx. 12,486 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 15A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lawrence J. Blasko, 2425 Hurst Street, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow construction of an addition 25 feet from the front lot line and a covered stoop 23 feet from the front lot line of a corner lot. The minimum required front yard is 30 feet; therefore, a variance of 5 feet and 7 feet were requested respectively.

Mr. Blasko presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the existing house was a small two bedroom house that was built in 1939 and the addition would extend 21 feet from the side of the house. He stated that since it was a corner lot the side yard was subject to the 30 feet side yard requirement. Mr. Blasko acknowledged that in 1986 a corner of the property was conveyed to the State when improvements were made to Virginia Avenue. He stated that the improvement to the property would significantly improve the value of his property as well as the neighborhood and that he had no opposition from the neighbors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 99-P-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAWRENCE J. AND CYNTHIA A. BLASKO, VC 99-P-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. and covered stoop 23.0 ft. from street line of a corner lot. Located at 2425 Hurst St. on approx. 12,486 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 15A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The dwelling was constructed in the 1930's.
4. There was a subsequent taking of right-a-way for Virginia Avenue, which reduces the area permitted for an addition on the south side of the building.
5. The variance request is reasonable.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

Page 491, April 13, 1999, (Tape 1), LAWRENCE J. AND CYNTHIA A. BLASKO, VC 99-P-002, continued from Page 490

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and a covered stoop shown on the plat prepared by William S. Sikes Jr., dated December 14, 1998, 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 and covered stoop shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 491, April 13, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FRANK J. MCGOVERN, VC 99-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.4 ft. from side lot line. Located at 9401 Lagovista Ct. on approx. 47,708 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((6)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank J. McGovern, 9401 Lagovista Court, Great Falls, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to allow construction of an addition 12.4 feet from the side lot line. A minimum 20 foot side yard is required; therefore, a variance of 7.6 feet was requested.

Mr. McGovern presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he was a member of the Homeowners Association (HOA) and referred to a letter submitted by the HOA recommending approval of the application. He stated that there was a wall of trees dividing his property from his neighbor and that it would not be detrimental to his neighbor or the neighborhood. He said that he had no opposition from the neighbors and the addition would improve the value of his home and the neighborhood.

Mr. McGovern requested that the Board waive the eight day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-D-019 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK J. MCGOVERN, VC 99-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.4 ft. from side lot line. Located at 9401 Lagovista Ct. on approx. 47,708 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((6)) 1. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The house is situated very much to one side and the new addition is going to be in line with the house.
3. The variance request is appropriate.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the sunroom addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 22, 1998, 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. Dively moved to waive the eight day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 493, April 13, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD AND BARBARA FOELBER, VC 99-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 5721 Colfax Ave. on approx. 19,000 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((9))(12) 74.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Foelber, 5721 Colfax Avenue, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to allow construction of an addition 8.0 feet from the side lot line. A minimum 12 foot side yard is required; therefore, a variance of 4 feet was requested.

Mr. Foelber presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the reason for the variance was to construct a garage and that his house was the only house in the neighborhood without a garage. He stated that the garage was desired for additional storage space. Mr. Foelber said that he had employed an architect prior to applying for the variance and it was discovered that an increased width was required due to the configuration and steepness of the driveway. He stated that there was no opposition from the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 99-M-011 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD AND BARBARA FOELBER, VC 99-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 5721 Colfax Ave. on approx. 19,000 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((9))(12) 74. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. There are topographic and narrowness problems on the side yard.
4. This is the only available place on the lot for the garage.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated March 2, 1987, as revised and certified by Jerold E. Kreidler on October 10, 1998, 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 495, April 13, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT D. AUDET, VC 98-V-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 27.0 ft. from front lot line of a corner lot. Located at corners of Wood Haven Rd., Olde Towne Rd. and 11th St. on approx. 8,950 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2))(36) 17, 17A and 18. (In association with SE 98-V-048).

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 D. Audet, 6621 Wakefield Drive, Alexandria, Virginia, replied that it was.

Tracy Swagler, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a single family dwelling 27 feet from the front lot line. The minimum front yard requirement is 30 feet; therefore, a variance of 3 feet was requested. On March 22, 1999, the Board of Supervisors approved SE 98-V-048 on the subject property for uses in a flood plain.

Mr. Audet presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that there was a 3 foot deep ditch through the center of his property that forced him to build toward the outside street instead of lengthwise. He stated that their home would be in character with the neighborhood, since there were several other homes built under 10 feet from their property lines.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 98-V-114 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT D. AUDET, VC 98-V-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 27.0 ft. from front lot line of a corner lot. Located at corners of Wood Haven Rd., Olde Towne Rd. and 11th St. on approx. 8,950 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2))(36) 17, 17A and 18. (In association with SE 98-V-048). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is in an old subdivision.
4. The lot is encumbered by a drainage ditch which goes through the middle of the property and several other easements that go along the side and the front precluding another location of the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the single family dwelling shown on the plat prepared by RC Fields, Jr. and Associates, dated January 1998, 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 6-0-1. Mr. Kelley abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DAVID AND DEBRA NOEL, VC 99-L-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from side lot line. Located at 3105 Franklin St. on approx. 18,375 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((20))(2) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Noel, 3105 Franklin Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 11.4 feet from the side lot line. The minimum side yard requirement is 15 feet; therefore, a variance of 3.6 feet was requested.

Mr. Noel presented the variance request as outlined in the statement of justification submitted with the application. He stated that his property was built over seventy years ago; therefore, there was no plumbing on the second level and the property was very narrow so the kitchen was very small and did not suit his family's needs. He stated that the addition would solve the plumbing problems and provide his family with adequate living space. Mr. Noel stated that there was no opposition from any neighbors and that the addition would help to revitalize and improve the neighborhood.

Mr. Ribble asked for clarification regarding whether the house was located in Mt. Vernon or Lee District. Mr. Noel answered the Lee District.

Mr. Hammack asked if the roof would be raised up for the structure. Mr. Noel replied that the roof would be taken off one side of the dormer where there currently was a very narrow and slanted closet.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 99-L-015 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID AND DEBRA NOEL, VC 99-L-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.4 ft. from side lot line. Located at 3105 Franklin St. on approx. 18,375 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((20))(2) 15. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. This is a very old subdivision.
4. The addition will not be out of line 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a two story addition shown on the plat prepared by John L. Marshall, dated April 19, 1990 and revised by Matthew Grant Guenther, dated January 22, 1999, 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 April 21, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TRU PROPERTIES, INC., VC 99-L-022 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 and addition to be constructed less than 75.0 ft. from the right-of-way of an inter-state highway. Located at 6715 Commerce St. on approx. 4.49 ac. of land zoned C-7, CR, HC and SC. Lee District. Tax Map 80-4 ((1)) 21C, 22A, and 22C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sara Hall, Blankenship and Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit parking spaces to remain 9.89 feet from the front lot line and an addition to be constructed 10 feet from the right-of-way of an interstate highway. A minimum distance of 10 feet is required for a parking lot from the front lot line and a minimum distance of 75 feet is required for an addition from the right-of-way of an interstate highway; therefore, a variance of .11 feet for the parking lot and 65 feet for the addition were requested.

Ms. Hall presented the variance request as outlined in the statement of justification submitted with the application. She informed the Board that the application was an attempt by the applicants to reconfigure the property in response to the proposed taking by Virginia Department of Transportation (VDOT) for the mixing bowl project. She stated the applicants wanted to reconstruct the corner of the building and parking spaces, which would be included in the 1 acre of land taken by VDOT. Ms. Hall acknowledged that the Board of Supervisors granted concurrent review of the site plan and the variance application.

Mr. Pammel asked why VDOT did not take the entire building. Ms. Hall answered that there had been talk of that, but the building had been there for a number of years and they thought they had found a solution to keep the building intact. Mr. Pammel referred to a past instance where VDOT had taken half of a house and the other half remained for at least twenty years. Ms. Hall replied that she had not heard of that particular case and that VDOT was only clipping one corner of the store and not taking half of it.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-L-015 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRU PROPERTIES, INC., VC 99-L-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than10.0 ft. from front lot line and addition to be constructed less than 75.0 ft. from the right-of-way of an inter-state highway. Located at 6715 Commerce St. on approx. 4.49 ac. of land zoned C-7, CR, HC and SC. Lee District. Tax Map 80-4 ((1)) 21C, 22A, and 22C. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. This involves a VDOT taking and is an exceptionally good case for granting 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and parking lot shown on the plat prepared by Thomas D. Rust of Patton, Harris, Rust & Associates, P.C. dated January 1999, as revised through March 17, 1999 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 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 seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BECKFORD T. MACKEY, SP 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 1014 Harriman St. on approx. 2.15 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 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. Beckford T. Mackey, 1014 Harriman Street, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a group 9 accessory dwelling unit to be located within a free-standing accessory structure. The accessory dwelling unit would be located approximately 40 feet south of the principle dwelling. He stated that the subject property was in harmony with the Comprehensive Plan and it conformed with the applicable Zoning Ordinance provisions; therefore, staff recommended approval.

Mr. Mackey presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the purpose of the application was to accommodate his wife's mother and father, who were getting on in years. He stated that he had prepared and sent out notifications to the ten adjacent and abutting neighbors and no complaints had come back. Mr. Mackey said that the previous evening Mr. Bernal notified him that two neighbors, Mr. and Mrs. Thomas and Ms. Bertelli, were in opposition. He explained that Mr. and Mrs. Thomas were not included in the ten notifications because their property did not adjoin or abut his; however, his property was in view of their house. Mr. Mackey stated that it would be impossible for the Thomas family to see the new dwelling due to where it was to be located on his property and to ensure this, there would be additional shrubbery and vegetation planted.

Mr. Pammel mentioned the letter submitted from the Great Falls Citizen's Association which suggested that it was desirable to have the accessory building attached to the principle building and asked Mr. Mackey what his thoughts were regarding this issue. Mr. Mackey replied that the dwellings could be attached to each other and the reason they wanted them to be separate was to give his in-laws privacy, but he was willing to attach them if necessary.

Mr. Pammel asked staff if an amendment to the special permit would need to be done if the applicants were to replace the existing structure with a new structure. Susan Langdon, Chief, Special Permit and Variance Branch replied that an amendment would be needed to make any changes to either dwelling on the property. Mr. Mackey stated that he had no intention of replacing the existing structure.

Mr. Hammack informed staff that there was not a condition in the proposed development conditions that required this use to be recorded in the land records and asked why that was not included. Ms. Langdon answered that staff had looked back at past accessory dwelling units to see if that had been done and that had not been adopted as a condition. She stated it was something that could be added.

Chairman DiGiulian called for speakers.

Nancy Thomas, 1018 Harriman Street, Great Falls, Virginia, stated that she was never informed of the public hearing and the only way that she knew of the application was from the sign that was posted. She submitted photographs that, she felt, illustrated that her property was the most impacted from the proposed dwelling even though her lot did not abut the subject property. Ms. Thomas said her complaint was the view from her home would be of many structures "clumped" together. She stated that she had a conversation with Mr. Mackey one month prior, where he stated that he was adding an addition onto his home, not constructing an accessory structure. Ms. Thomas voiced her concern that this application would have an adverse impact on the resale value of her home. Mr. Ribble asked whether Mr. Mackey told her he was building an addition to the existing dwelling. Ms. Thomas replied that he had told her that they were adding an addition to their home. She said that she felt that a notification should have been sent to her. Mr. Ribble informed her that Mr. Mackey was not required to send her a notification.

Mr. Mackey, in his rebuttal, stated that the location of the proposed accessory dwelling would not change the appearance whether it was attached or not attached and that from his backyard, he could only view the top two windows of Ms. Thomas house. He reiterated that the accessory dwelling would not be detrimental to the resale value of any of the homes in the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that this was a very difficult case, but what Mr. Mackey proposed was permitted under the applicable sections of the County Zoning Ordinance. Mr. Pammel was in favor of the Great Falls Citizens Association's request to have linkage of the two structures. Mr. Pammel stated that his opinion was to approve the application having the connecting link as a separate condition to the special permit.

Mr. Kelley stated that he was still troubled with the application and that there was plenty of room for the applicant to be more accommodating to the objecting neighbors and the Citizens Association and that he had a problem with the concept of what Mr. Mackey wanted to do.

Mr. Hammack said that he was not opposed to the concept of the use, but he would like to see what the applicant would do to satisfy the concerns of the Board, and what the attachment of the two dwellings would look like before he voted to approve or disapprove.

Mr. Pammel made a substitute motion that they defer the decision on the application for one month to allow the applicant to present additional information to the Board with respect to the connection that had been discussed by the board members. Mr. Dively seconded the motion which carried by a vote of 7-0. Mr. Kelley moved to defer decision regarding the application until June 1, 1999 at 9:00 A.M. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 502, April 13, 1999, (Tape 1), Scheduled case of:

9:30 A.M. NELLIE V. HERRING, WOODROW W. HERRING, JR., WILLOW SPRINGS TOWING & RECOVERY, A 1999-SU-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a junk yard and storage yard on property zoned R-1 in violation of Par. 5 Sect. 2-302 of the Zoning Ordinance. Located at 12801 Lee Hwy. on approx. 2.95 ac. of land zoned R-1. Sully District. Tax Map 55-4 ((1)) 34.

Chairman DiGiulian stated that the Board issued an intent to defer the subject application on April 6, 1999. Mr. Dively moved to defer the above application to May 25, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 502, April 13, 1999, (Tape 1), After Agenda Item:

Approval of February 9, 1999 Minutes

Mr. Pammel moved to approve February 9, 1999 Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 502, April 13, 1999, (Tape 1), After Agenda Item:

Approval of April 6, 1999 Resolutions

Mr. Pammel moved to approve April 6, 1999 Resolutions. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 502, April 13, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer
Centreville Land Corporation
A 1998-SU-045

Maggie Stehman, Zoning Administration referred to a memo dated April 12, 1999, from William Shoup,

Deputy Zoning Administrator, relative to the request for intent to defer. She explained that the appellants had submitted a request to reactivate a special exception application that should resolve the issues in the appeal.

Mr. Dively moved to approve the intent to defer for A 1998-SU-045. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new hearing date is November 16, 1999.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: Lori M. Mallam

Approved on:

Regina Thorn, 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 Tuesday, April 20, 1999. The following Board Members were present: Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:04 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 505, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PLATON N. AND ANNE K. MANDROS, VC 99-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an addition to remain 15.8 ft. from the front lot line and 3.2 ft. from the side lot line and fence greater than 4.0 ft. to remain in front yard and greater than 7.0 ft. to remain in the side and rear yards. Located at 1925 Summit Ter. on approx. 12,920 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(10) 20.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Platon Mandros, 1925 Summit Terrace, Alexandria, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to allow an addition consisting of a deck connected to a gazebo to remain 15.8 feet from the front lot line and 3.2 feet from the side lot line, and a fence with a height of 6.0 feet to remain in the front yard, and a fence height of 7.2 feet to remain in the side and rear yards. Ms. Schilling stated that for the deck and gazebo combination, the Zoning Ordinance requires a minimum front yard of 30 feet and a side yard of 10 feet; therefore, variances of 14.2 feet for the front yard and 6.8 feet for the side yard were requested. For the fence, the Zoning Ordinance requires a maximum fence height of 4 feet in the front yard and 7 feet in the side and rear yards; therefore, variances of 2.0 feet and 0.2 feet were requested.

Mr. Mandros presented the variance request as outlined in the statement of justification submitted with the application.

Mr. Kelley asked Mr. Mandros if his property was on a corner lot with three front yards. Mr. Mandros stated his property was shaped like a triangle with three front yards. He stated his entrance was on one side with three sides facing the street.

Mr. Kelley stated that the lot was an oddly shaped lot, especially for the Bellehaven Community and told Mr. Mandros his property was beautiful and well maintained.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve VC 99-V-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 13, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PLATON N. AND ANNE K. MANDROS, VC 99-V-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an addition to remain 15.8 ft. from the front lot line and 3.2 ft. from the side lot line and fence greater than 4.0 ft. to remain in front yard and greater than 7.0 ft. to remain in the side and rear yards. Located at 1925 Summit Ter. on approx. 12,920 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(10) 20. 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 20, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The application was necessary because the lot was oddly shaped with three front yards.
3. The applicants have presented testimony before the Board indicating compliance with the nine required variance 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck, gazebo and fence shown on the plat prepared by Kenneth W. White, dated January 6, 1999, 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 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LOUIS S. POLSTER, SP 98-V-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 3.5 ft. from side lot line. Located at 2205 Martha's Rd. on approx. 15,990 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3((4)) 111.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Louis Polster, 2205 Martha's Road, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure to remain 3.5 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 11.5 feet was requested. Mr. Bernal noted that this case was originally heard by the BZA on December 3, 1996, and was denied. However, due to the accessory structure's height reduction from 16 feet to 13 feet, the applicant was reapplying for this special permit.

Mr. Hammack asked why this application was allowed to be resubmitted and noted Mr. Polster was not in compliance with the height restrictions.

Susan Langdon, Chief, Special Permit and Variance Branch, stated Mr. Polster had originally applied for a height of 16 feet and it had been reduced to 13 feet. She noted that the Board had waived the one year waiting period for refiling of an application.

Mr. Hammack stated the denial was in 1996 and the new application was 1998 and asked staff why they had not followed up on the issue of non-compliance.

Mr. Polster stated he had to wait one year to reapply and had been working with Ms. Rebecca Goodyear of the Zoning Enforcement Branch to bring the height of the structure into compliance.

Ms. Langdon stated Ms. Goodyear was unable to be present at the public hearing and stated staff's understanding was that Ms. Goodyear had been working with Mr. Polster to bring the structure into compliance; and, because he had reduced the height and had indicated he would reapply, enforcement was stayed.

Mr. Hammack asked if it was policy that the Zoning Inspectors work with people whose applications had been denied in the past. Ms. Langdon replied she did not know what the policy was in this situation.

Mr. Polster presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Polster stated the roof of the shed had been lowered by 3 feet, reducing the height to 13 feet. He said he had planted approximately $2,000.00 worth of mature Leland Cyprus trees and other plantings between the shed and the property line of the lot directly behind him. Mr. Polster said that both efforts had made the shed more appropriate and had been reviewed by Ms. Goodyear who had indicated to him that these measures were favorable for his case. Mr. Polster noted that the neighbor who had made the original objections to the shed had moved and said the new owner had no objection when he had spoken with her. He stated that in his hearing in 1996, he was in an unusual position where things were said that were not true and he had only three minutes to rebut the opposition and did not know what he should have done. Mr. Polster told the Board that the shed/workshop was needed and that it was not an unusual structure within the development to have, and submitted photographs to the Board showing various structures within the development. He also submitted to the Board a letter of approval from the Design Review Committee of the Homeowners Association, which he stated he did not have at his last public hearing. Mr. Polster stated he was now in complete compliance with the size of the structure to the lot line with his neighbor to the rear of his property and the neighbor to the left of his property approved of the structure. He said that his neighbor had cut down trees on his property, thinking it was her property, of which he had replanted and submitted pictures to the Board showing the trees. Mr. Polster stated that he had spent a lot of time and effort bringing the structure into compliance and to ensure it was compatible with the neighborhood and asked for the Board's approval of the special permit application.

Mr. Hammack stated the statute was that the structure was not to exceed 7 feet in height. Mr. Polster replied that when the structure was originally built, the County had assumed it would not be over 7 feet in height; however, since it was a shed/workshop, at 13 feet in height, it needed to be 13 feet from the rear property

line and have a side yard of 15 feet. He stated he had reduced the height so that it was within the legal limit to the neighbor in the rear and the neighbors on either side did not have any objection to the structure.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to defer decision in order to have the Zoning Administrator present to explain why the application was accepted. He said the previous application was denied and the structure was still not in conformance with the statute. The applicant had not applied within one year and the previous decision was not appealed and asked why County staff had accepted a new application. Mr. Hammack expressed his concern that if the application was denied at this public hearing, Mr. Polster could remove another foot and County staff would not do anything and accept another reapplication and was unsure why the application was accepted.

Mr. Kelley seconded the motion and stated he had made the original motion to deny the application and had not changed his mind about that denial. The motion carried by a vote of 6-0.

Mr. Pammel noted there was a letter of opposition from the new owner of the property where the original opposition had occurred.

Mr. Dively made a motion to defer the decision to April 27, 1999, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 508, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KASS REALTY, SP 99-D-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a meeting hall. Located at on the S. side of Canal Dr. on approx. 33,047 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((1)) 33 pt.

Susan Langdon, Chief, Special Permit and Variance Branch, referred to a memorandum she had distributed to the Board prior to the hearing stating that staff had reexamined the application and the notifications and had determined they were in order. She noted the Board had issued an intent to defer on April 13, 1999, and could have issued a final deferral at this hearing; however, the case was in order and could go forward if the Board deemed it appropriate.

Mr. Dively asked what was the status of an intent to defer as far as notice to the public. Ms. Langdon replied that staff did not notice the public specifically; however, citizens had called the office after the intent to defer was issued, and were given this information.

Mr. Dively stated that the intent to defer was done in a public forum and he was troubled by the fact that there was a notice to the public that the application was intended to be deferred.

Mr. Kelley stated the Board had started granting intents to defer some years ago and he could not remember a time where the Board backed away from their decision. He said he did not think the Board should start with that process now.

Mr. Pammel stated he concurred with the other Board members' concerns.

Mr. Dively asked for the date the application was currently intended to be deferred to. Ms. Langdon replied May 25, 1999, at 9:00 a.m. Mr. Dively stated he would like to accommodate the applicant; however, felt the Board must stick by the original intent to defer.

