A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 8, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; James Hart; Robert Kelley, James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 001, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. JOHN E. AND LAURA A. MEARS, VC 99-Y-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 17.0 ft. from rear lot line. Located at 6205 Mountain Spring Ct. on approx. 10,697 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-2 ((7)) 149.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Mears, 6205 Mountain Spring Court, 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 17.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 8 feet was requested.

Mr. Mears presented the variance request as outlined in the statement of justification submitted with the application. He said in addition to his statement of justification, he wanted a screened porch to shield them from the outdoors and provide a good place for their daughter to play.

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

Mr. Hammack moved to approve VC 99-Y-037 for the reason stated in the Resolution.

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Page 001, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. CHRIS AND DIANE NORTON, VC 99-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and carport 5.0 ft. from side lot line. Located at 3406 Executive Ave. on approx. 11,168 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8))(8) 17.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete. Chris Norton, 3406 Executive Avenue, Falls Church, 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 an addition 7.0 feet from the side lot line and a carport 5.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 5 feet was requested for the addition; and a minimum side yard of 7 feet is required for the carport; therefore, a variance of 2 feet was requested.

Mr. Norton presented the variance requested as outlined in the statement of justification submitted with the application. He said the dwelling was built in the 1950's. He said the carport would be where the existing driveway was located. Mr. Norton said he spoke with neighbors and received three letters supporting the application.

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

Mr. Pammel moved to approve VC 99-P-042 for the reasons noted in the Resolution.

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Page 002, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. ROBERT AND CAROL SAMPSON, VC 99-B-044 Appl. under Sect.(s) 18-401 of the Zoning Ordinance to permit construction of addition 17.9 ft. from rear lot line. Located at 8940 Kenilworth Dr. on approx. 9,576 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((21)) 109A.

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 Sampson 8940 Kenilworth Drive, 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 an addition 17.9 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.5 feet was requested.

Mr. Dively asked whether Parcel A was floodplain or common area. Mr. Bernal replied it was open space common area.

Mr. Sampson presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to extend the kitchen towards the rear of the house. Mr. Sampson said the property abutted homeowners association land. He stated that he received approval from the homeowners association and that all the neighbors supported the application.

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

Mr. Dively moved to approve VC 99-B-044 for the reasons noted in the Resolution.

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Page 002, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. ROBERT, JR. AND BARBARA PETERSEN, SP 99-P-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit additions to remain 24.0 ft. from street line of a corner lot. Located at 2819 Hunter Rd. on approx. 17,798 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 12. (Concurrent with VC 99-P-043).

9:00 A.M. ROBERT, JR. AND BARBARA PETERSEN, VC 99-P-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from street line of a corner lot. Located at 2819 Hunter Rd. on approx. 17,798 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 12. (Concurrent with SP 99-P-022).

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 Petersen, 2819 Hunter Road, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to permit reduction to minimum yard requirements based on error in building location to permit additions to remain 24.0 feet from the street line of a corner lot. A minimum front yard of 35 feet is required; therefore, the amount of error was 11.0 feet or 31%. The applicants also requested a variance to permit the construction of an addition 12 feet from the street line of a corner lot. A minimum front yard of 35 feet is required; therefore, a variance of 23 feet was requested.

Mr. Petersen presented the requests as outlined in the statement of justification submitted with the application. He said his architect discovered the error on the plat and that he wished to build an extra garage to house hold cars. Mr. Petersen said the house was unusually shaped because of large oak trees.

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

Mr. Hammack moved to approve SP 99-P-022 and VC 99-P-043 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT, JR. AND BARBARA PETERSEN, SP 99-P-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit additions to remain 24.0 ft. from street line of a corner lot. Located at 2819 Hunter Rd. on approx. 17,798 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 12. (Concurrent with VC 99-P-043). 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 8, 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 garage and room addition shown on the plat prepared by Scott W. Sterl, AIA., dated March 23, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 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

ROBERT, JR. AND BARBARA PETERSEN, VC 99-P-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from street line of a corner lot. Located at 2819 Hunter Rd. on approx. 17,798 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 12. (Concurrent with SP 99-P-022). 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 8, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants satisfied 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 an addition, as shown on the plat prepared by Scott W. Sterl, AIA, dated March 23, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 1999. This date shall be deemed to be the final approval date of this variance.

Page 005, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. BRIAN AND SYLVANA MASCARENHAS, SP 99-L-021 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 9.0 ft. from side lot line. Located at 7205 Layton Dr. on approx. 10,320 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 121. (Concurrent with VC 99-L-041)

9:00 A.M. BRIAN AND SYLVANA MASCARENHAS, VC 99-L-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. from side lot line. Located at 7205 Layton Dr. on approx. 10,320 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 121. (Concurrent with SP 99-L-021)

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 Mascarenhas, 7205 Layton Drive, Springfield, 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 to permit the reduction to minimum yard requirements based on error in building location to permit a dwelling to remain 9 feet form the side lot line. A minimum side yard of 12 feet is required; therefore, the amount of error was 3 feet or 75%. The applicants also requested a variance to permit the construction of an addition 7.6 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.4 feet was requested.