Robert Lawrence, Agent, Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, stated the applicant would like to move forward with the application.

Ms. Langdon also stated that the applicant had submitted revised proposed development conditions prior to the hearing, which staff had not had the opportunity to review.

Mr. Hammack made a motion to defer SP 99-D-002 to May 25, 1999, at 9:00 a.m. Mr. Pammel seconded

the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 509, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WESTERRA RESTON L.L.C. AND KINDERCARE LEARNING CENTER, INC., VC 99-H-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in the front yard of a corner lot. Located at the intersection of North Village Rd. and Wiehle Ave. on approx. 2.16 ac. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((1)) 14.

Vice Chairman Ribble called the applicants 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 Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was. Mr. Martin stated the application was ready to go forward; however, noted that the Fairfax County Planning Commission had contacted the Board via written memorandum requesting a deferral of the application. Mr. Martin stated the applicant had no objection to the request for a deferral out of courtesy to the Planning Commission.

Mr. Dively made a motion to defer VC 99-H-012 to May 18, 1999, at 9:00 a.m., based upon the unanimous vote of the Planning Commission, so they could have an opportunity to review the application. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 509, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TIMOTHY W. AND MARY E. JONES, VC 99-Y-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.6 ft. and deck 9.1 ft. from rear lot line. Located at 12240 Westwood Hills Dr. on approx. 20,941 sq. ft. of land zoned R-1. Sully District. Tax Map 36-1 ((16)) 51.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested an approval to construct an addition, consisting of a sunroom and screened porch to be located 14.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.4 was requested. The applicants also requested approval to construct a deck adjoining the addition 9.1 feet from the rear lot line. Ms. Wilson stated the deck was permitted by the Ordinance to extend to within 13 feet of the lot line; therefore, a variance of 3.9 feet was requested.

Ms. Strobel, Agent, presented the variance request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the property was acquired in good faith in 1978 and had the characteristic of an unusual condition that limited reasonable development because the property was a pipestem lot with an extraordinary shape. Ms. Strobel stated the dwelling was located at the front of the lot in order to access the pipestem driveway and a septic field was located on the east side yard, in which no development was permitted; therefore, the only available location for the addition required the variance. Ms. Strobel referred to a petition submitted to the Board by surrounding property owners stating that they had no objection to the request.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 99-Y-016 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 13, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY W. AND MARY E. JONES, VC 99-Y-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.6 ft. and deck 9.1 ft. from rear lot line. Located at 12240 Westwood Hills Dr. on approx. 20,941 sq. ft. of land zoned R-1. Sully District. Tax Map 36-1 ((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 April 20, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have more than adequately presented testimony before the Board indicating compliance with the nine required variance 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and deck shown on the plat prepared by Paciulli, Simmons and Associates, LTD., dated November 10, 1998, and certified on February 1, 1999 by Steven B. Rolen, Land Surveyor, 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 511, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. OSCAR SAHONERO, SP 99-P-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.0 ft. from side lot line and covered porch 26.8 ft. from front lot line. Located at 2916 Johnson Rd. on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 195.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Oscar Sahonero, 2916 Johnson Road, Falls Church, Virginia, replied that it was.

Mr. Sahonero stated to the Board that his ability to speak English was not good; therefore, Mr. Juan Bernal, Staff Coordinator, offered to interpret for Mr. Sahonero.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for error in building location to allow a carport, converted into a garage, to remain 5.0 feet from the side lot line and a covered porch to remain 26.8 feet from the front lot line. The Zoning Ordinance requires a minimum side yard of 10 feet and a minimum required front yard of 30 feet; therefore, the amount of error was 50% for the side lot line and 11% for the front yard, respectively. Ms. Schilling noted that Paul McAdam, Zoning Inspector, was present to answer any questions regarding enforcement issues.

Mr. Bernal stated Mr. Sahonero apologized to the Board for any inconvenience he may have caused for the addition. Mr. Bernal stated that Mr. Sahonero had enclosed his carport because he had noticed other neighbors had done so and with the removal of his shed, this was the only logical location for the addition. On two occasions Mr. Sahonero had stormwater drainage into his basement and therefore he enclosed the entire structure.

Mr. Hammack asked if he had personally applied for the building permits. Mr. Bernal stated that for the carport and the front porch he said he had received building permits.

Mr. Hammack asked if he had understood that he had applied for a building permit for an open carport when he had made the application to the County. Mr. Bernal said Mr. Sahonero replied he had understood and did take plans to the County prior to the construction. Mr. Hammack asked if Mr. Sahonero had asked for approval to enclose the carport as a garage. Mr. Bernal said Mr. Sahonero did not request this approval

from the County. Mr. Hammack asked if Mr. Sahonero had asked for approval to build the front porch closer to the property line than the permit allowed. Mr. Bernal said Mr. Sahonero had thought he could only go to 5 feet, and with the 5 feet he believed the porch would be too small for the construction he had planned on. Mr. Bernal stated that Mr. Sahonero said he did not receive approval to go beyond the 5 feet and said he was looking at another home with the same type of an addition and applied the application to his home. Mr. Hammack asked if Mr. Sahonero had seen the two letters in opposition to the application. Mr. Sahonero replied he had.

Mr. Hammack asked if Mr. Sahonero had any comments regarding the complaint/allegations contained in the letters of opposition. Mr. Bernal stated that Mr. Sahonero said he had one vehicle which he was constantly repairing over the past year. He said Mr. Sahonero stated there were five vehicles all together in his family, three owned by himself and his wife, and two vehicles owned by his two brothers. Mr. Bernal stated that Mr. Sahonero said that as far as car repairs, the only repairs were to his own vehicles.

Vice Chairman Ribble called for speakers.

William Benedict, 2919 Stuart Drive, Falls Church, Virginia; Marcel Desrosiers, 7324 Elmwood Drive, Falls Church, Virginia; and, Robert Hull, 2923 Johnson Road, Falls Church, Virginia, all spoke in opposition of the application. The concerns expressed by the opposition included the following: There was not a need for an enclosed garage in the neighborhood; none of the other homes had enclosed garages; a carport would protect a vehicle just as well as an enclosed garage; items such as a basketball hoop, buckets, etcetera, were in the five foot area between lot lines; complaints that there seemed to be car repair work being done out of the enclosed garage and the garage was to shield a car repair business; cars from other County's were parked throughout the neighborhood waiting for repairs; a wrecker was purchased by the applicant to accommodate the repair business; the addition was too close to the property line; and, if the garage was allowed to remain, the business would continue.

Mr. Hammack questioned a July 20, 1998, Notice of Violation issued which stated the existing carport was being enclosed without approval and asked if it was still under construction at that time.

Mr. Paul McAdam, Zoning Enforcement Division, stated the construction had already been completed and that the carport had already been enclosed.

Mr. Bernal and Mr. Sahonero came to the podium to rebut the statements in opposition. Mr. Bernal stated that Mr. Sahonero said the buckets were used for toy storage for his children as well as the basketball hoop and stated he would move those items to the rear of his property when he had an opportunity to install a shed. In reference to the wrecker, Mr. Bernal stated Mr. Sahonero worked for Elliott Motors and he had problems obtaining insurance and license tags for the wrecker; however, Elliott Motors had obtained this for the vehicle. Mr. Bernal stated as far as the car repairs, Mr. Sahonero stated he did not do any repairs on any other vehicle other than the five vehicles which belonged to his immediate family. Mr. Sahonero stated that he was only attempting to enhance the house and the neighborhood. Mr. Sahonero stated he did not bring any vehicles back from Elliott Motors, he did not do any repairs on these vehicles and believed he was being discriminated against.

There were no further speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack asked if the wrecker was used in connection with Elliott Motors. Mr. Bernal replied it was. Mr. Hammack asked if the logo was on the side of the vehicle. Mr. Sahonero stated due to the licensing issues, it had not been completed; however, it was planned to be put on the side of the wrecker.

Mr. Hammack asked how long Mr. Sahonero had the wrecker. Mr. Sahonero stated approximately 1 ½ months and the plates and insurance approximately 2 weeks.

Mr. Dively said he was concerned there was a business in the garage; however, he was not sure whether that issue needed to be addressed. He stated the applicant admitted the addition was not done in good faith and was done through his own fault.

Mr. Dively moved to deny SP 99-P-006 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

OSCAR SAHONERO, SP 99-P-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.0 ft. from side lot line and covered porch 26.8 ft. from front lot line. Located at 2916 Johnson Rd. on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((9)) 195. 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 20, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There was concern of a business being operated from the enclosed garage.
3. The additions were not done in good faith. The applicant built the additions when he knew a permit was required.

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 Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. 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 28, 1999.

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Page 513, April 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT F. AUGUSTINE, SP 99-D-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit covered porch to remain 23.9 ft. from front lot line. Located at 6700 West Falls Wy. on approx. 10,114 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((35)) 1A. (Concurrent with VC 99-D-013).

9:00 A.M. ROBERT F. AUGUSTINE, VC 99-D-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from front lot line and accessory structure to remain in front yard of lot containing less than 36,000 sq. ft. Located at 6700 West Falls Wy. on approx. 10,114 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((35)) 1A. (Concurrent with SP 99-D-005).

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Augustine, 6700 West Falls Way, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for error in building location to allow a covered porch to remain 23.9 feet from the front lot line, and a variance to permit the construction of a screened porch addition 19.7 feet from the front lot line, and for a detached carport to remain in the front yard of a lot containing less than

36,000 square feet. For the special permit for error in building location, a minimum front yard of 30 feet is required; therefore, the amount of the error was 6.1 feet or 20%. For the variance, a minimum front yard of 30 feet is required; therefore, a variance of 10.3 feet was requested for the screened porch addition.

Mr. Dively asked when the additions were constructed. Ms. Schilling stated the original house was built in 1930 on approximately 1 acre of land. She said subsequent to that, the previous owners had two subdivision variances approved in order to subdivide the property so that the application property would be the lot with frontage from the street and the remaining back lots had access from pipestem lots. She stated that during that time it was determined that the structure met the front yard requirements; however, it appeared that in the intervening time, street dedication had occurred. Staff could not determine at what point the screen porch addition in the front encroached into the front yard. Ms. Schilling stated it appeared that either the house location was incorrectly determined previously when the subdivision variance was approved or an addition to the screened porch occurred prior to ownership by Mr. Augustine. She said staff could also not determine when the carport appeared because there were no records of the carport addition.

Mr. Dively asked if the covered porch was at least 18 years old. Mr. Augustine stated the house was built in 1922 and that the covered porch was there when the house was originally built. He stated he had photographs of the house prior to its reconstruction.

Mr. Augustine presented the variance and special permit requests as outlined in the statement of justification submitted with the application. He stated the front porch used to be the front of the house and said when it was renovated, the front door was moved to front on West Falls Way. Mr. Augustine stated he had submitted a picture of the house taken in the 1950's which clearly showed the roof covering the front porch. Mr. Augustine said the house was set back from the street at the same distance as a house built in 1888 on the north of his property and another home to the south of his property built in the 1930's. Mr. Augustine stressed to the Board the fact that his property had three front yards and asked for the Board's approval.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Ms. Gibb asked if the 25 foot setback was from the street or the easement. Ms. Schilling stated it was measured from the edge of the easement on West Falls Way.

Ms. Gibb moved to approve SP 99-D-005 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 13, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT F. AUGUSTINE, SP 99-D-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit covered porch to remain 23.9 ft. from front lot line. Located at 6700 West Falls Wy. on approx. 10,114 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((35)) 1A. (Concurrent with VC 99-D-013).
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a covered porch shown on the plat prepared by Kenneth W. White, dated October 20, 1998, submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1999. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve VC 99-D-013 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 13, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT F. AUGUSTINE, VC 99-D-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from front lot line and accessory structure to remain in front yard of lot containing less than 36,000 sq. ft. Located at 6700 West Falls Wy. on approx. 10,114 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((35)) 1A. (Concurrent with SP 99-D-005).
Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application was necessary because the lot was oddly shaped with three front yards.
3. The applicant has presented testimony before the Board indicating compliance with the nine required variance 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch and detached carport shown on the plat prepared by Kenneth W. White, Land Surveyor, dated October 20, 1998 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the screened porch 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 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 517, April 20, 1999, (Tape 1), Scheduled case of:

9:30 A.M. CENTREVILLE LAND CORPORATION, A 1998-SU-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the truck storage component and the sand and stone storage component of the concrete batching plant located on appellant's property cannot be considered separately as permissible uses in the I-6 District and instead, constitute an expansion of the batching plant operation without special exception approval, in violation of Zoning Ordinance provisions. Located at 15700 Lee Hwy. on approx. 114,904 sq. ft. of land zoned I-6 and WS. Sully District. Tax Map 64-1 ((4)) 2, 3, 4, and 5A.

Vice Chairman Ribble noted an intent to defer was granted on April 13, 1999.

Mr. Dively made a motion to defer Appeal Application A 1998-SU-045 to November 16, 1999, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 517, April 20, 1999, (Tape 1), After Agenda Item:

Approval of April 13, 1999 Resolutions

Mr. Pammel made a motion to approve the April 13, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 517, April 20, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer for Renaissance Apartments, A 1998-PR-033

Mr. Kelley stated that upon review of the letter submitted from Lynne Strobel, the request was warranted and asked staff for a deferral date.

Diane Johnson-Quinn, Zoning Administration Division, stated that staff did not support the request for deferral and noted the appeal concerned a Notice of Violation dating back to the summer of 1998 involving the erection of off-site directional signs for an apartment complex. The appellant had indicated in their request that a proposed Zoning Ordinance Amendment would provide a remedy for the situation. Ms. Johnson-Quinn stated that the 1999 Work Program was presently on the Board of Supervisor's agenda for April 26, 1999; however, the remedy being sought in this appeal application through the Ordinance amendment was part of a large initiation of a comprehensive review of Article 12, Sign Ordinance. Staff anticipated that it would take some time to accomplish the amendment, in excess of a year, all the while the violation would remain if deferred awaiting the Ordinance amendment.

Mr. Hammack asked how long the apartment building had been constructed and been in operation and how long the sign been in place and considered a violation.

Lynne Strobel, Agent, stated that the sign had been in place since at least the summer of 1998. Ms. Strobel stated the issue the appellant had was that the apartment complex did not have any public street frontage and it was difficult to lease apartments without the sign. She stated that the sign was located on property of a landowner who had a lease arrangement with Renaissance Apartments. Ms. Strobel stated that the sign was not a danger to public health or safety and asked the Board to approve the deferral request.

Mr. Kelley made a motion to approve the request for intent to defer for Appeal Application A 1998-PR-033 to November 16, 1999. Mr. Hammack seconded the motion which carried by a vote of 5-1. Ms. Gibb voted nay. Chairman DiGiulian was absent from the meeting.

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Page 518, April 20, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request, Phillip Gallo and Rosemary Gwynn - VC 99-M-046

Susan Langdon, Branch Chief, Special Permit and Variance Branch, noted to Vice Chairman Ribble that the applicant had withdrawn their request for an out-of-turn hearing and had agreed to a date suggested by staff.

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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: Deborah Hedrick

Approved on: July 6, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, April 27, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 519, April 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EDITH LOWE, VC 99-L-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.7 ft. from rear lot line. Located at 8200 Aspen Glen Ct. on approx. 2,747 sq. ft. of land zoned R-8. Lee District. Tax Map 101-3 ((25)) 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. James Garner, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition (sunroom) 18.7 feet from the rear lot line. A minimum rear yard of 20 feet is required; therefore, a variance of 1.3 feet was requested.

Mr. Garner, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was exceptionally shallow. He read the variance standards and indicated that the lot met all the requirements necessary for the approval of a variance.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-L-018 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDITH LOWE, VC 99-L-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.7 ft. from rear lot line. Located at 8200 Aspen Glen Ct. on approx. 2,747 sq. ft. of land zoned R-8. Lee District. Tax Map 101-3 ((25)) 19. 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, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant satisfied the required standards for a variance.
3. The lot is shallow.
4. The variance request is minimal to accommodate a modest addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a sunroom shown on the plat prepared by Kenneth W. White, Land Surveyor, dated January 4, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The sunroom 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. 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 May 5, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 520, April 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT F. DALEY, VC 99-V-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 7976

Bolling Dr. on approx. 13,817 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 180.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Daley, 7976 Bolling Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit fences greater than 4 feet in height to remain in front yards of a corner lot. Ms. Wilson stated that on October 13, 1998, the Board of Zoning Appeals (BZA) denied VC 98-V-086 which was the same fence height as the subject application, but had been adjusted backward from Wellington Road approximately 10 feet. She said the BZA moved to waive the one year refiling period at the hearing for the previous application.

Mr. Daley presented the variance request as outlined in the statement of justification submitted with the application. He said a Virginia Department of Transportation (VDOT) Field Inspector came to the property to investigate the complaint after the previous public hearing. Mr. Daley said the Field Inspector indicated that there were no sight distance problems, as indicated in the VDOT report submitted with the application. He said there was a community meeting held and 25 of his neighbors supported the application. Mr. Daley stated that moving the fence back from Wellington road would alleviate his hardship. He stated that the property across the street was similar to his and that other properties in the neighborhood had 6 foot fences.

Chairman DiGiulian called for speakers.

Janice Pickering came forward to speak in opposition. She stated that the fence ran along her driveway and was not within the law. Ms. Pickering stated that the applicant made no effort to stay with the law.

Mr. Hammack said the applicant indicated that he would move the fence back. Ms. Pickering asked how come he hadn't moved it yet, and why it was 7 feet in height bordering her side.

Tommy Steadman came forward to speak in opposition stating that he didn't care for the fence being as high on Wellington Road, and if it was up to him, he would take a chainsaw and cut it down himself.

Mr. Daley stated in his rebuttal that everything was done in good faith. He said he wasn't clear about the guidelines for a thoroughfare. He said it would be a tremendous effort to reconstruct the fence. Mr. Daley acknowledged that he had made a mistake.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny VC 99-V-017 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT F. DALEY, VC 99-V-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height to remain in front yards of a corner lot. Located at 7976 Bolling Dr. on approx. 13,817 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 180. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land
2. The applicant has not met the required standards for a variance.
3. There is a question whether the applicant acted in good faith.
4. There is a sight problem and moving the fence back 10 feet would not help.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Kelley seconded the motion which carried by a vote of 6-0. 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 May 5, 1999.

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Page 522, April 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD W. FIELDS, SP 99-V-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 ft. from side lot line. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38. (Concurrent with VC 99-V-024).

9:00 A.M. RICHARD AND KAREN FIELDS, VC 99-V-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in

height in a side yard. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 100-2 ((1)) 38. (Concurrent with SP 99-V-012).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Carson Lee Fifer, 8280 Greensboro Drive, McLean, Virginia, replied that it was.
Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a reduction to minimum yard requirements based on error in building location to permit an accessory structure (pergola) to remain 4.4 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, the amount of error was 10.6 feet or 70%. The applicant also requested a variance to permit fences greater than 4 feet in height in the front yard and greater than 7 feet in height in a side yard. A maximum fence height of 4 feet is permitted in a front yard; therefore, a variance of 3.5 was requested. A maximum fence height of 7 feet is permitted in a side yard; therefore, a variance of 2.3 feet was requested.

Mr. Fifer, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He said most of the fence in the front yard was in compliance and to alter it would cause destruction of a wall. Mr. Fifer said the fence was built with permits but that the pergola was not. He said the applicants thought construction of the pergola required no building permits. He said the pergola could not be moved towards the house because there would not be any walking area and trying to move it would destroy it all together. Mr. Fifer stated that the pergola was placed in a location not detrimental to neighbors and to function in conjunction with the pool.

Chairman DiGiulian called for speakers.

General Noah, the neighbor next door, came forward to speak in opposition. He noted that he submitted a letter to the BZA which contained the reasons he requested denial of the subject application. Mr. Noah stated that the applicant cut down boundary trees on his property. He said the pergola was constructed in January and a permit was never obtained for it. Mr. Noah said he wanted the applicant to be in compliance with the Code and felt that he didn't act in good faith.

William Vodra, 913 Arcturus on the Potomac, came forward to speak in opposition stating that the applicants no longer resided on the property and the property was not aesthetically pleasing to the neighbors.

June Kalijarvi, 814 Arcturus on the Potomac, came forward to speak in opposition stating that ignorance of the law was not an excuse. She said the pergola did not serve any purpose because the applicant no longer resided there. Ms. Kalijarvi stated that the applicant was trying to maximize the profit for the property.

Jane Reese, 824 Arcturus on the Potomac, came forward to speak in opposition stating that the pergola was 10-15 feet in height which was hardly a good faith effort.

Priscilla Noah, 820 Arcturus on the Potomac, came forward to speak in opposition stating that the fence was perched on a stone wall. She submitted photographs to the BZA. Ms. Noah said the pergola was less than 5 feet from her property line and the applicant's could have positioned it in their own yard near the river.

Mr. Fifer stated in his rebuttal that the conflict between neighbors was unfortunate but that corrective action would be expensive. He said the applicant did not reside on the property but that his current dwelling was for sale.

Mr. Kelley asked if the boathouse was approved under a different owner. Mr. Fifer replied yes and that the applicant had not altered the boathouse.

Chairman DiGiulian closed the public hearing.

Mr. Dively said his instinct was to let people obtain full use of their property, but the pergola looked very busy and was just for convenience. He said a hardship is not defined in the Ordinance by finance. Mr. Dively stated that there was no justification for the height of the fence. He moved to deny SP 99-V-012 and VC 99-V-024 for the reasons noted in the Resolution.

Mr. Kelley opposed the motion stating that the land rolled and was higher in some places than others and that part of the application shouldn't be denied.

Mr. Hammack said the fence was somewhat of a convenience and should be lowered in certain parts.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD W. FIELDS, SP 99-V-012 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 ft. from side lot line. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 38. (Concurrent with VC 99-V-024). 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, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

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 Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD AND KAREN FIELDS, VC 99-V-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences greater than 4.0 ft. in height in front yard and greater than 7.0 ft. in height in a side yard. Located at 816 Arcturus on the Potomac on approx. 41,871 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-2 ((1)) 38. (Concurrent with SP 99-V-012). 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, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not met the required standards for a variance.
3. Financial hardship is not addressed in the Zoning Ordinance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Kelley and Mr. Hammack voted nay. Mr. Pammel was absent from the meeting

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1999.

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Page 525, April 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE GROW AND DJAHDIN YURNILAWATI, SP 99-L-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.2 ft. from rear lot line. Located at 5300 Trumpington Ct. on approx. 9,252 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12))(44) 37.

continued from Page 525

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pam Smith, 5515 Security Lane, Rockville, Maryland, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit reduction to minimum yard requirements based on error in building location to permit a deck to remain 3.2 feet from the rear lot line. A minimum rear yard of 5 feet is required; therefore, the amount of error was 1.8 feet.

Ms. Smith, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said the applicant's purchased the property with the deck already built. Ms. Smith said the deck did not infringe on any other property.

Chairman DiGiulian asked how the error was discovered. Ms. Wilson replied that the house inspector indicated that the deck was too close to the lot line.

There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 99-L-008 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE GROW AND DJAHDIN YURNILAWATI, SP 99-L-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 3.2 ft. from rear lot line. Located at 5300 Trumpington Ct. on approx. 9,252 sq. ft. of land zoned PDH-4. Lee District. Tax Map 91-2 ((12))(44) 37. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck shown on the plat prepared by BC Consultants, dated February 18, 1998, 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. 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 May 5, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 527, April 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. LOUIS S. POLSTER, SP 98-V-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 3.5 ft. from side lot line. Located at 2205 Martha's Rd. on approx. 15,990 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 111. (Continued from 4/20/99 for decision only)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barry Bedford came forward and indicated to the Board that the subject application was before the Board for decision only. He said Mr. Polster retained him recently because he felt he didn't adequately address the Board at the previous hearing due to trouble speaking in a public forum. He said the history of the case dated back to 1996 when a complaint was filed by his then neighbor who objected to a shed that he had built in his back yard. Mr. Polster had contacted the County to see whether a building permit was required and it was his understanding that no permit would be required for the type of shed that he was building. Mr. Polster received approval from the homeowners association for the construction of the shed. Mr. Bedford said the applicant reduced the height of the shed since the previous public hearing, but there was still an issue with the side yard because of the topography. He said the neighbors who had complained had since moved. Mr. Bedford said the shed was not out of character with the neighborhood.

Susan Langdon, Chief, Special Permit and Variance Branch, said the application was deferred because the BZA had questions that staff couldn't answer at that time.

Mr. Hammack said he was curious as to why the applicant was allowed to submit his current application after being previously denied.

Jane Gwinn, Zoning Administrator, stated that the applicant made modifications to reduce the height and

indicated to the zoning inspector, Rebecca Goodyear, that he was trying to bring the addition into compliance and reapply for a special permit.

Mr. Hammack asked why the application was accepted and the applicant still wasn't in compliance.

Ms. Gwinn said there was no basis to refuse the application. She said the applicant indicated a willingness to comply with the Ordinance

Mr. Kelley moved to deny SP 98-V-065 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

LOUIS S. POLSTER, SP 98-V-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 3.5 ft. from side lot line. Located at 2205 Martha's Rd. on approx. 15,990 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 111. (Continued from 4/20/99 for decision only). 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 27, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has not presented testimony indicating compliance with the required standards for a variance.
3. The applicant has not made alterations sufficiently to keep the shed and be in compliance with zoning requirements.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

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 May 5, 1999.

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Mr. Dively moved that staff prepare a report about the guidelines for enforcement actions and submit to the BZA within a month. The motion carried by a vote 6-0. Mr. Pammel was absent from the meeting.

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Page 528, April 27, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ERIC W. GARAND, A 1999-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance.

Determination that appellant is operating an off-street commercial parking lot and has denuded approx. 3,168 sq. ft. in area on the property without obtaining appropriate plan approvals and without installing proper erosion and sediment controls, all in violation of Zoning Ordinance provisions. Located at 2932 Fairlee Dr. on approx. 20,000 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((6)) 35.

William Shoup, Deputy Zoning Administrator, indicated that the notices were not in order. He said the appeal pertained to a December 18, 1998, Notice of Violation for operating a commercial parking lot on residential property and for graveling over a portion of the front yard to create the parking lot. Mr. Shoup said there were concerns about the appellant's failure to send the notices and the delay in the process. He said about the time the notices were due to be sent, staff received a call from the appellant's wife indicating that the appellant was out of the country and wasn't able to do the notices before he left. Mr. Shoup said staff questioned the effort made to satisfy the notice requirement. He noted that this particular violation had no other remedy and there was substantial neighborhood concern about the activities. Mr. Shoup said considering the nature of the violation and the questionable effort to send the notices, staff recommended dismissal of the appeal.

Eric Garand, 2932 Fairlee Drive, said part of the reason he did not send the notices was that he gave the Zoning Enforcement office permission to visit his property to take additional measurements. He said he was left with the impression that they would contact him with additional information. Mr. Garand said he had every expectation that this process would be resolved. He said it was absolutely baseless and they didn't read their own regulations. Mr. Garand said it was all incorrect and he was present to refute their claims.

Chairman DiGiulian told the appellant if he was going to do that, he needed to send out the notices.

Mr. Garand said he anticipated that the issue would be dropped.

Mr. Hammack told the appellant that he appealed the determination and if he wanted to drop it, he could withdraw the appeal.

Mr. Garand said he expected the complaint to be dropped.

Mr. Shoup said the purpose for being on the appellant's property was that staff wanted to confirm the measurements of the parking lot that he created on the site, but at no time did staff indicate that it would result in the violation being dropped.

Mr. Kelley asked the appellant if he operated a parking lot. Mr. Garand said he did not.

Mr. Hammack asked about the brochures and flyers as contained in the staff report. Mr. Garand said his original intent was to charge people for parking, but that was not what it turned out to be.

Mr. Hammack asked if he was doing it for free. Mr. Garand responded, absolutely.

Mr. Hammack asked if the appellant had proof. Mr. Garand asked if he needed to prove it. He added that he could obtain affidavits from the people who parked there.

Mr. Dively moved to dismiss the appeal. Mr. Ribble seconded the motion.

Mr. Hammack opposed the motion stating that the Board always allowed at least one deferral and in a case such as this, a serious violation, he'd like the appellant to have the opportunity to demonstrate the validity of his position.

Ms. Gibb said she was uncomfortable when the appellant benefits from not having notices in order.

Mr. Hammack said he agreed with Ms. Gibb, but the only purpose for deferring the appeal was to have a hearing on the merits of the appeal and an appeal on his part would not be made simply with respect to the Board denying him the right to have a hearing on the merits. He said it was just a matter of getting to the real issues of the case rather than dismissing it on a procedural issue.

Mr. Dively said there was distinction that the Board should apply. He said the Board usually granted deferrals, but those notices were not in order not because of a good faith effort, but because a small technical problem arose. Mr. Dively said this wasn't a case of technical deficiencies, it was a failure to issue notices and that's quite a bit different.

Mr. Kelley asked Mr. Shoup if the appellant was still in violation if he did not charge for parking. Mr. Shoup said if the appellant was not charging for parking it would not be considered a commercial parking lot and would not be in violation.

The motion failed for lack of 4 votes. Chairman DiGiulian, Mr. Hammack and Ms. Gibb voted nay. Mr. Pammel was absent from the vote.

Mr. Hammack moved to defer the appeal to June 1, 1999 at 9:30 a.m., noting that if notices were not sent out, the appeal would be dismissed. Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Kelley voted nay. Mr. Pammel was absent from the meeting.

Mr. Kelley said the Board was making a terrible mistake in allowing someone to profit from disregarding the rules of the County and of the Board.

Chairman DiGiulian said he agreed with that statement but he didn't know for a fact that the appellant was doing that.

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Page 530, April 27, 1999, (Tape 1), After Agenda Item:

Approval of February 16, 1999 Minutes

Mr. Ribble moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 530, April 27, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration
Oscar Sahonero, SP 99-P-006

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant was present. The request died for lack of interest and therefore, the request was denied.

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Page 530, April 27, 1999, (Tape 1), After Agenda Item:

Approval of April 20, 1999 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 530, April 27, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
Temple Baptist Church, SPA 85-D-009-5

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the subject application was scheduled for June 29, 1999. She said staff had administratively moved the application up one week, but

they needed time to circulate the plat and other information to other staff. Ms. Langdon indicated that this application would need to be staffed and pre-staffed and two months was a very short time period.

Mr. Dively asked what was the earliest date. Ms. Langdon replied that the week prior had one opening.

Mr. Dively asked Jane Kelsey, Agent, what date would she request.

Ms. Kelsey stated that Pastor Pittman indicated he needed the earlier date because he needed to do all the things necessary to get the additional students enrolled in the school. She said that was the reason they asked for June 8, 1999. Ms. Kelsey stated that she realized this was an imposition on staff; however, the request was just to increase the number of students.

Ms. Langdon noted that staff was currently preparing notices for June 22, 1999. She said all the notices had already gone out for all the previous dates and they were all full.

Mr. Dively said he was aware of the irony of the fact that Ms. Kelsey was present to ask that the Board move the date up when she used to ask the Board not to move the date up. He moved to approve the request and schedule the public hearing on June 8, 1999.

Mr. Langdon stated that date was very soon and the application needed to be staffed and pre-staffed and circulated to other agencies which makes it very difficult.

Mr. Hammack stated that in Ms. Kelsey's letter it said that the Pastor would be on vacation between June 8th and June 15th, and when would he take action if it's granted on June 8th?

Ms. Kelsey said the Pastor had turned the next steps over to some of his deacons.

Ms. Langdon noted that the case has history with transportation issues, and this is a request for an increase in the number of students. She said she would imagine those issues would surface again.

Mr. Hammack said he wasn't sure that June 22, 1999 wouldn't be adequate enough time to accomplish the church's goals.

There was no second and the motion carried by a vote of 4-2. Mr. Hammack and Ms. Gibb voted nay. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:33 a.m.

Minutes by: Regina Thorn

Approved on: July 27, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, May 4, 1999. The following Board Members were present: Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; John Ribble; and James Pammel; Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:06 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 533, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ST. JOHN NEUMANN CHURCH, SPA 80-C-096-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-C-096 for church and related facilities to permit building additions and site modifications. Located at 11900 Lawyers Rd. on approx. 17.95 ac. of land zoned R-2. Hunter Mill District. Tax Map 26-3 ((1)) 5A. 5-11-99 (MOVED 4/6/99).

Vice Chairman Ribble referred to a letter from the applicant's agent requesting a deferral to May 11, 1999. Mr. Hammack voiced his concern over whether a week would resolve all of the issues or if an extended amount of time was needed. Mr. Dively suggested a two week deferral.

Mr. Hammack asked staff if one week would be enough time for them to review the new plats that were submitted. Phyllis Wilson, Staff Coordinator, replied that the latest revision was evaluated in the addendum that was handed out that morning. She said there was some anticipation of another revised plat and revised development conditions, and as soon as she received this information it would be addressed in another addendum, if possible due to the short time frame.

Mr. Pammel moved to defer the above referenced application to May 11, 1999 at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 533, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT C. AND HELEN F. HARRISON, SP 99-D-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 415 Walker Rd. on approx. 5.77 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 37.

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. Grayson Hanes, Hazel & Thomas, PC, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for the construction of an additional dwelling to be located on the application site sufficient in size to designate the existing dwelling as the accessory dwelling unit.

Mr. Hanes presented the special permit request as outlined in the statement of justification submitted with the application. He submitted three letters of support from adjoining property owners along with a change to Development Condition #2. He informed the Board that the square footage shown on the plat for the primary dwelling unit was too large and he wanted to add language to the development conditions to allow for smaller square footage in the primary dwelling unit, but still meet Zoning Ordinance requirements.

Mr. Hanes stated that the home had been in the family for forty years and the reason for the additional dwelling was to allow the applicants to care for their elderly mother. He said the application met all of the Zoning Ordinance criteria and requirements.

Mr. Hammack asked if the applicants understood the severe restrictions on the use of the property as an accessory dwelling unit and if they were aware of the condition which would restrict the sale to future owners. Mr. Hanes replied that the applicants were aware of these restrictions and were in accordance with them.

Ms. Gibb asked how many bedrooms the existing dwelling contained. Mr. Hanes answered that currently

there were three bedrooms, but they would change one of them into an office or den when the construction began.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 99-D-011 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT C. AND HELEN F. HARRISON, SP 99-D-011 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 415 Walker Rd. on approx. 5.77 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 37. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 415 Walker Road, 5.77 acres, and is not transferable to other land.

2. This Special Permit is approved for the purpose(s), structures and/or use(s) shown on the plat prepared by Runyon, Dudley, Associates, Inc., dated through February 5, 1999, submitted with this application and approved with this application, as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for the accessory dwelling unit.

3. A copy of this Special Permit and the Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The 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.

5. The existing dwelling unit shall be converted to contain no more than 2 bedrooms prior to, and as a condition for, issuance of the Residential Use Permit for the proposed new primary dwelling unit.

6. There shall be a minimum of 4 parking spaces provided on the site as shown on the special permit plat.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon notice and the accessory dwelling unit shall meet the applicable Ordinance standards and regulations.

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. Should the property sell, the only use for the accessory dwelling unit is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance.

10. The limits of clearing and grading shall be established to the satisfaction of the Department of Public Works and Environmental Management (DPWES).

11. The principle dwelling unit may be less than 13,786 gross square feet, but shall be a minimum of 65% larger in floor area than the accessory dwelling unit.

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 Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of the expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 535, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JON M. AND PAMELA K. YEREB, VC 99-L-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line and a basketball standard to remain 14.4 ft. from front lot line and 3.0 ft. from side lot line. Located at 4617 Winston Pl. on approx. 12,683 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((6)) 54.

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. Jon Yereb, 4617 Winston Place, Alexandria Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of an addition 6.6 feet from the side lot line and a basketball standard to remain 14.4 feet from the front lot line and 3.0 feet from the side lot line. A side yard of 12 feet is required; therefore, a variance of 5.4 feet was requested for the addition. The Zoning Ordinance allows basketball standards in the front yard of lots less than 36,000 square feet in size, but requires the standard to be located no closer than 15 feet from the front lot line or 12 feet from the side lot line; therefore, a variance of 0.6 feet was requested in the front yard and 9 feet was requested in the side yard.

Mr. Yereb presented the variance request as outlined in the statement of justification submitted with the application. He stated that he wished to keep the basketball standard for recreational use and that the addition would be architecturally similar to the existing home. Mr. Yereb explained to the Board that his house was located on a very narrow portion of the lot and all of the water and sewer lines ran through the concrete slab that the house rested on; therefore, making it impossible to put an addition on any other portion of the house.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 99-L-023 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JON M. AND PAMELA K. YEREB, VC 99-L-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from side lot line and a basketball standard to remain 14.4 ft. from front lot line and 3.0 ft. from side lot line. Located at 4617 Winston Pl. on approx. 12,683 sq. ft. of land zoned R-3. Lee District. Tax Map 92-1 ((6)) 54. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of the variance.
3. The topographic conditions, the irregular shape of the lot and the fact that the applicant would be unable to enlarge the dwelling in any other direction than that proposed by the variance application create a hardship.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and for a basketball standard to remain as shown on the plat prepared by Kenneth W. White, dated October 6, 1998, as revised through February 3, 1999 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. 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 12, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 537, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MELVIN F., III, KIMBERLY LYNN AND NADEAN B. WESLEY, SP 99-D-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 612 Walker Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((1)) 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. Keith Martin, Walsh, Colucci, et. al., 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow an accessory dwelling unit, which would involve the construction of a new single family dwelling on the site and the conversion of the existing dwelling into an accessory dwelling unit. Ms. Schilling noted a correction in the development conditions replacing Non-Residential Use Permit with Residential Use Permit.

Mr. Martin presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the property had been in the family for a number of years and the reason for the special permit was to be able to provide care for the applicants' elderly mother. He said that the application

met all of the Zoning Ordinance criteria and that it was in harmony with the neighborhood. Mr. Martin requested an addition to the development conditions to allow for smaller square footage in primary dwelling unit, but to still meet Zoning Ordinance requirements.

Mr. Hammack asked if the applicants understood the severe restrictions on the use of the property as an accessory dwelling unit and if they were aware of the condition which would restrict the sale to future owners. Mr. Martin replied that the applicants were aware of these restrictions and were in accordance with them.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Dively moved to approve SP 99-D-009 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MELVIN F., III, KIMBERLY LYNN AND NADEAN B. WESLEY, SP 99-D-009 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 612 Walker Rd. on approx. 4.0 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((1)) 31. 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 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 612 Walker Road (4.0 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Reid M. Dudley, P.E. dated December 31, 1998, as revised through March 19, 1999, and approved with this application, as qualified by these development conditions. These conditions shall be recorded among the land records of Fairfax County for the accessory dwelling unit.

3. A copy of this Special Permit and the Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The 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.

5. The accessory dwelling unit shall contain no more than 2 bedrooms.

6. There shall be 4 parking spaces provided on the site as shown on the special permit plat.

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 regulation 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. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance.

10. The principle dwelling unit may be less than 7,000 square feet, but shall be a minimum of 65% larger in floor area than the accessory dwelling unit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty(30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 12, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 539, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MATTIE PETTY-HUNTER, SP 99-B-010 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 21.8 ft. from street line of a corner lot. Located at 9025 Orange Hunt Ln. on approx. 14,729 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 24. (Concurrent with VC 99-B-021).

MATTIE PETTY-HUNTER, VC 99-B-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line, accessory structures to remain in front yard of a lot containing less than 36,000 sq. ft. and shed to exceed 200 sq. ft. Located at 9025 Orange Hunt Ln. on approx. 14,729 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 24. (Concurrent with SP 99-B-010).

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. Jeffrey Hunter, 9025 Orange Hunt Lane, Annandale, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow a deck to remain 21.8 feet from the street line of a corner lot and a variance to construct a screen porch addition 7.8 feet from the side lot line and accessory structures, consisting of a swing set and shed, to remain in the front yard of a lot less than 36,000 square feet, and for this shed to exceed 200 square feet. The minimum required front yard is 30 feet; therefore, the amount of error for the deck is 8.2 feet or 27%. The minimum required side yard is 12 feet; therefore, the amount of the variance for the screened porch addition is 4.2 feet. The shed is 204 square feet, while the Zoning Ordinance requires sheds not to exceed 200 square feet; therefore, a variance of 4 square feet was requested.

Mr. Hunter presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He informed the Board that the structures he wanted to replace were on the property when it was purchased and when the original deck was torn down he was unaware that it was in violation.

Ms. Gibb clarified that a variance was needed to move the swing set to a new location and that the screened porch he wanted to add was to replace the deck that he had torn down. Mr. Hunter replied that was true.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve SP 99-B-010 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTIE PETTY-HUNTER, SP 99-B-010 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 21.8 ft. from street line of a corner lot. Located at 9025 Orange Hunt Ln. on approx. 14,729 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 24. (Concurrent with VC 99-B-021). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck shown on the plat prepared by Robert J. Simpson, Land Surveyor, dated September 29, 1998 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.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 12, 1999. This date shall be deemed to be the final approval date of this special permit.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTIE PETTY-HUNTER, VC 99-B-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line, accessory structures to remain in front yard of a lot containing less than 36,000 sq. ft. and shed to exceed 200 sq. ft. Located at 9025 Orange Hunt Ln. on approx. 14,729 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 24. (Concurrent with SP 99-B-010). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant indicated that the property had all of these structures when it was purchased.
3. The lot is surrounded by streets and the variances are very minor in nature.
4. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch, shed, and swing set shown on the plat prepared by Robert J. Simpson, Land Surveyor, dated September 29, 1998 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the screened porch prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 543, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FREDERICK J. AND ELLEN K. DEFILIPPIS, VC 99-M-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 8 ft. 11 in. and 12 ft. 9 in. from side lot lines. Located at 4135 Old Columbia Pk. on approx. 9,640 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 36.

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. Ellen Defilippis, 4135 Old Columbia Pike, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit construction of a deck 8.11 feet from the eastern side lot line and 12.9 feet from the western side lot line. A minimum side yard of 15 feet is required; therefore, variances of 6.1 feet and 2.3 feet were requested.

Ms. Defilippis presented the variance request as outlined in the statement of justification submitted with the application. She stated the reason for the variance was that the home was over fifty years old, the lot was too long and narrow and did not meet the current standards. Ms. Defilippis requested that the Board waive the eight day waiting period.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve VC 99-M-026 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FREDERICK J. AND ELLEN K. DEFILIPPIS, VC 99-M-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 8 ft. 11 in. and 12 ft. 9 in. from side lot lines. Located at 4135 Old Columbia Pk. on approx. 9,640 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 36. 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 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of the variance.
3. The lot has exceptional narrowness.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a deck as shown on the plat prepared by Cutis L. McAllister, dated August 18, 1998 and revised by Walter D. Neale, registered architect, dated February 17, 1999, 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

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley moved to waive the eight day waiting period. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 4, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARGARET B. GOLDMAN, VC 99-Y-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.6 ft. from front lot line and 6.0 ft. high fence to remain in the front yard. Located at 13600 Gladwyn Ct. on approx. 10,030 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 159.