Mr. Pammel noted that the amount error should be 25% and not 75%.

Mr. Mascarhenhas presented the requests as stated in the statement of justification submitted with the application. He said they needed extra room in their 2 bedroom house and he wanted to enclose the carport.

Chairman DiGiulian called for speakers.

William Shelton, 7203 Layton Drive, came forward to speak in support of the application. He said the carport was built with the house over 42 years ago. Mr. Shelton said his carport was enclosed as well as six others in homes in the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 99-L-021 and VC 99-L-041 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN AND SYLVANA MASCARENHAS, SP 99-L-021 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 9.0 ft. from side lot line. Located at 7205 Layton Dr. on approx. 10,320 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 121. (Concurrent with VC 99-L-041). 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 8, 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 dwelling as shown on the plat prepared by Kenneth W. White, dated February 22, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 16, 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

BRIAN AND SYLVANA MASCARENHAS, VC 99-L-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. from side lot line. Located at 7205 Layton Dr. on approx. 10,320 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 121. (Concurrent with SP 99-L-021). 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 8, 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.
3. The siting of the house on the property creates this condition and this addition will not cause any detrimental situations to any of the 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 room addition as shown on the plat prepared by Kenneth W. White, dated February 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 room addition 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 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. 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 June 16, 1999. This date shall be deemed to be the final approval date of this variance.

Page 008, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. PARKWOOD BAPTIST CHURCH, SPA 84-A-048-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-A-048 for church and related facilities and child care center to permit building additions and site modifications. Located at 8726 Braddock Rd. on approx. 8.63 ac. of land zoned R-1. Braddock District. Tax Map 70-3 ((1)) 6. (MOVED FROM 6/1/99)

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 D. Hooper, 8726 Braddock 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 special permit to permit building additions and site modifications. The proposed addition would accommodate an expanded lobby area, new classroom space (enabling removal of the existing classroom trailers), and a new fellowship hall for church dinners and educational activities. No additional seating capacity or increase in child care enrollment was requested. Site modifications would include the redesign of

the front entrance to the church and the removal of the existing classroom trailers. Site modifications could also include the construction of a stormwater management pond, if deemed necessary by the Department of Public Works and Environmental Services (DPWES). Staff recommended approval of the subject application with the implementation of the proposed development conditions contained in the staff report.

Mr. Kelley questioned staff about the development condition referencing interparcel access. Ms. Wilson replied that the condition was requested by the Department of Transportation.

Mr. Hopler, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said there would be no additional seating and the addition would not be any closer to the boundary lines. Mr. Hopler indicated that the applicant wanted to meet with all the standards and would be happy to work with DPWES. He stated the church agreed to additional right-of-way. Mr. Hopler expressed concern with Condition #16 relating to interparcel access. He said the church understood the reasoning of reducing the flow of traffic, but their church had co-existed with the other church for 30 years without an interconnection. Mr. Hopler said both churches felt it would be detrimental and the interparcel would become a cut-through.

Mr. Hammack asked if there was a history of traffic problems. Ms. Wilson replied she was not aware of any accidents but the Department of Transportation thought the interparcel access would facilitate better traffic flow by giving the neighboring church an entrance which would have access to a median break on Braddock Road.

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

Ms. Gibb moved to approve SPA 84-A-048-3 for the Reasons noted in the Resolution.

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Page 009, June 8, 1999, (Tape 1) Scheduled case of:

9:00 A.M. CHARLOTTE M. HOLZMAN, SP 99-L-017 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 7121 Highland St. on approx. 8,589 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((5)) (15) 513.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charlotte Holzman, 7121 Highland 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 special permit modification to the limitation on the keeping of animals to allow 3 dogs on a lot containing less than 12,500 square feet.

Ms. Holzman presented the special permit request as outline din the statement of justification submitted with the application. She said her friend had a stroke and she wants to keep her friend's dog along with her own two dogs. Ms. Holzman said she had not received any complaints from her neighbors and she had extended her privacy fence with bushes. She stated that her vet volunteered to write a letter of recommendation for this hearing. Ms. Holzman said she constantly monitors the dogs.

Ms. Gibb asked how did she know that a special permit was required for 3 dogs. Ms. Holzman replied that the dog warden had informed her.

Mr. Kelley said this was the first time he recalled an applicant filing for a special permit on their own initiative.

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

Mr. Kelley moved to approve SP 99-L-017 for the reasons noted in the Resolution.
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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, HC and SC. Mason District. Tax Map 61-2 ((1)) 23. (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, 2/10/98, 6/30/98, 1/12/99 AND 3/30/99) (