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. Jim Garner, Patio Enclosures, 6826 Hillpark Drive, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 15.6 feet from the front lot line and a 6.0 foot high fence to remain in the front yard. The maximum height permitted for a fence is 4 feet and the minimum front yard required is 20 feet; therefore, variances of 2.0 feet for the fence, and 4.4 feet for the addition were requested

Mr. Garner presented the variance request as outlined in the statement of justification submitted with the application. Mr. Garner informed the Board that, according to the plat, the house had two front yards and the six foot fence was put up to block headlights shining in through the back of the house. He explained to the Board that the stairs and landing from the house needed to be interior to provide the applicant with a protected ascent and descent, and to accommodate for this, the sunroom had to be the dimensions it was.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve VC 99-Y-028 for the reasons stated in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET B. GOLDMAN, VC 99-Y-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.6 ft. from front lot line and 6.0 ft. high fence to remain in the front yard. Located at 13600 Gladwyn Ct. on approx. 10,030 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 34-4 ((10)) 159. 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 4, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. Ms. Goldman's property is a thru lot and the front yard is actually a functional rear yard that backs up to a very busy thoroughfare.
4. The 6 foot fence will not have a detrimental affect on any adjoining property owner nor will the granting of 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition and fence as shown on the plat prepared by Dennis P. Corl, dated February 17, 1999, 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 architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 546, May 4, 1999, (Tape 1), Scheduled case of:

9:00 A.M. VIRGINIA PRESBYTERIAN CHURCH, HIE C. KIM AND WON KIL PAIK, SPA 90-L-050 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 90-L-050 for church and related facilities to permit trailer and site modifications. Located at 6021 Franconia Rd. on approx. 2.32

ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((2)) 5A.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Flood, 4425 Middleridge Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow a classroom trailer on site. The classroom trailer would allow space for the church's youth group. The maximum number of children would be 35 and the hours of operation would be between 6:00 p.m. and 10:00 p.m. on Friday evenings and from 11:00 a.m. to 1:00 p.m. on Sunday.

Mr. Flood presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the reason for the request was to provide more comfortable space for the youth group students to worship and the current room that they were using was very crowded. He informed the Board that; at the time, the congregation had not shown any appreciative growth and the trailer would only be needed until funds were raised to build an addition onto the church. Mr. Flood said that the church was actively working with neighbors to find solutions to their concerns.

Mr. Hammack stated that upon review of the 1991 development conditions the church had been aware of restrictions on the proposed growth and use of the property and asked what had changed to require the need for the trailer if the congregation had not increased since 1991. Mr. Flood reiterated that the room the youth group was currently using was very small for the number of students and, as the church was not growing in numbers, they were merely trying to spread out the congregation that they had.

Mr. Hammack asked how long the trailer would be needed. Mr. Flood replied that if the special permit amendment was approved they would have an addition to the church built before the 5 year term of the permit expired.

William Harrison, 5918 Ridge Ford Drive, Burke, Virginia stated that he was the Youth Pastor at the church and had been for the past five years. He informed the Board that although the congregation was not increasing, the youth group was, due to the children moving up in grades each year from elementary school into the youth group, which consisted of junior high and high school students. He stated that the current enrollment of students was 25 and the number could go as high as 30 when there were visitors. Mr. Harrison stated that approval of this trailer would be most beneficial for the church and for the students.

Mr. Pammel referred to a letter in opposition from a neighbor that stated the church had not complied with the conditions from the original permit that was approved in 1991 with relation to plantings and the removing of transitional screening. He also mentioned when the structure, under the original permit, was maxed out, it was understood by the community that there would be no further expansions. Mr. Flood replied that the church was not maxed out and that there was still ample room inside for at least 70 parishioners. He reiterated that he had met with the surrounding neighbors and discussed the violations of the original permit and that the church was willing to resolve the issues. Mr. Flood informed the Board that he had met with a forestry agent because there were water problems at one end of the site; therefore, keeping the vegetation alive was difficult. He stated that he had looked into one complaint from a neighbor regarding the lighting in the parking lot and that the current lighting was County approved.

Vice Chairman Ribble called for speakers.

William H. Higham, Jr., 6214 Higham Drive, Franconia, Virginia, stated that he was also speaking on behalf of his father who lived at 6001 Franconia Road, Franconia, Virginia. Mr. Higham said that while they had no objection to the trailer, they felt that the church had not abided by the conditions of the original permit. He referred to the Resolution that called for screened planting along the east of the property and to the immediate replacement of the plantings should they die, depending on plant availability and the weather conditions. Mr. Higham informed the Board that, at the current time, there were 31 dead or missing trees along the east side of the property and that in 1995 someone from the church cut down 17 of the Austrian Pine trees. He said that, after intervention by the County, 14 of the trees were replaced, not with Austrian Pine, but with White Pine trees which, upon maturity, would cause a 60 foot shade barrier that was not agreeable to the neighbors. Mr. Higham also referred to a condition that called for low intensity downward

facing lighting in the parking lot. He said that at the current time the lighting was horizontal and shined out instead of down.

Herbert Higham, 6208 Higham Drive, Franconia, Virginia, stated that he lived adjacent to the property. Mr. Higham requested that the Board defer the application until the development conditions from the original permit were met and asked that a narrow time table be implemented with regard to the trailer.

Mr. Flood stated, in his rebuttal, that the church had agreed to replace plantings along the east end of the property, that they were unintentionally cut down by a member of the church, and that the development conditions of the original permit did not specifically state that Austrian Pines be planted, but they were willing to put some back in that area. He said that the current lighting in the parking lot depicted what was approved by the County, but to appease the opposing neighbors, the church would change the lighting closest to their homes.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel stated that he had serious concerns regarding the application and that the conditions proposed in the original permit were not to be taken lightly. He said that conditions that were agreed upon as part of the permit had to be followed, that there had been a lack of good faith and, as a result, the adjoining neighbors were impacted. Mr. Pammel noted that the County may have made an error when they approved the lighting, but that it was clear in the specifications that the lights were to be downward facing. Mr. Pammel moved to deny the application due to the fact that he did not feel comfortable approving the trailer until there was a more deliberate attempt to comply with the standards set in the original permit.

Mr. Kelley seconded the motion but suggested a deferral of 6 months rather than have the applicant go through the expense of another special permit. Mr. Pammel stated that this application was a clear cut example of non-compliance and that action should be taken to deny and waive the 12 month period.

Mr. Dively suggested a status review set for 2 months to see if the lighting and planting issues were resolved.
Mr. Hammack voiced his concern that the church had no firm plans to begin construction to replace the trailer and there were churches out there applying for additional time that had never initiated construction. He said that this practice had become a pattern and he had reservations about approving such a large trailer for a temporary time period.

Mr. Kelley made a substitute motion to defer the application for six months. Mr. Dively seconded the motion which carried by a vote of 5-1. Mr. Pammel voted nay and Chairman DiGiulian was absent from the meeting. The application was scheduled for October 5, 1999, at 9:00 a.m.

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Page 548, May 4, 1999, (Tape 2 and 3), Scheduled case of:

9:30 A.M. HUNTER MILL EAST, LLC, JINDO & YOUNGHEE KIM, A 1997-HM-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants have established uses authorized by SPA 91-C-070-2 without a Non-Residential Use Permit (Non-RUP), and that the uses are not in compliance with Special Permit Conditions 7, 9, 16 and 20, all in violation of Zoning Ordinance provisions. Located at 1627 Hunter Mill Rd. on approx. 46.29 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, and 5. (RESCHEDULED FROM 3/10/98; DEFERRED FROM 7/7/98 and 8/25/98; RECONSIDERATION OF TREE ISSUE ONLY GRANTED ON 12/8/98).

William E. Shoup, Deputy Zoning Administrator, made staff's presentation as contained in the staff report. Mr. Shoup noted that this hearing was a reconsideration of the November 17, 1998, decision to uphold the November 12, 1997, Notice of Violation pertaining to the appellants' golf driving range use. He stated that the reconsideration was limited only to the landscaping issue that was cited in the Notice of Violation and it was staff's position that the appellants were in violation of the Zoning Ordinance provision for failure to comply with Condition #9 of the currently applicable special permit; SPA-91-C-070-2.

Mr. Shoup referred to the basis of staff's position in his April 26, 1999 memorandum. He noted that the case was not about the total number of trees that were on the site or what may have occurred when the Non-Residential Use Permit (Non-RUP) was issued for the original operation of the use, but a condition that was imposed by the Board of Zoning Appeals (BZA) in the special permit amendment (SPA) that authorized the lighting of the driving range and the intensification of the use. He said that Condition #9 required additional plantings to be provided using site plan number 8646-SP-01 as the controlling document for that additional planting, and they were to be provided within 6 months of the approval of the SPA, which occurred in March of 1997.

Mr. Shoup informed the Board that there were a total of 303 plantings that were missing on site. These plantings consisted of 179 trees and 124 landscape shrubs. He stated there were 30 trees missing around adjoining Lot 22 and 63 trees were missing along the Dulles Toll Road side of the property. He noted that Mr. Thoburn had presented arguments of why he should not have to plant the trees and shrubs, but stated that staff's position was that Condition #9 was specific.

Mr. Shoup said the plantings had to be provided within 6 months of the SPA approval and the condition did not provide for a delay in planting because the appellant chose not to pursue construction of new berms or a new clubhouse. Mr. Shoup noted that a large portion of the plantings that needed to be planted would not be impacted by any future development on the site.

Mr. Shoup requested that the Board uphold the 1997 Notice of Violation regarding the landscaping issues due to the above stated circumstances and the fact that the violation had gone unresolved for nearly 18 months.

Mr. John Thoburn stated that he had filed an amended SPA that addressed the issues at hand, which went before the Board in February and failed due to lack of votes. He stated that the traffic study, which the Board requested in February, was in progress as well as a new lighting study and expected to be completed within the following month. Mr. Thoburn informed the Board that he expected to reapply within sixty days; therefore, he requested a deferral of the appeal for 90 days so that it would be concurrent with the new SPA application. He then requested an interpretation of Condition #9, if the application was not deferred.

Mr. Thoburn stated that he objected to planting transitional screening that would, at some point in the future, be bulldozed upon new construction. He stated that the Dulles Toll Road did not need any further transitional screening and the trees would be bulldozed when the additional berms were constructed. He suggested instead, to plant these trees along Crowell Road and said that the trees would be beneficial to the neighborhood.

Mr. Thoburn said he had gotten two minor site plan amendments to build a deck and a ball wash deck onto the clubhouse where the site plan had called for shrubs to be planted but the berries that the shrubs produced were toxic and as a result the shrubs had never been planted.

Ms. Gibb asked staff what the appellant should have done when he realized the problem with the shrubbery. Mr. Shoup replied that he should have raised the issues before the SPA was approved and at this time, the appellant needed to either plant the shrubs or amend the plan. Mr. Thoburn stated that he had applied for an amendment and the Board had denied that application.

Mr. Dively asked staff's opinion regarding the reasonableness of the locational shifts. Mr. Shoup referred the question to Cecilia Lammers, Chief of the Urban Forestry Branch. Ms. Lammers answered that they were not reasonable and not in conformance with the plan. She informed the Board that the SPA landscape plan was very specific regarding what was supposed to be planted and where, and that the southern and eastern property lines were not provided with screening.

Ms. Lammers pointed out that there were a considerable number of the plant materials that could have been installed at the present time that would not impact any future development on the site.

Mr. Shoup stated that because the original site plan was used as a guide for establishing where the plantings had to go, any discussion of locational shifts was not relevant of how to implement Condition #9. Ms. Lammers added that any discussion of locational shifts occurred before Condition #9 came into existence and that Condition #9 came into effect because there were noted deficiencies.

Mr. Dively asked Mr. Thoburn if he agreed that there were places that plantings could have been put that would not be affected by further development. Mr. Thoburn disagreed and stated that the plantings could not go in the areas that were discussed.

Vice Chairman Ribble called for speakers.

Ron Stanton, 10309 Browns Mill Road, Vienna, Virginia, encouraged the Board to deny the application and stated that the applicant did not comply with the development conditions.

Jody Bennett, 1459 Hunterview Farms, Vienna, Virginia, stated that the evidence in the record illustrated that Mr. Thoburn had successfully used delay tactics to achieve his goal in getting repeated deferrals. She requested that the Board uphold the determination of the Zoning Administrator and bring the appellant into compliance.

Bruce Bennett, 1459 Hunterview Farms. Vienna, Virginia, urged the Board to support the staff and to uphold the determination of the Zoning Administrator.

Don Skidmore, 10900 Equestrian Court, Reston, Virginia, voiced his frustration regarding the deferrals of the appeal and stated that it was about time the Board brought an end to the deferrals.

Mr. Thoburn stated, in his rebuttal, that no adjoining homeowners spoke in opposition and that he had been sensitive with the transitional screening. He said that the people who spoke in opposition were not directly affected by the use and were just trying to make him spend money.

Mr. Pammel asked what in the nature of landscaping would be on the revised plan for the western and southern boundaries where VDOT had indicated road improvements. Mr. Thoburn replied that the revised plan would not reflect any additional plantings, due to the fact that there was substantial landscaping and berming along those boundaries.

Vice Chairman Ribble closed the public hearing.

Mr. Dively explained that although there had been a number continuances and delays, everything that had been in before the Board had been ruled on and was done except the issue of the trees. He stated that he did not want to force the planting of trees that would eventually have to be torn up and he didn't think there was anything that the Board could do that would terminate the case at that time. Mr. Dively moved to continue the appeal for 60 days. Mr. Kelley seconded the motion.

Ms. Gibb mentioned that they had been waiting for 18 months to get the SPA plat. She stated that the planting of at least some shrubbery that would not be impaired by future development would have been a sign of good faith and that was not done. She said that due to all of the delays, a tremendous amount of time and manpower had been wasted and she felt that an additional 60 days to prepare another plan was not deserved.

Mr. Pammel explained the normal way to address issues when an appellant does not agree with conditions that have been applied was to prepare a site plan amendment and report to the Board why the conditions did not seem reasonable, and instead of following the normal process, Mr. Thoburn appealed the decisions. Mr. Hammack said that it had been 8 years since Condition #9 was imposed at the request of Mr. Thoburn and, during that time, he had many opportunities to seek amendments.

The motion to defer the appeal for 6 months was denied 2-4. Ms. Gibb, Mr. Hammack, Mr. Pammel, and Vice Chairman Ribble voted nay. Mr. Hammack made a substitute motion to uphold the determination of the Zoning Administrator regarding Development Condition #9 of Appeal Application A 1997-HM-040. Mr. Pammel seconded the motion which carried by a vote of 5-1. Mr. Dively voted nay. Chairman DiGiulian was absent from the meeting.

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Page 551, May 4, 1999, (Tape 3), Scheduled case of:

9:30 A.M. BILLIE J. ODOM AND CATHERINE O. MONCADA, A 1999-DR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a retail sales establishment (contact lense sales) on property zoned R-1 and have failed to comply with the use limitations applicable to an approved Home Occupation Permit, all in violation of Zoning Ordinance provisions. Located at 12150 Windsor Hall Wy. on approx. 25,700 sq. ft. of land zoned R-1. Dranesville District. Tax Map 6-3

William E. Shoup, Deputy Zoning Administrator, referred to the withdrawal request by Attorney James Powers. He said this appeal dealt with the operation of a retail sales establishment where the appellants were selling contact lenses out of their residence. As of May 3, 1999, the appellants were in the process of moving the operation to Leesburg, Virginia and expected to be in compliance very soon. Mr. Shoup stated that Mr. Powers was withdrawing the appeal based on staff's representation that they would not take any further enforcement action for 15 days and that staff had agreed.

Mr. Hammack moved to approve the withdrawal of A 1999-DR-005. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 551, May 4, 1999, (Tape 3), After Agenda Item:

Request for Additional Time
St. Katherine's Greek Orthodox Church of Northern Virginia
SP 93-M-119

Mr. Hammack moved to approve the Request for Additional Time for St. Katherine's Greek Orthodox Church of Northern Virginia, SP 93-M-119. The new expiration date is October 6, 2000. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 551, May 4, 1999, (Tape 3), After Agenda Item:

Request for Additional Time
William C. Reynolds
VC 92-V-081

Mr. Hammack moved to approve the Request for Additional Time for William C. Reynolds, VC 92-V-081. The new expiration date is April 21, 2001. The Board indicated that they would not approve any further additional time requests. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 551, May 4, 1999, (Tape 3), After Agenda Item:

Request for Intent to Defer
William G. Meeker
A 1998-MV-015; A 1998-MV-016; A 1998-MV-041

Mr. Dively moved to approve the intent to defer for A 1998-MV-015; 016; 041. Ms. Gibb seconded the motion which carried by a vote of 6-0. The new hearing date is July 13, 1999 at 9:30 a.m. Chairman DiGiulian was absent from the meeting.

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Page 552, May 4, 1999, (Tape 3), After Agenda Item:

Approval of April 27, 1999 Resolutions

Mr. Dively moved to approve April 27, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Chairman DiGiulian was absent from the hearing.

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Page 552, May 4, 1999, (Tape 3), After Agenda Item:

Out-of-Turn Hearing Request
Landon and Nellie Morgan
VC 99-L-056

Mr. Dively moved to approve the Out-Of-Turn Hearing Request for Landon and Nellie Morgan, VC 99-L-056. Ms. Gibb seconded the motion which carried by a vote of 6-0. The new hearing date is July 6, 1999 at 9:00 a.m. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

Minutes by: Lori M. Mallam

Approved on: July 13, 1999

Regina Thorn
Regina Thorn, 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 Tuesday, May 11, 1999. The following Board Members were present: Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:01 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 553, May 11, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 98-D-027 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a community recreation use. Located at 1836 and 1840 Westmoreland St. on approx. 7.2 ac. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 42 and 46. (Associated with SE 98-D-047). (MOVED FROM 9/8/98, 11/24/98, 1/12/99, 2/2/99, 1/26/99, 2/9/99 AND 3/9/99).

Vice Chairman Ribble called the applicants 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 & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for continuation of baseball fields and in conjunction with this, requested and obtained approval of a special exception for uses in a floodplain from the Board of Supervisors. Ms. Schilling stated that the baseball fields were originally established in 1959, with approval of Special Permit #48. A new special permit was approved by the Board of Zoning Appeals in 1991 to allow site modifications, a change in the hours of operation and existing miscellaneous structures that were existing without benefit of special permit approval; that special permit expired in 1993. Ms. Schilling said that the request by the applicant, under the special permit request, included the addition of lights with a height of 60 feet for fields 1 and 2; extension of the hours of operation; construction of a shed, snack bar addition and installation of score tables; reduction in the size of field 3; regrading the infield for field 1 and shifting fields 1, 2 and 4 closer together. In staff's evaluation, all land use, transportation and environmental issues were addressed with adoption of the proposed development conditions dated May 11, 1999. Ms. Schilling said that the development conditions reflected revisions that were suggested by the applicant as a result of meetings with representatives of the homeowners associations that surrounded the site; and, reviewed by the Planning Commission and the Board of Supervisors, as well as the development conditions for the Special Exception. On May 10, 1999, the Board of Supervisors approved the special exception for uses in the floodplain.

Mr. Hammack asked staff how the revised proposed development conditions would change the application from the approval granted in 1991.

Ms. Schilling stated the development conditions which were most substantial dealt with the lighting of the site and with the hours of operation.

Keith Martin, Agent, presented the applicant's request as outlined in the statement of justification submitted with the application. Mr. Martin stated that the application was in full agreement with surrounding neighborhoods, Fox Hall, Crosswoods, Lemon Road and Westmoreland, after 5 months of intense negotiations to attempt to resolve issues raised in the past. He said that the main focus of concern was the hours of operation and parking issues. Mr. Martin said all issues had been addressed with the revised development conditions and asked for the Board's approval of the special permit application to complete its 44th year of use and benefit the McLean community.

Vice Chairman Ribble called for speakers.

Bill Marr, Attorney representing the four McLean communities surrounding the Little League field, stated that the applicant and community members had addressed and reached a resolution of community concerns and noted that all communities supported the application and asked for the Board's approval.

Mr. Hammack questioned the number of bleachers for the fields. Ms. Schilling stated 10 bleachers were requested by the applicant and were indicated on the revised plat.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to approve SP 98-D-027 for the reasons noted in the Resolution subject to the revised development conditions dated May 11, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 98-D-027 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a community recreation use. Located at 1836 and 1840 Westmoreland St. on approx. 7.2 ac. of land zoned R-3. Dranesville District. Tax Map 40-2 ((1)) 42 and 46. (Associated with SE 98-D-047). (MOVED FROM 9/8/98, 11/24/98, 1/12/99, 2/2/99, 1/26/99, 2/9/99 and 3/9/99). 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 May 11, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a special permit application.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1836, 1840 Westmoreland Street (7.2 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis (J. Thomas Tanner, P.E. and Richard F. Polk, P.E.), and dated August 25, 1998, as revised through March 24, 1999, 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. A copy of these development conditions shall be distributed to all Little League Board members on an annual basis.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with these conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance. All existing structures are permitted as shown on the special permit plat, except that the following proposed structures are not permitted and shall not be constructed: the proposed picnic pavilion, and the proposed light poles with the exception that low level safety lighting

on four (4) foot high standards is permitted as shown on the plat around the parking lot.

5. The hours of operation shall be limited in accordance with the following table:

	Monday- Friday	Saturday	Sunday
Fields 1 and 2	4:30 p.m.-9:30 p.m. (games end) lights out by 9:45 p.m.	8:30 a.m.-9:30 p.m. (games end) lights out by 9:45 p.m.	12:30 p.m.-9:00 p.m. (rain makeups only)
Field 3	4:30 p.m. to dark	8:30 a.m. -7:00 p.m.	12:30 p.m.-5:00 p.m. (rain makeup only)
Field 4	4:30 p.m. to dark	8:30 a.m. -dark	12:30 p.m.-5:00 p.m. (rain makeups only)

Spring and Fall seasons shall generally occur between March 15 and October 31 of each year.

6. There shall be no more than 50 children enrolled in the baseball summer camps, onsite at any one time. The summer camp may be conducted for one month between June 1 and August 31, during the hours of 8:30 a.m. to 5:00 p.m.

7. A minimum of 140 adequately marked parking spaces shall be provided on-site, in the locations shown for parking on the plat. Spaces in the gravel parking lot shall be marked by painted marks on the timber wheel stops, or other such marking subject to the review and approval of the Department of Planning and Zoning. The gravel parking lot shall remain and shall not be paved beyond that shown on the special permit plat.

8. In order to prevent increased erosion and sedimentation of soils within the floodplain area and along the stream bank, all outfall areas for surface and subsurface drains or ditches which currently exist shall be provided with an adequate outfall area and devices such as rip-rap and/or lowering of the outfall pipe with the provision of a drop inlet. The outfall areas shall be properly maintained. An outfall drainage design and maintenance plan shall be provided to DPWES prior to the approval of this plan.

9. In order to provide the highest level of stream bank and water quality protection in the Pimmit Run and maintain adequate allowance for bank-full as well as overflow capacity for the watershed that drains to this point of the receiving channel, the vegetative buffer shown on the plat shall be extended to include the drainage way along the western property boundary flowing into the Pimmit Run. The vegetative buffer shall be re-established with a vegetative restoration plan utilizing selected plant materials as determined by the Urban Forestry Branch of DPWES, the Virginia Department of Forestry, and Virginia Power, which include but are not limited to: Shadblow Serviceberry, Fringetree, Florida Dogwood, Winterberry Holly, American Craneberry Bush Viburnum, Redwig Osier Dogwood, and Willow stakes. The restoration plan shall be coordinated with and approved by the Urban Forestry Branch of DPWES and Virginia Power. This minimum vegetative buffer shall constitute the limits of clearing and grading and shall be depicted as such on all site plans.

10. A field maintenance plan shall be developed which incorporates erosion and sediment control as well as nutrient and chemical control measures intended to reduce pollutant loads entering the Pimmit Run for the review and approval of the DPWES. A copy of this management plan shall be made available to the Director of the Department of Planning and Zoning and/or the Director of DPWES upon request.

11. Transitional Screening 1 shall be provided along the eastern lot line and along that portion of the western lot line which abuts residentially-developed properties. Existing vegetation may serve to meet this requirement if supplemented to meet the effectiveness of Transitional Screening 1, as determined by the Urban Forestry Branch of DPWES. The barrier requirement shall be waived.

12. Right-of-way up to 35 feet from the centerline of Westmoreland Street shall be dedicated in fee simple to the Board of Supervisors prior to approval of a site plan or upon demand by VDOT or Fairfax County, whichever occurs first.

13. The parking lot island shown on the plat shall be increased in width to six (6) feet and shall be landscaped to provide a more visible separation between travel aisles within the parking lot.

14. Not withstanding the additional light poles shown on the plat, no additional lighting, to include light poles, light fixtures, or security lighting shall be permitted on the site, except for low level safety lighting on four (4) foot high standards as shown on the plat around the parking lot. Existing light fixtures on the site shall be full cutoff fixtures and directed downward, and shall not be directed toward any adjoining residences.

    Not withstanding the above, existing light poles surrounding Fields 1 and 2 may be removed and replaced with a total of up to six (6) light poles per field with heights of up to 60 feet, upon review and approval of a revised lighting study submitted to the Department of Planning and Zoning that documents that the cumulative effects of all existing and proposed lighting on the site meet the performance standards as outlined in Article 14 of the Zoning Ordinance.

15. Artificial amplification of sound shall be contained on site and shall meet all Fairfax County noise ordinance and performance standards applicable to noise off-site in residential areas. Prior to approval of a Non-Residential Use Permit for the use, a noise analysis shall be conducted during peak hours of operation and submitted for review and approval to the Department of Planning and Zoning which documents that the performance standards for noise within residential areas are not exceeded. If it is determined that noise levels are in excess of the performance standards, then use of loudspeakers on the site shall be prohibited. Use of loudspeakers shall be limited to opening day ceremonies, two other "community days", closing ceremonies, city series finals and up to six (6) District All Star Games. There shall be no limit on the number of other tournament games where the use of loudspeakers is mandated by District, State and National Little League tournament requirements. The use of loudspeakers shall be subject to on-site containment of amplified sound in conformance with performance standards of the Zoning Ordinance.

16. This special permit shall be null and void if the Board of Supervisors denies Special Exception SE 98-D-047 for uses in a floodplain.

17. Use of the snack bar addition shall be limited to administrative office use accessory to Little League operations and Little League Board meetings. Little League Board meetings shall only be held when the ball fields are not in 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.

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 as approved under the special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. RICHARD J. LURITO, VC 99-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence in excess of 4.0 ft. in front yard and an accessory structure to remain 5.4 ft. from the rear lot line and 6.6 ft. from a side lot line. Located at 1501 Highwood Dr. on approx. 12,504 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-4 ((24)) 19A.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Lurito, 1501 Highwood Drive, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Juan Bernal, Staff Coordinator. The applicant requested a variance to permit a fence in excess of 4.0 feet to be located on a portion of the front yard on a corner lot and an accessory structure to remain 5.4 feet from the rear lot line and 6.6 feet from the side lot line. The maximum height permitted for a fence in a front yard is 4.0 feet; therefore, a variance of 2.0 feet was requested. The minimum rear and side yard requirements were 8.0 feet; therefore, variances of 2.6 feet from the rear yard and 1.4 feet from the side yard were requested.

Mr. Lurito presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lurito provided the Board with a copy of an approval letter he had received from the Chain Bridge Forest Homeowners Association supporting the request. He said that a permit was granted for the pergola structure, with a variance not being required, because the structure was allowed to be classified as an accessory structure. With respect to the fence, Mr. Lurito stated it surrounded a pool and was to be 5 feet around this pool and would not adversely impact adjoining neighbors.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to approve VC 99-D-025 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 4, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD J. LURITO, VC 99-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence in excess of 4.0 ft. in front yard and an accessory structure to remain 5.4 ft. from the rear lot line and 6.6 ft. from a side lot line. Located at 1501 Highwood Dr. on approx. 12,504 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 31-4 ((24)) 19A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The request was nominal.
4. The application property was a corner lot which made it hard to meet the requirements.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:

A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an accessory structure (pergola) and a fence as shown on the plat prepared by Robert J. Simpson, dated January 14, 1999, as revised through February 18, 1999, 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. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 558, May 11, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DOROTHEA POTTER TEIPEL, SP 99-D-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit carport with second story deck to remain 8 ft. 11 inches from rear and 11 ft. from side lot lines. Located at 1424 Ingleside Ave. on approx. 9,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7))(1) 31.

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dorothea Potter Teipel, 1424 Ingleside Avenue, McLean, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report prepared by Juan Bernal, Staff Coordinator. The applicant requested a special permit to permit a carport with second story deck over the carport to remain 8 feet 11 inches from the rear lot line and 11.0 feet from the side lot line. A minimum of 25 feet is required for the rear yard; therefore, modifications of 16 feet 1 inch to the rear lot line for the carport; 3 feet 1 inch to the rear lot line for the deck; and, 1 foot to the side lot line were requested. Staff noted that this application had been originally heard by the Board on December 1, 1998, for a variance, and was subsequently approved. However, due to a miscalculation in location by the builder and applicant, the applicant reapplied for a special permit to correct the error.

Ms. Teipel presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Teipel stated that the builder of the addition was Phoenix Builders and said in working with the County, there was a conflict in where the 10 foot setback was to be measured and, therefore, due to the error in measurement, the gutters went over the 10 foot variance. She stated it was an innocent mistake and asked for the Board's approval of the special permit request.

Mr. Hammack asked if the builder had calculated the distance. Ms. Teipel stated that County staff and her architect worked together; however, one measurement was from the columns and the carport cement and another measurement was from the gutter. She said she had assumed the measurement was to be taken from the structure, which was the 10 foot setback with the columns which held up the carport, and not the overhang of the gutters.

Ms. Teipel stated her neighbors were in support of the application.

Mr. Pammel asked what the actual amount of error was. Ms. Teipel stated the error was 9 inches.

There were no speakers and Vice Chairman Ribble closed the public hearing.
Mr. Dively moved to approve SP 99-D-025 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 4, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOROTHEA POTTER TEIPEL, SP 99-D-025 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit carport with second story deck to remain 8 ft. 11 inches from rear and 11 ft. from side lot lines. Located at 1424 Ingleside Ave. on approx. 9,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7))(1) 31. 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 11, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a carport and second story deck addition shown on the plat prepared by Joseph A. Wohlmuth, dated September 2, 1998, revised through March 31, 1999, 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. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 560, May 11, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RENAISSANCE APARTMENTS, L.P., AN ENTITY AFFILIATED WITH CHARLES E. SMITH RESIDENTIAL, A 1998-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected and displayed an off-site freestanding sign in violation of Zoning Ordinance provisions. Located at 7631-7659 Leesburg Pi. on approx. 106,847 sq. ft. of land zoned C-3 and HC. Providence District. Tax Map 39-2 ((22)) A. (Deferred from 2/9/99).

Mr. Kelley moved to defer Appeal Application A 1998-PR-033 to November 16, 1999, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 560, May 11, 1999, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage in the

R-1 District in violation of Zoning Ordinance provisions. Located at 7615 Bakers Dr. on approx. 1.76 ac. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 43. (Concurrent with A 1998-MV-016). (Def. from 9/8/98, 11/10/98, 1/12/99 and 3/2/99).

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining a junk yard, storage yard and outdoor storage, and is parking a commercial vehicle in an R-1 District, all in violation of Zoning Ordinance provisions. Located at 7611/7619 Pohick Rd. on approx. 119,354 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 45A. (Concurrent with A 1998-MV-015). (Def. from 9/8/98, 11/10/98, 1/12/99 and 3/2/99).

9:30 A.M. WILLIAM G. MEEKER, A 1998-MV-041 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that a 1,600 sq. ft. greenhouse is not subordinate to the existing dwelling on appellant's lot and therefore, cannot be permitted as an accessory use. Located at 7615 Bakers Dr. on approx. 1.76 ac. of land zoned R-1. Mt. Vernon District. Tax Map 108-1 ((1)) 43. (DEFERRED FROM 1/12/99 and 3/2/99).

Mr. Kelley moved to defer Appeal Applications A 1998-MV-015, A 1998-MV-016 and A 1998-MV-041 to July 13, 1999, at 9:30 a.m.

Mr. Pammel stated he had reservations about deferring the appeal applications, noting there had been a continuous history of deferrals and a decision needed to be made on the applications or recommend dismissal.

Mr. Hammack asked for staff's comment on the basis for the deferral requests.

William Shoup, Deputy Zoning Administrator, stated that staff had been working closely with the attorney for the Meekers and had a site visit to the application property. Mr. Shoup stated staff had sent the appellant a letter addressing what steps would be required to resolve the violations. He said the appellant had cleaned up the property considerably and believed the issues were close to being resolved and supported the deferrals.

Rose Meeker, 8111 Ainsworth Avenue, Springfield, Virginia, stated that she and her husband owned the Baker Road and Pohick Road properties. She said they agreed with Mr. Shoup that the violation was close to a resolution and asked for the Board to approve the deferral requests.

Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 561, May 11, 1999, (Tapes 1, 2 and 3), Scheduled case of:

9:00 A.M. ST. JOHN NEUMANN CHURCH, SPA 80-C-096-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-C-096 for church and related facilities to permit building additions and site modifications. Located at 11900 Lawyers Rd. on approx. 17.95 ac. of land zoned R-2. Hunter Mill District. Tax Map 26-3 ((1)) 5A. (MOVED 4/6/99. DEF. FROM 5/4/99).

Vice Chairman Ribble called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Timothy Sampson, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Wilson stated that approximately half of the parcel was developed with a church and related facilities to include two church buildings and a rectory. The remainder of the parcel to the north was EQC open space. The applicant sought approval of SPA 80-C-096-3 to permit building additions containing 35,519 additional square footage, an increase in number of seats from 1,000 to 1,200, a 3-car garage to serve the rectory, and site modifications which included additional parking spaces and an enlarged stormwater management pond. Subject to the revised development conditions dated May 10, 1999, which were distributed prior to the

hearing, staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SPA 80-C-096-3, subject to development conditions dated May 10, 1999.

Mr. Hammack asked staff for comment on the information received in opposition regarding environmental and traffic impacts.

Ms. Wilson stated the issues mentioned had been examined by County staff and said the revisions and changes made had been ascertained by County staff to have resolved the original issues and staff supported the proposal by the applicant.

Mr. Sampson, Agent, presented the applicant's request as outlined in the statement of justification submitted with the application. Mr. Sampson thanked Ms. Wilson for her work on the application and introduced Father Robert Brown, Pastor at St. John Neumann Church. Mr. Sampson asked those in the audience who were in favor of the church's application to stand and be recognized by the Board, in hopes of eliminating testimony in support of the application.

Mr. Sampson said that the expansion was to roughly double the size of the church's existing facilities from about 600 to 1,200 seats in the worship center and proportionately increase on-site parking. As depicted on the plat, the expansion was designed to occur as internal to the site as possible, with the building addition connecting two existing buildings and extending into the site away from Lawyers Road. Mr. Sampson said the need for the expansion was fully consistent with the growth and the community at large. Since the 1980 original expansion, Mr. Sampson said the parish had grown from approximately 887 families to nearly 3,300 families today. As a result of this growth, the demands on the church exceeded its capacity with standing room only and vehicles parked along neighborhood streets. Mr. Sampson said there would be 491 parking spaces required, with the closest parking space being located 83 feet from any property line. He further stated that over 50% of the tree coverage would be preserved. Mr. Sampson stressed to the Board that traffic issues would not conflict with peak traffic hours, with the main entrance of the church being relocated and said there was 30% more increase on Lawyers Road on weekday peak hour than during Sunday church services.

Mr. Sampson said that the Reston Neighbors report contained inconsistencies and stated that the buffer was a 35 foot transitional screening. He said that the issue of need was to be made by the church and that the expansion plan accommodated those needs and the request met the R-2 District standards and were consistent with other R-2 District church expansions; therefore, Mr. Sampson asked for the Board's approval of the application.

Vice Chairman Ribble called for speakers in support of the application.

Andrea Bramson, 2630 Fox Mill Road, Herndon, Virginia; Bernard O'Reilly, 2500 Pegasus Lane, Reston, Virginia; Charlotte Peed, 3166 Mary Etta Lane, Herndon, Virginia; Mark Emery, 3032 Jeannie Anna Court, Herndon, Virginia; Terry Ponick, 10912 Harpers Square Court, Reston, Virginia; Susan Hayden, 45 Whittingham Circle, Potomac Falls, Virginia; Francis Steinbauer, 2501 Fowlers Lane, Reston, Virginia; Chris Rainey, 2037 Beacon Place, Reston, Virginia; Donna Croan, 3117 Nestwood Drive, Herndon, Virginia; Dan McGuire, 2202 Gilmore Road, Reston, Virginia; Gerald Foster, 12502 Thomas Young Court, Oak Hill, Virginia; came to the podium to express their support for the application.

The following includes the overall consensus of their recommendation for support: The church was well loved by the community and welcomed all parishioners; the church taught the children values and morals; the church site was large enough to accommodate the expansion; the church plans were consistent with other nearby developments; the church had a strong relationship with support groups in the area providing food, shelter, tutoring services, etcetera, to its community members; the expansion would help community commitment; the church accepted people with special needs; the need for more space to worship and for education programs; the roadway redesign would accommodate the safety issue of vehicular traffic; the church served the Reston Catholic Community; families would be turned away from educational studies if the expansion was not allowed; any impacts would be nominal; almost 9 acres of untouched forest would remain after expansion; landscaping would be provided to shield on-site activities; whether the expansion was allowed or not, the same number of people would attend church services; the community must have tolerance to expansions of this nature.

Vice Chairman Ribble called for speakers in opposition of the application.

John Griggs, 2513 Fowlers Lane, Reston, Virginia; Richard Klein (consultant hired by Reston Neighbors regarding environmental concerns); both displayed easels showing the Zoning Ordinance requirements; aerial photographs of the site with an overlay showing tree removal; lands qualifying as retention of the EQC; copper loads and bioretention and intrusion upon the EQC regarding erosion concerns on steep slopes; Dr. Everett Carter, Professor at University of Maryland discussed traffic impacts; Charles Brenton, Professional Landscape Architect, provided an alternative site plan showing how an additional 70 parking spaces could be accommodated with nominal impact; vegetation topography regarding the forested area; existing 75 foot undisturbed buffer; Elfriede Walker, 2418 Fox Lane, Reston, Virginia; Sarah Gowen, 2510 Pegasus Lane, Reston, Virginia; Terry Walsh, 2508 Pegasus Lane, Reston, Virginia; Sean Walsh, 2508 Pegasus Lane, Reston, Virginia; Katherine Parker Martin, 2625 Steeple Chase Drive, Reston, Virginia; Charlene North, 2517 Fowler Lane, Reston, Virginia; Bryn Pavek, 2515 Fowlers Lane, Reston, Virginia; Mary Modster, 2503 Fowler Lane, Reston, Virginia; Marie Vincent, 2354 Soft Wind Court, Reston, Virginia; Jon Clarke, 12008 Whip Road, Reston, Virginia; Mr. Richardson, 2502 Fowlers Lane, Reston, Virginia; Mark Caplan, 2513 Fowlers Lane; Reston, Virginia; Barry Gowen, 2510 Pegasus Lane, Reston, Virginia; Thomas, Wiltshire, 11419 Night Star Way, Reston, Virginia; Bonnie Haukness, 2505 Fowlers Lane, Reston, Virginia; Yonna Kromholz, 2530 Trophy Lane, Reston, Virginia.

The following includes the topics discussed by the opposition: Environmental impacts; traffic impacts; alternative development proposals; demographics and need for expansion; history of the site; FAR concerns; frustration with church; scale, height and bulk of proposed development; natural resources of the site; promises unkept by the church; impacts on trails; tree preservation; impacts of the proposed service road; protection of the Glade Stream Valley; proposed plan not in harmony with Reston Planning and Zoning Committee covenants; size of proposed expansion was in excess of community.

Vice Chairman Ribble closed the public hearing.

Mr. Sampson came to the podium to rebut the opposition addressing issues with regard to FAR; seating capacity; parking spaces; and environmental concerns. Mr. Sampson stated all concerns were satisfactorily addressed with County staff, including traffic issues and said the proposal met all of the requirements of the R-2 District.

Ms. Gibb asked if the proposal was approved, when would construction begin on the property. Mr. Sampson replied January, 2000, with a completion of April, 2001.

Ms. Gibb asked, with regard to the EQC, how the lines could be changed. Ms. Wilson replied that the overall goal for the EQC was to protect sensitive areas such as erodible soils or any valuable environmental feature. Ms. Wilson stated in this instance, the EQC line was negotiated because County staff believed that a new EQC line was secured that protected the critical and erodible slopes in a particular area. Ms. Wilson said that additional valuable area was gained into the EQC which had natural springs which were deemed important to be protected. Ms. Wilson concluded by stating that EQC lines could be changed, in a small degree, if it would improve EQC areas.

Mr. Hammack asked if the proposal was approved, could the EQC line be negotiated again in the future. Ms. Wilson stated each EQC line was looked at on a case by case basis; however, in this instance, the County was able to improve the EQC area by saving natural springs and protecting critical slopes; the EQC boundary line was not normally altered unless it was determined that an improvement of the EQC area would be accomplished.

Ms. Gibb moved to deny SPA 80-C-096-3 for the reasons noted in the Resolution.

Mr. Dively expressed his opposition to the motion stating that the covenants issue could not be ruled on by the Board and that the standards set by the Zoning Ordinance and the statute were met with regard to the proposal. He further stated that the applicant met the requirements of the environmental and transportation aspects and voted to approve the application.

Mr. Kelley agreed with Mr. Dively, stating that the opponents recognized the need for some expansion. He said that the acreage which could be used met the applicable requirements; however, the application was

not perfect but issues could be addressed at site plan and agreed with the vote to approve the application.

Mr. Pammel stated his main concern was with regard to environmental issues. He said that the Board's position was to protect the environment and said the church knew of the restrictions when the property was purchased. Mr. Pammel recommended that the church review the community's proposed revised plan in order to reduce the impacts of the expansion due to the limits of developing the site.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. JOHN NEUMANN CHURCH, SPA 80-C-096-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-C-096 for church and related facilities to permit building additions and site modifications. Located at 11900 Lawyers Rd. on approx. 17.95 ac. of land zoned R-2. Hunter Mill District. Tax Map 26-3 ((1)) 5A. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The Board must look at land use issues regardless of the fact that the applicant is a church.
3. The parcel is large enough in square footage but a lot of the land is unusable for development, which the applicant knew when the property was purchased.
4. The site is an environmentally sensitive corridor and the protection of the Glade Stream Valley is important.
5. The church is limited by their site from any major expansion.
6. A 35 foot buffer was not substantial enough for the improvements outlined.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not 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 **DENIED.**

Mr. Pammel seconded the motion which carried by a vote of 4-2. Mr. Dively and Mr. Kelley voted nay. Chairman DiGiulian was absent from the meeting. Mr. Dively moved to waive the twelve (12) month waiting period for reapplication. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1999.

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Page 564, May 11, 1999, (Tape 3), After Agenda Item:

Additional Time Request VC 96-V-045,
James H. and Nancy R. Howren

Mr. Pammel made a motion to approve the request for additional time to June 2, 2000. Mr. Dively seconded

Page 565 May 11, 1999, (Tape 3), After Agenda Item, continued from Page 564

the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 565, May 11, 1999, (Tape 3), After Agenda Item:

Letter from Richard Hobson dated May 3, 1999,
Requesting a five (5) minute presentation opportunity for
Appeal Application A 1999-MA-006, Cafferty Bren Mar Associates, LP

Mr. Shoup stated the request had been received before the request for intent to defer and noted that the appellant was not the owner of the property at issue in this appeal. He clarified that Mr. Hobson represented the property owner and for that reason Mr. Hobson was requesting the opportunity for the additional time to speak at the recommended July 20, 1999, public hearing date.

Mr. Pammel made the motion to allow the additional time to speak. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 565, May 11, 1999, (Tape 3), After Agenda Item:

Approval of May 4, 1999 Resolutions

Mr. Pammel made a motion to approve the May 4, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 565, May 11, 1999, (Tape 3), After Agenda Item:

Request for Intent to Defer Appeal Application A 1999-MA-006, Cafferty Bren Mar Assoc.

Mr. Dively made a motion to accept the intent to defer Appeal Application A 1999-MA-006 to July 20, 1999. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:32 p.m.

Minutes by: Deborah Hedrick

Approved on: July 13, 1999

Regina Thorn, 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 18, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:06 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 567, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JIM TATE, VC 99-S-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.1 ft. from rear lot line. Located at 6048 Makely Dr. on approx. 20,000 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((7)) 125A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eddie Barnette, 17693 Rose Hill Circle, Dumfries, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, said she received a message indicating that the applicant might be withdrawing the application.

Mr. Barnette, the applicant's agent, stated that the applicant requested to withdraw his application.

Mr. Dively moved to accept the withdrawal of VC 99-S-031. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 567, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM E. AND PATRICIA M. STRUTT, VC 99-Y-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 14216 Pony Hill Ct. on approx. 12,714 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-4 ((3)) 63.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Greg Strutt, 9539 Chaton Road, Laurel, Maryland, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicant requested a variance to permit the construction of an addition 17.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 7.8 feet was requested.

Mr. Strutt, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicant requested to add screening to an existing deck. Mr. Strutt said the footprint would remain the same.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-Y-034 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM E. AND PATRICIA M. STRUTT, VC 99-Y-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.2 ft. from rear lot line. Located at 14216 Pony Hill Ct. on approx. 12,714 sq. ft. of land zoned R-5 and WS. Sully District. Tax Map 65-4 ((3)) 63. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch addition shown on the plat prepared by Kenneth W. White, dated February 11, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently

prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 569, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOHN AND MICHELLE MCCAUGHEY, SP 99-L-014 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6182 Darleon Pl. on approx. 2,393 sq. ft. of land zoned R-12. Lee District. Tax Map 91-1 ((9)) 13A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McCaughey, 6182 Darleon Place, Alexandria, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal. The applicant requested a special permit to allow modification to the limitation on the keeping of animals to permit 3 dogs on a property less than 12,500 square feet in size.

Mr. McCaughey presented the special permit request as outlined in the statement of justification submitted with the application. He said the dogs had been on the property for 7 years and no one had ever complained. Mr. McCaughey distributed photos to the Board and submitted letters in support from his next door neighbor, breeder, and veterinarian. Mr. McCaughey said the subject property was an end unit townhouse and that he worked at home, so the dogs were under constant supervision and that he always cleaned up after them. He stated that their dogs were similar to having children and they loved them and asked the Board for approval.

Mr. Pammel asked how this application came about. Jim Ciampini, Zoning Inspector, stated there was a complaint made.

Chairman DiGiulian called for speakers.

Carolyn Muller, Georgetown Woods Board of Directors, came forward to speak in opposition. She read a letter submitted by the Board of Directors which stated that the open space of the subdivision attracted many families and in order to keep animal waste to a minimum, they developed a dog run and leash laws. Ms. Muller said the Board of Directors opposed the application because it would set a precedent. She said she had never seen the applicants using the dog run or observing the leash laws and they had not paid their association dues. Ms. Muller said the Board of Director complained because the applicants were irresponsible dog owners.

Mr. Hammack asked the speaker if the Board of Directors had discussed the problems with the applicant. Ms. Muller did not respond.

Mr. Kelley asked the speaker if the subject property was part of another subdivision different from Georgetown Woods. Ms. Muller replied that they had all become one subdivision-Georgetown Woods.

Mr. Hammack said the applicant testified to cleaning up after the dogs. Ms. Muller replied that was not true.

Janet Russell, 6519 Gildar Street, came forward to speak in opposition, stating that she agreed with the previous speaker. She stated that the applicant had not observed the rules and did not support the Board of Directors financially. Ms. Russell stated she saw the applicant walking the dogs at the playground area and not the dog run.

Michelle McCaughey gave rebuttal stating that no one had ever directly spoken to them. She said the animal warden came, but none of the Board of Directors had ever approached her or her husband. Ms. McCaughey stated that Ms. Muller's letter was filled with half-truths. She said they had taught the dogs to use the dog run and that their financial problems were not an issue before the BZA.

Ms. Gibb asked Ms. McCaughey if they had ever been approached by a member of the Association. Ms. McCaughey said only when a citation was issued.

Mr. Dively asked what were the ages of the dogs. Ms. McCaughey replied 7, 6, and 4.

Ms. McCaughey stated that ignorance of the law was no excuse, but they didn't know there was a law.

Mr. Pammel asked if the applicant used the facilities daily. Ms. McCaughey replied yes. Mr. Pammel asked if the applicants were behind on their association fees. Ms. McCaughey said they were 3 years behind.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve the keeping of 3 dogs with a review by the BZA in one year and the association dues being paid in full. Ms. Gibb seconded the motion.

Mr. Dively said adding that condition troubled him and asked staff's opinion.

Ms. Langdon stated that she was unaware of a condition such as this, but would need to speak with the County Attorney's office.

Mr. Hammack said it was inappropriate for the BZA to add such a condition. He said it was provided for under the association's covenant.

Mr. Kelley said he felt the same as Mr. Hammack and Mr. Dively and it would set a very dangerous precedent.

Mr. Pammel offered a substitute motion to approve the application for a period of 1 year.

Mr. Kelley offered another substitute motion to approve SP 99-L-014 with staff conditions contained in the staff report and for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN AND MICHELLE MCCAUGHEY, SP 99-L-014 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 6182 Darleon Pl. on approx. 2,393 sq. ft. of land zoned R-12. Lee District. Tax Map 91-1 ((9)) 13A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 2-5123- of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 6182 Darleon Place, 2,393 square feet, shown on the plat prepared by Lonny D. Sturgeon, dated December 6, 1988 through April 19, 1989, revised by John McCaughey, as revised through February 27, 1989, and is not transferable to other land.

2. The applicant shall make this special permit property available for inspection by County officials during reasonable hours of the day.

3. This approval shall be for the applicant's existing three dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that two dogs may be kept on the property in accordance with the Zoning Ordinance.

4. The yard used for 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.

5. The dogs shall not remain in the yard unsupervised.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Dively seconded the motion which carried by a vote of 5-1. Mr. Pammel voted nay and 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 May 26, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 571, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HASSAN SEDAGHATPOUR, SP 99-H-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 16.9 ft. from side lot line. Located at 1106 Mill Ridge on approx. 36,958 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 20-4 ((24)) 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. Hassan Sedaghatpour, 261 Golden Woods Court, Great Falls, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal, Staff Coordinator. The applicant requested a special permit to permit the reduction to minimum yard requirements based on error in building location to permit an addition to remain 16.9 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, the amount of error was 3.1 feet or 15%.

Mr. Sedaghatpour presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the property was purchased in 1994 and he hired a builder to finish the property, but the company incorrectly noted the dimensions; therefore, he was requesting a special permit to allow the garage to remain.

Mr. Dively asked if a building permit was obtained. Ms. Langdon replied not for the current garage, but for a

detached garage.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SP 99-H-015 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HASSAN SEDAGHATPOUR, SP 99-H-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 16.9 ft. from side lot line. Located at 1106 Mill Ridge on approx. 36,958 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 20-4 ((24)) 13. 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 18, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition (garage) shown on the plat prepared by Raymond A. Frost, Surveyor, dated September 8, 1998 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.

Ms. Gibb seconded the motion which carried by a vote of 5-1-1. Mr. Pammel voted nay and Mr. Ribble abstained from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 573, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SHARON B. KENNEDY, SP 99-Y-018 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification of minimum yard requirements for certain R-C lots to permit addition 17.6 ft. from side lot line. Located at 6269 Welton Dr. on approx. 13,072 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 492.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sharon and Steven Kennedy, 6269 Welton Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Juan Bernal, Staff Coordinator. The applicant requested a special permit to permit modification of minimum yard requirement to permit an addition 17.6 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 2.4 feet was requested.

Mr. Kennedy presented the special permit request as outlined in the statement of justification submitted with the application. He said the addition was approved by the Virginia Run Architectural Review Board. Mr. Kennedy asked for a waiver of the 8-day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 99-Y-018 for the reasons noted in the Resolution. Mr. Ribble also moved to waive the 8-day waiting period. Mr. Pammel seconded the motions which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHARON B. KENNEDY, SP 99-Y-018 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification of minimum yard requirements for certain R-C lots to permit addition 17.6 ft. from side lot line. Located at 6269 Welton Dr. on approx. 13,072 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 492. 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 18. 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. 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.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard 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 **APPROVED** with the following development conditions:

1. This special permit is approved for the location of a second story addition shown on the plat prepared by Louis J. Matacia and revised by Sharon B. Kennedy, dated March 4, 1999, 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. 8- 015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the Special Permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 7-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 18, 1999.

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Page 574, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HANNAH HILLS ASSOCIATION, ET. AL., VC 99-P-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots and an outlot into three lots and an outlot, with proposed lots 1 and 2 having lot widths of 148.6 ft. and 155.4 ft. Located at 10521 and 10523 Vale Rd. on approx. 7.02 ac. of land zoned R-1 and R-E. Providence District. Tax Map 37-2 ((2)) 2B, 2C; 37-4 ((21)) B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of two lots and one outlot into three lots and one outlot, with proposed lots 1 and 2 having lot widths of 148.6 feet and 155.4 feet respectively, where 200 feet is required by the Zoning Ordinance. It was staff's evaluation that the proposed subdivision did not meet all the Variance Standards, specifically the provisions of Standards 4, 5 and 6. Pursuant to Variance Standards 4, 5 and 6, staff could not conclude that undue hardship would result absent the granting of a variance nor that all reasonable use of the land would be prohibited without approval of a variance. The application site already contained two buildable sites, one of which is already developed with a single family dwelling. Outlot B was created and recorded with the note that the parcel was an outlot because it did not meet the

requirements of the Zoning Ordinance, and the Zoning Ordinance did not guarantee maximum use of one's property when the minimum requirements were not met.

Mr. Pammel noted the staff report staff language indicating that "In addition, the variance plat showed that proposed lot 3 has a minimum lot width of 413 feet along Hannah Farm Road, so it may be possible to redesign the proposed subdivision to create two lots with frontage along Hannah Farms Road that met the minimum lot width of 200 feet each for the R-E District and a third lot with a lot width of 300 feet along Vale Road without approval of a variance". He asked if staff could show him how that could be done.

Ms. Schilling referred to the subdivision plat on the overhead. She said there were no engineers in-house who could design the subdivision so there were some unknowns on the property such as the location of septic fields. It was not known whether the existing house on the site would need to be demolished, but it appeared from the dimensions of the lot that it might be possible to do so.

Mr. Pammel requested that the applicants address the issue in their presentation.

Barnes Lawson Jr., the applicant's attorney, said the variance was needed because the 2 existing building lots presently did not meet minimum lot requirements. Mr. Lawson said they had spoken to a number of neighbors that morning and he wanted to reiterate the request so it would be clear. He referred to a colored map on the overhead to explain the request. Mr. Lawson deferred to Jane Kelsey, agent, to present the application and answer Mr. Pammel's question.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She said she would only address the standards at issue. Ms. Kelsey indicated that there was an undue hardship because there was no use at all of the outlot without some land being added to it in order to make a buildable lot. She said the homeowners had gotten together and decided that if they obtained some land from the owners of existing Lot 2B and Lot 2C they could make a buildable lot fronting on Hannah Farms Road and it would be compatible in size and appearance with their existing subdivision. Ms. Kelsey said the hardship was not caused by the applicant; it was caused when the developer of the Hannah Hills subdivision developed the property. She stated that the County required that he shift the location of the road and when he shifted the road, it took some land from his developable lots and moved the land to the narrow strip of land, which the County then required to be identified as an outlot. She said it was a conventional subdivision and no open space was required. Ms. Kelsey said 14 of the homeowners were saddled with the problem of having this extra land that they had to take care of. She said they collected the fees and paid for the maintenance and the liability insurance, which was a burden for them. Ms. Kelsey said the hardship was not general in the neighborhood. She stated that there was an existing house with a septic field and a well. Ms. Kelsey responded to Mr. Pammel's question by stating that when staff advised them that they felt the subdivision could be done by-right, Ms. Greenlief did additional research and had discussions with the health department. Ms. Kelsey said there was a house worth around $700,000 on the lot and she didn't think the owners wanted to demolish it, due to the location of the drainfields and the wells. She said absence of the variance would cause the owners not to have any reasonable use of the land.

Mr. Hammack asked if the applicant would retain proposed Outlot A. Ms. Kelsey replied they would not, that it would be contained in the sale of the property.

Mr. Hammack asked if the proposed outlot was needed for density calculations. Ms. Kelsey replied no.

Ms. Gibb asked Ms. Kelsey if the applicant would request a waiver of the stormwater drainage. Ms. Kelsey replied that there was no stormwater management pond required, but if so, there might need to be some shifting of the house.

Mr. Lawson said the applicant would be agreeable to a condition indicating that proposed outlot A be incorporated into Lot 3. Mr. Lawson referred to two court cases Ms. Kelsey had faxed to the BZA. He said if the BZA was willing to approve the variance, they would request two development condition changes. He asked that Condition #2 and the last sentence of Condition #5 be deleted.

Mr. Dively asked staff if they objected to the deletion of Condition #2. Ms. Schilling replied that the condition was requested by the Department of Transportation and staff objected to the deletion. She said staff did not see the need for rewording Condition #5.

Chairman DiGiulian called for speakers.

Debra Cook, 10606 Hannah Farm Road, Ahmad Kangarloo, 10604 Hannah Farm Road, and Michael Mancusi, 10600 Hannah Farm Road came forward to speak in support of the application. The speakers noted that they were in support of maintaining the wooded nature of the lot and minimized clearing of the land.

Mr. Hammack asked if all the owners in the Hannah Hills Association were notified. Ms. Kelsey replied yes and that they had all met and decided to sell the property.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 99-P-027 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HANNAH HILLS ASSOCIATION, ET. AL., VC 99-P-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots and an outlot into three lots and an outlot, with proposed lots 1 and 2 having lot widths of 148.6 ft. and 155.4 ft. Located at 10521 and 10523 Vale Rd. on approx. 7.02 ac. of land zoned R-1 and R-E. Providence District. Tax Map 37-2 ((2)) 2B, 2C; 37-4 ((21)) B. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony and a written statement of justification indicating compliance with the required standards for a variance.
3. The outlot is an unusual shape.
4. An unusual situation was created when Hannah Farm Road was realigned.
5. Because the outlot is a long narrow strip it has become a burden to the homeowners association to maintain.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision shown on the plat prepared by Theodore D. Britt, P.E., dated October 23, 1998. 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 each of these lots.

2. The entrance for proposed lots 1 and 2 shall be via one driveway apron or curb cut from Vale Road.

3. The limits of clearing and grading for the dwellings on proposed lots 2 and 3 shall be the minimum necessary to construct the dwellings, septic fields and driveways, as determined by the Urban Forestry Branch of DPWES.

4. Prior to subdivision plan approval, a tree save plan showing the limits of clearing and grading for the proposed dwellings and reflecting efforts to preserve existing vegetation to the maximum extent possible shall be submitted for review and approval by the Urban Forestry Branch, DPWES.

5. Stormwater Management /Best Management Practices and adequate outfall, shall be provided to the satisfaction of the OSDS, DPWES, and if not waived may require approval of an amendment to the variance.

Pursuant 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. Kelley seconded the motion which carried by a vote of 5-2. Mr. Hammack and Mr. Pammel voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 26, 1999. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack moved that the Board of Zoning Appeals enter into Executive Session. Mr. Ribble seconded the motion which carried by a vote of 7-0.

The public hearing recessed at 10:25 a.m. and reconvened at 11:12 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene executive session were heard, discussed, or considered by the Board of Zoning Appeals during the executive session. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Kelley were not present for the vote.

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Page 578, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SAMUEL, JR. AND SUSAN F. SUNUKJIAN, VC 99-Y-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from rear lot line. Located at 6612 Rockland Dr. on approx. 8,661 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 229.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Samuel Sunukjian, 6612 Rockland Drive, Clifton, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a (screened porch) addition 20.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 4.2 feet was requested.

Mr. Sunukjian presented the variance request as outlined in the statement of justification submitted with the application. He said the rear section of the property had a lot of sun and the rear boundary line was at an angle. Mr. Sunukjian said he received approval from the homeowner's association and the neighbors. He asked for a waiver of the 8-day waiting period.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-Y-033 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SAMUEL, JR. AND SUSAN F. SUNUKJIAN, VC 99-Y-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from rear lot line. Located at 6612 Rockland Dr. on approx. 8,661 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((2)) 229. 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 18, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The property has a truncated 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch shown on the plat prepared by Reid M. Dudley, P.E. dated February 7, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The screened porch shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. Mr. Hammack moved to waive the 8-day waiting period. 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 18, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 580, May 18, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WESTERRA RESTON L.L.C. AND KINDERCARE LEARNING CENTER, INC., VC 99-H-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in the front yard of a corner lot. Located at the intersection of North Village Rd. and Wiehle Ave. on approx. 2.16 ac. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((1)) 14. (Def. from 4/20/99)

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicant requested a deferral because they were working with the homeowners association to resolve some of their issues.

Mr. Pammel moved to defer VC 99-H-012 to June 1, 1999. 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 580, May 18, 1999, (Tape 1), Scheduled case of:

9:30 A.M. CONTINENTAL BREN MAR ASSOCIATES L.P., A 1999-MA-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that there is a continuing nonconforming right to warehouse and distribution uses on property located at 6315 Bren Mar Drive which is zoned I-3. Located at 6315 Bren Mar Drive on approx. 589,541 sq. ft. of land zoned I-3. Mason District. Tax Map 81-1 ((1)) 9A.

Jack Reale, Zoning Administration Division, noted that the appellant requested a deferral. He said staff did not support the request because there had been six previous deferrals.

Mr. Dively moved to defer A 1999-MA-006 to July 20, 1999. Mr. Pammel and Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 580, May 18, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Margaret A. Coyle, VC 93-V-074

Mr. Pammel moved to approve the request for additional time. Mr. Dively seconded the motion which carried by a vote 6-0. Mr. Kelley was not present for the vote. The new expiration date is May 28, 2002.

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Page 580, May 18, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Hrair Kazanjian, VC 93-L-063

Mr. Dively moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote 6-0. Mr. Kelley was not present for the vote. The new expiration date is September 8, 2001.

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Page 580, May 18, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Gary Shafer, VC 96-S-101

Mr. Dively moved to approve the request for additional time. Mr. Pammel seconded the motion which carried by a vote 6-0. Mr. Kelley was not present for the vote. The new expiration date is May 28, 2000.

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Page 581, May 18, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration
St. John Neumann Church, SPA 80-C-096-3

There was no motion, consequently, the request was denied.

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Page 581, May 18, 1999, (Tape 1), After Agenda Item:

Approval of May 11, 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 581, May 18, 1999, (Tape 1), After Agenda Item:

Recommended Public Hearing Date
Kathleen G. Pace, A 1998-MV-042

William Shoup, Deputy Zoning Administrator, indicated that the appellant had filed a special permit application and staff recommended a public hearing date of July 6, 1999 to hear the appeal. Mr. Ribble moved to approve the recommended date. 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 581, May 18, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer
Sheehy Investments One Limited Partnership, A 1997-LE-028

Mr. Dively moved to approve the request for intent to defer to September 7, 1999. Mr. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Kelley were 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 11:27 a.m.

Minutes by: Regina Thorn

Approved on: September 28, 1999

Regina Thorn

Regina Thorn, 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 Tuesday, May 25, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; John Ribble; and James Pammel. Nancy Gibb was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

9:00 A.M. LINDA AND ANTHONY PERKINS, VC 99-M-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in minimum required front yard of lot containing less than 36,000 sq. ft. Located at 6911 Winter Ln. on approx. 16,001 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((39)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Perkins, 6911 Winter Lane, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit an accessory structure, a gazebo, to remain in the front yard. The Ordinance requires approval of a variance for this use on a residential lot which contains less than 36,000 square feet.

Anthony Perkins presented the variance request as outlined in the statement of justification submitted with the application. He said the gazebo was built in good faith three years prior and, at that time, they were not aware the gazebo was in violation of the Zoning Ordinance. He explained that due to the narrowness of the property they were unable to construct a porch; therefore, they opted to have a gazebo. He stated that for them to have to tear down the gazebo would present a personal and financial hardship. Mr. Perkins suggested that a fax number should be placed on the public notice signs.

Mr. Pammel noted that Mr. Perkins suggestion was a good idea and said the County should proceed to do this.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 99-M-036 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA AND ANTHONY PERKINS, VC 99-M-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in minimum required front yard of lot containing less than 36,000 sq. ft. Located at 6911 Winter Ln. on approx. 16,001 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((39)) 7. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony before the Board, indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot is of unusual shape and configuration.
4. Location of house on lot precluded ability to put porch on house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning

Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the gazebo shown on the plat prepared by Dewberry & Davis, dated October 28, 1994, as revised through October 29, 1998, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote and Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 584, May 25, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FREDERICK C. RODGERS, VC 99-H-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 1655 Montmorency Dr. on approx. 15,128 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((26)) 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. Frederick C. Rodgers, 1655 Montmorency Drive, Vienna, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch addition to a deck 20.6 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore a variance of 4.4 feet was requested.

Mr. Rodgers presented the variance request as outlined in the statement of justification submitted with the application. He said that the lot was small he was precluded from putting the deck in any other location and the addition of the screened porch would add to the marketability of the home.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-H-035 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FREDERICK C. RODGERS, VC 99-H-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 1655 Montmorency Dr. on approx. 15,128 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 28-4 ((26)) 3. 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 25, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The property is shallow and there will not be any further footprint added because they are just enclosing the existing deck.
3. There would be no objection to what the screen porch will look like because it is very heavily wooded behind 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 **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch shown on the plat prepared by Kenneth W. White, dated February 3, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The screened porch addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 586, May 25, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KASS REALTY COMPANY, INC., SP 99-D-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a meeting hall. Located at on the S. side of Canal Dr. on approx. 33,047 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((1)) 33 pt. (DEFERRED FROM 4/2/099).

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 Lawrence, Hazel & Thomas, 3110 Fairview Park, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to permit the construction of a community association meeting hall and gatehouse which would serve as administrative offices and a meeting hall for the community association. The proposed hours of operation for the community building were 9:00 a.m. to 10:00 p.m. daily, while the gatehouse was proposed to be operated 24 hours a day. He noted that the applicant had

submitted a revised affidavit and that staff had received proposed Development Conditions which suggested possible installation of trails, utility lines, and stormwater facilities within the application site for the proposed subdivision. Mr. Bernal stated that staff did not support the applicants revised Development Conditions, staff had not had sufficient time to properly review them.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. He said that the purpose of the gatehouse was to prevent cut-through traffic. He then illustrated the location of the subdivision and the proposed location of the special permit.

During the discussion between the Board and Mr. Lawrence questions were raised regarding whether the gatehouse would block the citizens' access to publicly dedicated streets and what the legalities were regarding this issue. The Board suggested continuing the hearing one week to retain the opinion of the County Attorney.

Mr. Dively moved to continue SP 99-D-002 to June 1, 1999, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-1. Chairman DiGiulian voted nay and Ms. Gibb was absent from the meeting.

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Page 587, May 25, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DONALD L. WITMAN, SP 99-P-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 1.0 ft. from side lot line and accessory structure to remain 3.0 ft. from rear lot line. Located at 8318 Colby St. on approx. 13,596 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(H) 12.

9:00 A.M. DONALD L. WITMAN, VC 99-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.5 ft. from street line of a corner lot and 4.7 ft. from side lot line and 7.3 ft. from side lot line. Located at 8318 Colby St. on approx. 13,596 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(H) 12. (Concurrent with SP 99-P-016).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald L. Witman, 8318 Colby Street, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit a deck to remain 1.0 foot from the side lot line and an accessory structure (a playhouse) to remain 3.0 feet from the rear lot line. A minimum side yard of 12 feet is required; therefore, a modification of 11.0 feet was requested for the deck. A minimum rear yard of 12.1 feet is required for the playhouse; therefore, a modification of 9.1 feet was requested. With regard to the variance request, Mr. Bernal reported that the applicant requested a variance to construct a garage addition to be located 27.5 feet from the front lot line of a corner lot and 4.7 feet from the side lot line and a 2 story addition to be located 7.3 feet from the same side lot line. A 30 foot minimum front yard and a 12 foot minimum side yard is required; therefore, variances of 22.5 feet, 7.3 feet for the garage and 4.7 feet for the 2 story addition were requested.

Mr. and Mrs. Witman presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. Mrs. Witman said the deck in question was an error made in good faith when they purchased the property and originally there was a stone patio where the deck was currently located. She said they replaced the crumbling stone with the deck and it was flush on the ground. Mrs. Witman stated that the playhouse was constructed with a swing set that was attached to it and that, at that time, they were unaware of the Zoning Ordinance restrictions. She informed the Board that the deck was the only place in the back of the house for them to gather and that the playhouse had been there for seven years and removing it would cause a personal hardship. With regard to the variance request, Ms. Witman stated that due to the unusual shape of the lot there was no other place to construct the garage addition.

Mr. Kelley asked how tall the garage would be. Mr. Witman replied that it would be 12 feet tall. Mr. Hammack stated that the adjacent neighbor's home was 14 feet away from the property line and asked if the home was on a parallel plane with the garage. Mr. Witman answered that it was. Mr. Hammack said that he was concerned about it being so close to the property line and that a significant variance was required to construct the garage that close to the property line. Mr. Hammack asked why they needed that large of a garage. Mr. Witman stated that the garages in the neighborhood were that big and that they also required a variance. Mr. Hammack informed Mr. Witman that he could build an oversized one car garage by right. Mr. Witman replied that he had researched that but felt that it would be very difficult to build because of the justification of the house on the corner of the lot.

Mr. Ribble stated that he was opposed to granting the variance for the garage due to the excessive size and its proximity to the side lot line.

Mr. Dively asked who constructed the deck and whether or not a building permit was acquired. Mr. Witman answered that he had constructed the deck himself and that a building permit was not acquired.

Mr. Dively asked whether they went into the neighbor's yard while constructing the deck. Mr. Witman replied that originally there was a crumbling stone wall that circled the back area and he repaired the stone wall, placed the fence on top of it and then incorporated the wall to be the basis for the deck.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 99-P-016 for the reasons stated in the Resolution and to approve-in-part VC 99-P-032 for the reasons stated in the Resolution. Mr. Kelley moved to waive the 12 month waiting period. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD L. WITMAN, SP 99-P-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 1.0 ft. from side lot line and accessory structure to remain 3.0 ft. from rear lot line. Located at 8318 Colby St. on approx. 13,596 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(H) 12. (Concurrent with VC 99-P-032). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 1999; 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 **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of a deck and an accessory structure (playhouse) as shown on the plat prepared by Kenneth W. White, dated January 20, 1999 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. Kelley seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1999. 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

DONALD L. WITMAN, VC 99-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 27.5 ft. from street line of a corner lot and 4.7 ft. from side lot line and 7.3 ft. from side lot line. **(THE GARAGE WAS DENIED).** Located at 8318 Colby St. on approx. 13,596 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(H) 12. (Concurrent with SP 99-P-016). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The lot has an exceptional shape.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED- IN-PART**, with the following limitations:

1. This Variance is approved for the location of a two-story addition as shown on the plat prepared by Kenneth W. White, dated January 20, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The two-story addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 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 addition 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. Kelley moved to waive the 12 month waiting period. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

Page 591, May 25, 1999, (Tape 1), DONALD L. WITMAN, SP 99-P-016, VC 99-P-032, continued from Page 590

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 591, May 25, 1999, (Tape 1), Scheduled case of:

9:30 A.M. PAUL G. DOUGLAS, A 95-V-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental, and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 6737 Richmond Hwy. on approx. 27,705 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 93-1 ((17)) 1A. (DEF. FROM 11/14/95 FOR NOTICES. MOVED FROM 10/1/96, 2/11/97, 5/13/97, 7/22/97, 10/28/97, 2/3/98, 6/9/98 AND 1/5/99; DEF. FROM 8/4/98 AND 3/23/99).

Chairman DiGiulian informed the Board that there was a withdrawal request for the appeal application.

William E. Shoup, Deputy Zoning Administrator, stated that staff had no objection to the request and said the appellants were pursuing a special exception.

Mr. Dively moved to approve the withdrawal request regarding A 95-V-044. Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 591, May 25, 1999, (Tape 1), Scheduled case of:

9:30 A.M. HERITAGE CITGO, A 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx. 10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1. (DEF. FROM 11/28/95 MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/3/98, 6/9/98 AND 1/5/99; DEF. FROM 8/4/98 AND 3/23/99).

Jayne Collins, Zoning Administration Division, presented staff's position as contained in the staff report. She informed the Board that this was an appeal of the original determination set forth in a June 21, 1995, notice of Violation that the appellants were operating a heavy equipment and specialized vehicle sale, rental and service establishment for U-Haul trucks. She said this use was not permitted in the C-6 District when the appeal was initially filed.

Ms. Collins reminded the Board that all of the U-Haul appeals had been deferred to allow the Board of Supervisors time to consider and approve an amendment to the Zoning Ordinance which would permit a truck rental establishment use in certain commercial districts by special exception and to allow the appellants time to pursue such an option. She stated that since the appellants had not obtained such approval, they were still considered in violation of the Zoning Ordinance. She said staff did not agree that the appellants had grandfathered or nonconforming rights to a truck rental establishment on the property. Ms. Collins noted that Ms. Kelsey was raising new grounds to which the appellants were not entitled as they were not a part of the original statement filed with the appeal application in 1995 and, upon reviewing the Zoning Ordinance in effect at the time that the gas station was established on the property, the definition of a gasoline station did not include truck rentals.

She presented evidence that the Board of Zoning Appeals (BZA) adopted a resolution in 1969 interpreting that the rental of trailers was not an accessory use to a gas station and in 1972 a similar ruling was made in the Circuit court. In closing, she stated there was no evidence suggesting that truck and trailer rentals at gas stations were permitted when the appellants use commenced.

Jane Kelsey, Jane Kelsey and Associates, stated that she represented the appellant. She explained that the

appellant felt he had a legal, grandfathered use and when he purchased the rights to operate the station he observed there were U-Haul trucks rented there; therefore, he simply continued the use. She said that there were two witnesses who had submitted affidavits stating there were U-Haul trucks rented from the gas station in the late1960's and early 1970's.

Ms. Kelsey stated her opinion that the rental of trailers from a gas station was an accessory use before the BZA's interpretation in 1969, and before 1969, trailer rentals were customarily found at gas stations. She said the Zoning Ordinance that was in effect in 1968, did not define this use. She articulated that upon her review of the BZA minutes from 1969, she found they did not contain the word "only" with regard to the issue of whether or not rental trailers at gas stations was an accessory use; therefore, she did not agree with staff's statement that the BZA minutes indicated that the accessory use was approved for a gas station "only". She informed the Board that the definition of accessory use, in the Zoning Ordinance that was in effect in 1959, read that an accessory use was a use which was customarily associated with the primary use.

In closing, Ms. Kelsey disagreed with the violation notice that was issued in 1995, because it was for a heavy equipment and specialized sales establishment. She explained to the Board that two-axle trucks were not considered heavy equipment and the gas station was not a vehicle sales and rental establishment because the sale or rental of vehicles was not the primary use.

Mr. Hammack asked when was the business purchased. Ms. Kelsey answered that they had a long- term lease and they had purchased the rights to run the business in 1988.

Mr. Dively asked staff if Circuit Court precedents were binding for the BZA. Mr. Shoup replied that he did not know the answer, but stated the reason the Circuit Court information was presented because it illustrated a good basis to support staff's position that this type of use was never allowed under the 1959 Zoning Ordinance.

Mr. Hammack asked if the appellant was aware of the Circuit Court decision prior to purchasing the business rights. Ms. Kelsey replied that the appellant was unaware of this.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack stated his agreement with the Circuit Court decision and said that although it had not been enforced, it still applied to the property because the property was under a long-term lease with the owner.

Mr. Hammack moved to uphold the determination of the Zoning Administrator regarding A 95-B-045. Mr. Dively seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

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Page 592, May 25, 1999, (Tape 1), Scheduled case of:

9:30 A.M. WOODROOF G. FITZHUGH, TR., BY COUNSEL, A 95-D-058 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has established various uses and structures including a miniature golf course that were not previously approved in Special Permit Amendment SPA 79-D-176-1, and which are in violation of Zoning Ordinance provisions. Located at 11801 Leesburg Pk. on approx. 29.01 ac. of land zoned R-1 and HD. Dranesville District. Tax Map 6-3 ((1)) 33 and 33A. (Def. from 6/9/98 and 11/10/98).

Chairman DiGiulian informed the Board of the request for withdrawal. William E. Shoup, Deputy Zoning Administrator stated that all of the issues that were subject to the Notice of Violation had been resolved and that a non-residential use permit had been issued.

Mr. Dively moved to approve the withdrawal request regarding A 95-D-058. Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the hearing.

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9:30 A.M. NELLIE V. HERRING, WOODROW W. HERRING, JR., WILLOW SPRINGS TOWING & RECOVERY, A 1999-SU-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a junk yard and storage yard on property zoned R-1 in violation of Par. 5 Sect. 2-302 of the Zoning Ordinance. Located at 12801 Lee Hwy. on approx. 2.95 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((1)) 34. (DEFERRED FROM 4/13/99).

John Bell, Zoning Administration Division, presented staff's position as contained in the staff report. He informed the Board that the subject property was operating as a junkyard and storage yard which was a violation of the Zoning Ordinance. He said the appellants claimed that the junkyard and storage yard were nonconforming uses on the subject property that had been in continuous use since at least March 1, 1941, the effective date of the first Zoning Ordinance. Mr. Bell stated the issue of the appeal was the storage of junk automobiles, trucks, and or parts thereof and it was determined that the activity constituted a junkyard, storage yard use, which was not permitted in the R-1 District. He said the only access to the subject property in violation was from the adjacent nonconforming junkyard use known as Willow Springs Towing & Recovery; therefore, the subject property was considered an extension of the towing company. In closing, Mr. Bell reiterated staff's position that the appellants had not substantiated their claim of a non-conforming use on the subject property.

Mr. Stephen Fox, Agent for the appellants, stated that the issue of nonconforming use in this instance pre-dated the Zoning Ordinance. He said that the most critical element with regard to the appeal was that the Herring family and the Crouch family were friends. He began illustrating the history of the property and said that the appellants initially rented a portion of the subject property known as the "garage area" and as their business grew stronger they ultimately started using more property than they were entitled to, but since both families were friends, the Crouch family did not mind. Mr. Fox compared the memory of Ms. Herring who was 23 years of age with Ms. Crouch-Ward, who was 6 years of age at the time the Herring family began the business in 1941. He stated that Ms. Crouch-Ward did not have the capacity to perceive the issues at hand in 1941 and that she did not have any idea of her grandfather's dealings with the Herring family with regards to the subject property. Mr. Fox submitted photographs of several old vehicles that had become imbedded in the brush surrounding the property. Mr. Fox referred to a photograph, submitted by the appellants, illustrating cars stored on property that had never been owned by the appellants and by doing this, he suggested that the appellants were permitted liberally to use the Crouch land for the storage of their cars.

Woodrow Herring, Jr. stated that he had operated the towing service since 1957, and that he remembered the garage from a very early age.

Chairman DiGiulian called for speakers.

Claudette Crouch-Ward, 5370 Tractor Lane, Fairfax, Virginia, stated that many of the points the appellants had brought up were addressed in her five pages of written testimony. She said that she remembered well the circumstances of the property between her grandfather and the Herring family.

Ms. Crouch-Ward informed the Board that she had complained about junk vehicles stacked up above a six-foot fence on a portion of the Herring property located directly behind the well where the Herrings get their drinking water. She said that she had an agreement with the Herrings not to store junk vehicles on that portion of property. She stated that her grandfather rented the garage and one half of an acre of land to the Herring family from February of 1941 to December 1941 and at that time her grandfather sold the Herrings one acre of land and the garage. Ms. Crouch-Ward said that the Crouch land adjoining the garage lot was farmed between 1941 to 1948; therefore, the Herrings would not have been permitted to park vehicles on this farm land and that this land included the Herring house lot, which was sold to them in 1948. She informed the Board that the business had expanded and intensified since the Zoning Ordinance was initiated in 1941.

Calvin Minor, 5278 Tractor Lane, Fairfax, Virginia stated that he had recently purchased his property in December, 1998. He said that he viewed the subject property as a junkyard instead of a recycling center because a recycling center brings things in, processes them, and takes them back out. Mr. Minor said, to his knowledge, nothing was being moved off of the property once it was brought in. He informed the Board that the junk cars stacked up on top of each other had not been moved since he had purchased his home and that they had even been adding to the cars by stacking them behind the garage.

Jocelyn E. Colvin-Donald, 5264 Tractor Lane, Fairfax, Virginia, stated that she lived two doors down from Ms. Crouch-Ward. She read a letter that she had written to Zoning Administration regarding a pile of discarded tires that were dumped at the edge of her property line.

William E. Shoup, Deputy Zoning Administrator, stated that a nonconforming right would have to be traced back to before March 1, 1941 and it was important to take into consideration the increased intensity of the use through the years. Mr. Shoup compared a GIS map of the property with photographs that were submitted. He concentrated on the one aerial photograph of the property submitted by the appellant and illustrated the increased intensity level of the business by comparing the number and the placement of stored cars on the property then, and the increased number of cars stored at the current time. Mr. Shoup stated that the statement from Ms. Herring regarding the past storage of cars was inconsistent with the time-line of the aerial pictures that were submitted by the appellant. In closing, Mr. Shoup reiterated staff's opinion that the Notice of Violation was correct and there was no nonconforming grandfathered use.

Mr. Fox, in his rebuttal, reiterated his opinion that the only competent evidence was that of Ms. Herring's testimony that the use was the same intensity as it was back in 1941. He stated that Ms. Crouch-Ward's recollections were totally incredible and he discounted Mr. Minor's and Ms. Colvin-Donald's testimony, stating they were irrelevant to the issues at hand. Mr. Fox maintained that the GIS Maps showing the property lines were incorrect. He stressed that there were cars stored on the Crouch property back when the aerial photograph was taken, illustrating a friendship between the two families.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that the case was very complicated, but he placed a fair degree of reliance on the GIS maps and modern technology. He said that though there were conflicting affidavits as to what had occurred, during the time-frame of 1937 through 1954, the aerial photographs illustrated the fact that the use had intensified substantially.

Mr. Pammel moved to uphold the determination of the Zoning Administrator regarding A 1999-SU-002. Mr. Hammack seconded the motion which failed by a vote of 2-3. Chairman DiGiulian, Mr. Ribble, and Mr. Kelley voted nay. Mr. Dively was not present for the vote and Ms. Gibb was absent from the meeting. Chairman DiGiulian explained, due to the fact that 4 votes were needed to reverse the determination of the Zoning Administrator, the decision was upheld.

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Page 594, May 25, 1999, (Tape 2), After Agenda Item:

Request for Reconsideration
SP 99-L-014
John and Michelle McCaughey

There was no motion; therefore, the request reconsideration for SP 99-L-014, was denied. Mr. Dively was not present for the vote and Ms. Gibb was absent from the meeting.

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Page 594, May 25, 1999, (Tape 2), After Agenda Item:

Approval of May 18, 1999 Resolutions

Mr. Pammel moved to approve the May 18, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Ms. Gibb 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 10:49 a.m.

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The meeting reconvened at 10:50 a.m.

Mr. Pammel initiated discussion regarding the Board of Zoning Appeal recruiting more zoning inspectors. He said that the staff did not have the resources to follow up and perform strong enforcement activities. Chairman DiGiulian said he would not object to forwarding a memo regarding the matter to the Board of Supervisors (BOS), but he did not think that it was the BZA's place to tell the BOS to hire more people. Mr. Pammel suggested that the BZA submit a memorandum to the BOS outlining the enforcement problems and request that they address the problem with additional staff resources so enforcement could take place. Chairman DiGiulian stated that he was opposed to requesting the BOS to add staff. Mr. Pammel said that not having strong enforcement activities was putting the burden back on the BZA because the cases were returning to them on appeal, causing long public hearings and other situations that should have been resolved either at the staff level or the Circuit Court level. Mr. Hammack said that there was a moratorium on hiring imposed by the County Board but he was not sure what positions were impeded by this.

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As there was no other business to come before the Board, the meeting was adjourned at 10:54 a.m.

Minutes by: Lori M. Mallam

Approved on: September 28, 1999

Regina Thorn, 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 Tuesday, June 1, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Paul Hammack; James Pammel and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:01 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 597, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KASS REALTY COMPANY, INC., SP 99-D-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a meeting hall. Located at on the S. side of Canal Dr. on approx. 33,047 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((1)) 33 pt. (DEFERRED FROM 4/2/099) (continued from 5/25/99).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Hazel & Thomas, PC, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was.

Chairman DiGiulian noted that the application was deferred from May 25, 1999, in order to have comment from the County Attorney's Office.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board had requested staff contact the County Attorney's Office to determine if the location of the proposed community use was in conformance with the requirements of the Zoning Ordinance. Specifically, if the use, with a private driveway, could access off two public streets and be the only connection between the public streets. Ms. Langdon stated that while staff may share BZA's concern with the proposed location, it had been determined by the County Attorney's Office and the Zoning Administration Division that the use, in the location as proposed, was not precluded by the Zoning Ordinance. The driveways for ingress and egress from the two public streets gave access to the community use and met the definition of a driveway, not a public street. Ms. Langdon said that the Board could exercise their discretion on whether the particular community use met the standards for the Group 4 Special Permit Use. Additionally, the subdivision could stand alone, regardless of the location of the community use.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Lawrence distribution revised development conditions to the Board and reviewed his proposed revisions. Mr. Lawrence noted that staff had no objections to the applicant's revised conditions.

Mr. Pammel asked how many access points to the subdivision were located on Georgetown Pike and Old Dominion Drive. Mr. Lawrence replied there would be one access point at each location.

Mr. Hammack asked for a definition of a non-resident, as noted in the staff report, and asked if that would include anyone outside of the Kass Realty Development. Mr. Lawrence replied that it would be anyone who was not a property owner within the subdivision, including other immediate residents around the development.

Mr. Lawrence submitted a letter of support from a representative of the Swinks Mill Estates Association.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 99-D-002 for the reasons noted in the Resolution subject to the revised Development Conditions dated June 1, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KASS REALTY COMPANY, INC., SP 99-D-002 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a meeting hall. Located at on the S. side of Canal Dr. on approx. 33,047 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((1)) 33 pt. (DEFERRED FROM 4/2/99 and 4/25/99). 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 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony before the Board indicating compliance with special permit standards.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, south of Georgetown Pike, 33,105 square feet (.76 acres) and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Michael R. Tucker, Professional Engineer, dated December 1998, as revised through March 3, 1999, 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 Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. There shall be 4 parking spaces. All parking shall be on-site as shown on the special permit plat.

6. The existing vegetation shall be maintained and shall be deemed to satisfy the transitional screening requirements along the eastern, northeastern and western property lines, as depicted on the Special Permit plat. In the area around the foundation of the gatehouse, the applicant shall provide a combination of shrubbery, flowering trees, and lawn to soften the impact of the structure on the proposed single family dwellings and blend the development with the proposed surrounding residential area, in conformance with a landscape plan to be approved by the Urban Forestry Branch. If construction of the stormwater management facility is not waived, two rows of evergreen trees a minimum of six feet in height at time of planting, which meet the requirements of Transitional Screening I, shall be placed along the southern lot line. If the stormwater management facility is waived, all the existing vegetation within the proposed stormwater management area shall be preserved. All landscaping shall be installed to the satisfaction of the Urban Forester. Dead or dying plant material shall be replaced to maintain the Transitional Screening as outlined above. Additional plant material may be required as needed to the east and west screening areas to meet the

requirement of Transitional Screening I. The Applicant shall conform to the limits of clearing and grading shown on the special permit plat and described within these development conditions subject, however, to modifications of these areas, if necessary, for the installation of utility lines required for the use proposed herein or necessitated by the development of the underlying adjacent subdivision, now referred to as Garfield Park. If any utility lines are required to be located within the tree save areas protected by the limits of clearing and grading and these development conditions, they shall be located and installed in the least disruptive manner feasible, considering cost and engineering, as determined by DPWES. If any trees within the areas designed to be preserved are destroyed as a result of the developer's construction activities, the developer will provide appropriate replacement trees in terms of species, size and quantity as determined by the Urban Forestry Branch pursuant t Section 12-403 of the Public Facilities Manual.

7. The barrier requirement shall be waived.

8. A four foot hedge and/or board on board fence shall be provided along the eastern end of the parking area. All landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance.

9. 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 (12) twelve feet.
   - The light shall be a low-intensity, full cut-off fixture design which focuses the light directly on the subject property.
   - Additional shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

10. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

11. The maximum hours of operation for the community association building (meeting hall) shall be limited from 9:00 a.m. to 10:00 p.m., daily. This time limitation shall not apply to the gatehouse operations.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 4-1-1. Mr. Pammel voted against the motion. Mr. Hammack abstained from 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 9, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 599, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOE AND LYNDA HEATER, VC 99-L-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 5726 Barbmor Ct. on approx. 12,370 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((10)) 41.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Joe Heater, 5726 Barbmor Court, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a covered and screened deck to be located 8.6 feet from the side lot. A minimum side yard of 12 feet is required; therefore, a variance of 3.4 feet was requested.

Mr. Heater presented the variance request as outlined in the statement of justification submitted with the application. Mr. Heater showed the Board a diagram displaying the location of the deck as it would be placed on the rear of the home and stated there would not be any other location for the placement of the deck. He stated only one corner of the deck actually needed the variance, due to the pie shape of the lot.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-L-038 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 25, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOE AND LYNDA HEATER, VC 99-L-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line. Located at 5726 Barbmor Ct. on approx. 12,370 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((10)) 41. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The variance request was minimal due to only one corner of the deck requiring a variance.
4. The variance was necessary due to lot line configuration.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

the same vicinity.

6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the covered deck addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 2, 1999, as revised through March 8, 1999, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 601, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THE TRUSTEES OF GRACE EVANGELICAL LUTHERAN CHURCH, VC 99-M-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.9 ft. from street line of a corner lot. Located at 3300 Beechtree Ln. on approx. 21,689 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((7)) 2.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Wattles, Agent, 3233 Annandale Road, Falls Church, Virginia, replied that it was.

Chairman DiGiulian disclosed that his office was working for the church on another piece of property and, therefore, would not participate in discussion or voting on the application.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of an addition 27.9 feet from the street line. A minimum of 35 feet is required; therefore, a variance of 7.1 feet was requested.

Mr. Wattles presented the variance request as outlined in the statement of justification submitted with the application. Mr. Wattles stated that the request was necessary for a two story, two car garage, to provide adequate storage space. Mr. Wattles stated that nine of twelve homes on Beechtree Lane had two car garages and believed it would be in accordance with the neighborhood. Mr. Wattles said that in speaking with immediate neighbors, all had given their support of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 99-M-039 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 25, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THE TRUSTEES OF GRACE EVANGELICAL LUTHERAN CHURCH, VC 99-M-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.9 ft. from street line of a corner lot. Located at 3300 Beechtree Ln. on approx. 21,689 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((7)) 2. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The location and the design of the house as originally placed on the lot precluded the addition in any other location.
4. The variance request was minimal and caused no safety concerns with Annandale Road.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 5, 1999, as revised through March 22, 1999, 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 to the existing dwelling.

4. Prior to issuance of the Residential Use Permit for the proposed addition, the shed designated on the plat as Shed "B" shall be relocated or altered in height so as to comply with Ordinance requirements for shed location.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Chairman DiGiulian abstained from 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 9, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 603, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WESTERRA RESTON L.L.C. AND KINDERCARE LEARNING CENTER, INC., VC 99-H-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in the front yard of a corner lot. Located at the intersection of North Village Rd. and Wiehle Ave. on approx. 2.16 ac. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((1)) 14. (Def. from 4/20/99 and 5/18/99).

Chairman DiGiulian called the applicants 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 & Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a solid wood fence in excess of 4.0 feet to be located in the front yard of a corner lot. The maximum height permitted for a fence in a front yard is 4.0 feet; therefore, a variance of 2.0 feet was requested.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Martin stated the permitted use of a child care center was unpopular in Reston; and stated that the sole purpose of the request before the BZA was only to allow for a 6 foot high fence to provide security to children at play. Mr. Martin said that KinderCare, on its national basis, always used a minimum 6 foot high fence for the safety and protection of the children.

Chairman DiGiulian called for speakers.

Thomas Miles, 1332 Park Garden Lane, Reston, Virginia, came to the podium to speak in opposition of the application. His concerns were as follows: The use was inappropriate for the parcel even though it was zoned PRC; building on 100 year floodplain due to risks; forcing 400 additional commuter trips on North Village Road; roads are inadequate to handle additional traffic; and, safety issues with regard to traffic.

Mr. Pammel noted that only the fence variance was at issue in the public hearing. The use of a child care facility was an approved use for the location.

Chairman DiGiulian informed Mr. Miles that he could go to his Board of Supervisors member to express his concerns regarding the use.

Louise Harlowe, 11401 Gate Hill Drive, Reston, Virginia, came to the podium to speak in opposition of the application. She asked the Board where she could go to address the traffic situation which would arise on North Village Drive.

Chairman DiGiulian informed Ms. Harlowe that she would have to address this issue with her District Supervisor.

Mr. Pammel informed Ms. Harlowe that the forum for voicing her opinion on the use as before the Planning Commission and Board of Supervisors during the public hearing process and stated that her recourse would be through the Board of Supervisors.

Patricia Forbes, 1332 Park Garden Lane, Reston, Virginia; Rebecca Lewis, 11401 Gate Hill Place, Reston, Virginia; Jake Boshia, 11408 Gate Hill Place, Reston, Virginia; Arthur Laudenslager, 1371 Park Garden Lane, Reston, Virginia; Susan Glasgow, 11401 H Gate Hill Place, Reston, Virginia; Joy Constantino, 1305 J Windleaf Drive, Reston, Virginia; came forward to speak in opposition.

They expressed concerns relating to the following: The surrounding area was residential; the child care center would be detrimental to surrounding neighborhood; a 6 foot high fence was a commercial look within a residential neighborhood; the proposal would change character of the district and not be in harmony with community visually due to 6 foot high instead of 4 foot high; trees would be removed; it would be a visual eyesore; community does not want the use; it would take away from the ambiance of Reston; the 6 foot fence would be installed upon a 3 foot berm making the fence a 9 foot fence; most residents around the facility did not have children; the fence and facility should be supported by the community; and, should benefit the community. Ms. Constantino submitted a petition with 104 signatures from the Sutton Ridge Development protesting the facility and fence.

There were no further speakers and Chairman DiGiulian closed the public hearing.

Mr. Martin came to the podium to rebut the opposition and stated that most speakers were opposed to the principal use of the facility and not necessarily the fence. Mr. Martin said that the applicant had met twice with the Reston Design Review Board and due to restrictive covenants in Reston, would have to obtain their approval prior to site plan approval. Mr. Martin stated that the fence would not be built without this approvai from the Design Review Board to ensure proper screening of the principal use. Mr. Martin stated that stopping the 6 foot high fence would not stop the principal permitted use.

Ms. Gibb referred to trees between the fence and Wiehle Avenue on the plan. Mr. Martin replied that the Design Review Board was also looking at a detailed landscaping plan and stated that the property was elevated; therefore, would require heavy landscaping. Ms. Gibb referred to the request asking for a wooden fence. Mr. Martin stated that the Reston Design Review Board would pick the type of fencing.

Mr. Hammack questioned a 3 foot berm and stated it was not shown on the plat; however, he referred to a 6 foot berm with landscaping as referred to in the Planning Commission minutes. Mr. Martin replied that along the property's frontages, the fence was inside the berm and that the berming effect was around the perimeter of the site. Mr. Martin stated that the fence was to be located on grade level and not on a 3 foot berm. Mr. Martin agreed to additional language in the development conditions which would recognize the design review board's materials.

Ms. Gibb asked if the 6 foot high fence was not only for the safety of the children but also because the Reston community requested it. Mr. Martin agreed.

Mr. Dively moved to approve VC 99-H-012 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated April 13, 1999.

Mr. Pammel stated that the Master Plan for Reston was approved 30 years ago and allowed the requested use by-right as long as it was shown as a community use. Mr. Pammel noted that the process of a proffered condition amendment and development plan amendment were approved through public hearings before the Planning Commission and the Board of Supervisors and stated that on the site plan, the fence did not conflict with site line distances and was entirely within the building envelope for the property and was reasonable.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WESTERRA RESTON L.L.C. AND KINDERCARE LEARNING CENTER, INC., VC 99-H-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in the front yard of a corner lot. Located at the intersection of North Village Rd. and Wiehle Ave. on approx. 2.16 ac. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((1)) 14. (Def. from 4/20/99). 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 June 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The request was not unreasonable considering the safety of the children with the facility being located near a very busy intersection.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a fence, measuring 6.0 (six) feet at it maximum height, in the location shown on the plat prepared by Urban Engineering & Associates, dated November, 1998, as revised through December 22, 1998, submitted with this application and is not transferable to other land.

2. Minor modifications to the approved variance plat may be permitted for the final placement location of the fence within the front yard area, to the satisfaction of the Department of Public Works and Environmental Services at time of site plan review, and to the satisfaction of the Reston Design Review Board.

3. Transitional Screening shall be provided along Wiehle Avenue as indicated on the Variance 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 construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 606, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. AND JENNIFER O'C. ROONEY, VC 99-V-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.6 ft., 18.2 ft., and 16.0 ft. from street lines of a corner lot and deck to remain 11.34 ft. from front lot line. Located at 1801 Edgehill Dr. on approx. 22,901 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3))(8) 1, 2, and 25.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Rooney, 1801 Edgehill Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit construction of two room additions to be located 12.6 feet, 18.2 feet and 16.0 feet from the street line of a corner lot, and a deck to remain 11.34 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, variances of 17.4 feet, 11.8 feet and 14.0 feet were requested for the room additions and a variance of 12.66 feet for the deck was requested.

Mr. Rooney presented the variance request as outlined in the statement of justification submitted with the application. Mr. Rooney stated that the house was constructed around 1930 and said that other than some minor modifications in the 1940's, the house was its original structure. He stated that the purpose for the request was to enhance their home and bring it up to modern standards and asked for the Board's approval of the application.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 99-V-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated May 25, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES H. AND JENNIFER O'C. ROONEY, VC 99-V-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 12.6 ft., 18.2 ft., and 16.0 ft. from street lines of a corner lot and deck to remain 11.34 ft. from front lot line. Located at 1801 Edgehill Dr. on approx. 22,901 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3))(8) 1, 2, and 25. 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 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance request was necessary due to the siting of the original house in 1930.
3. The exceptionally shaped lot and the topography cause extraordinary conditions.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and

the same vicinity.

6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of two additions and a deck shown on the plat prepared by John McCartney, dated March 5, 1999 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The room 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. Dively and Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack was 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 9, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 608, June 1, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BECKFORD T. MACKEY, SP 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 1014 Harriman St. on approx. 2.15 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 3. (Continued from 4/13/99).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Beckford Mackey, 1014 Harriman Street, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Bernal noted that the original case was heard on April 20, 1999, and was deferred at the Board's request to this date for a revised plat to show a connection between the accessory dwelling unit and the existing house.

Mr. Pammel moved to approve SP 99-D-003 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BECKFORD T. MACKEY, SP 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 1014 Harriman St. on approx. 2.15 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 3. (Continued from 4/13/99). 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 1, 1999; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** 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, 1014 Harriman Street, 2.15 acres, and is not transferable to other land.

2. This Special Permit is approved for the purpose(s), structures and/or use(s) shown on the plat prepared by Reid M. Dudley, of Runyon, Dudley, Associates, Inc., May 19, 1999, submitted with this application and approved with this application, as qualified by these development conditions. Any plan submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

3. A copy of this Special Permit and the Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The 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.

5. The accessory dwelling unit shall contain no more than 2 bedrooms.

6. There shall be 5 parking spaces provided on site as shown on the special permit plat.

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 regulation 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. Should the property sell, the only use for the accessory dwelling unit is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of the 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.

Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Ribble were 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 9, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 610, June 1, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ERIC W. GARAND, A 1999-PR-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating an off-street commercial parking lot and has denuded approx. 3,168 sq. ft. in area on the property without obtaining appropriate plan approvals and without installing proper erosion and sediment controls, all in violation of Zoning Ordinance provisions. Located at 2932 Fairlee Dr. on approx. 20,000 sq. ft. of land zoned R-1. Providence District. Tax Map 48-1 ((6)) 35. (Def. from 4/27/99).

Eric Garand, 2932 Fairlee Drive, Fairfax, Virginia, came to the podium and stated that he no longer operated a parking lot on the property and had no future plans to do so. Mr. Garand asked if it would be appropriate to withdraw his appeal application.

William Shoup, Deputy Zoning Administrator, stated that staff had no knowledge if the parking lot use ceased; however, he stated that if Mr. Garand was willing to withdraw the appeal, staff would not object but would need to make follow up inspections to confirm that he was in compliance with the Zoning Ordinance regulations.

Mr. Dively made a motion to accept the withdrawal of the appeal application as requested by the appellant. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Ribble were not present for the vote. Mr. Kelley was absent from the meeting.

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Page 610, June 1, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ANNANDALE HARDWARE & SUPPLY CO., INC.--POONG IM, A 96-M-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul Rental Vehicles) in violation of Zoning Ordinance provisions. Located at 4709 Backlick Rd. on approx. 20,007 sq. ft. of land zoned C-5. Mason District. Tax Map 71-1 ((1)) 123. (MOVED FROM 1/29/96, 2/11/97, 5/13/97, 7/22/97, 10/28/97, 2/10/98, 6/30/98, 8/11/98, 1/12/99 and 3/30/99).

Chairman DiGiulian noted a request for withdrawal of the appeal application.

William Shoup, Deputy Zoning Administrator, stated that Ms. Jane Kelsey, Agent, had requested the withdrawal and said that a special exception application had been filed and accepted and noted that as long

Page 611, June 1, 1999, (Tape 1), ANNANDALE HARDWARE & SUPPLY CO., INC.--POONG IM, A 96-M-034, continued from Page 610

as that application was diligently pursued, staff would delay enforcement action and therefore concurred with the withdrawal of the appeal.

Mr. Dively made a motion to accept the withdrawal of the appeal application as requested by the appellant. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Ribble were not present for the vote. Mr. Kelley was absent from the meeting.

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Page 611, June 1, 1999, (Tape 1), Scheduled case of:

9:30 A.M. HAROLD DAWSON/DAWSON'S AUTO CARE, A 95-M-048 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul rental vehicles) in violation of the Zoning Ordinance provisions. Located at 5930 Leesburg Pi. on approx. 34,970 sq. ft. of land zoned C-5, R-3, HC and SC. Mason District. Tax Map 61-2 ((1)) 23. (DEF. FROM 11/28/95 TO GIVE APPELLANT, STAFF, AND BOARD OF SUPERVISORS TIME TO RESOLVE ISSUES IN CONTENTION. MOVED FROM 5/14/96, 10/8/96, 2/25/97, 5/27/97, 7/29/97, 11/4/97, 2/10/98, 6/30/98, 1/12/99, AND 3/30/99).

Chairman DiGiulian noted a letter submitted by Ms. Jane Kelsey, Agent, requesting deferral of the application until June 8, 1999.

Mr. Dively made a motion to defer the above referenced appeal to June 8, 1999. Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Ribble were not present for the vote. Mr. Kelley was absent from the meeting.

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Page 611, June 1, 1999, (Tape 1), Scheduled case of:

9:30 A.M. CLAUDE A. WHEELER, A 1998-LE-044 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the width of appellant's outlot is measured along an arc having a radius of 30 ft. from point where street line intersects property and as a result, the outlot does not satisfy the minimum lot width requirement of the R-3 District. Located at 5933 Old Rolling Rd. on approx. 14,644 sq. ft. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 99-A1. (MOVED FROM 2/2/99 and 4/13/99).

William Shoup, Deputy Zoning Administrator, noted that in April, 1999, the Board had approved a variance application which resolved the issue and noted that it was appropriate to withdraw the appeal.

Mr. Dively made a motion to accept the withdrawal of the appeal application as requested by the appellant. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Ribble were not present for the vote. Mr. Kelley was absent from the meeting.

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Page 611, June 1, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration for A 95-B-045, Heritage Citgo

Jane Kelsey, Agent, requested that the Board waive the 8-day waiting period and defer the request for reconsideration to June 8, 1999.

Mr. Hammack referred to an opinion letter which stated that the use requested was not permitted as an accessory use and expressed his concern with the request.

Ms. Kelsey requested additional time to research past court cases to assist in this appeal application.

Page 612, June 1, 1999, (Tape 1), After Agenda Item, continued from Page 611

Mr. Hammack made a motion to defer the request for reconsideration to June 8, 1999. Mr. Dively seconded the motion which carried by a vote of 4-1. Ms. Gibb voted against the motion. Mr. Ribble was not present for the vote. Mr. Kelley was absent from the meeting.

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Page 612, June 1, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration for VC 99-P-016, Donald L. Witman

Donald Witman, 8318 Colby Street, came to the podium and stated that due to the original denial of a portion of the variance application, he had redesigned the proposed garage/structure and reduced it in size and proximity to the property line.

Chairman DiGiulian noted that the Board had waived the 12 month limitation for the filing of a new variance application. He informed Mr. Witman that if the application had changed, a new application would need to be filed due to revisions on the plat.

There was no motion made to accept the request for reconsideration; therefore, the request was denied.

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Page 612, June 1, 1999, (Tape 1), After Agenda Item:

Approval of May 25, 1999 Resolutions

Mr. Pammel made a motion to approve the May 25, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. 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 10:17 a.m.

Minutes by: Deborah Hedrick

Approved on: September 28, 1999

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals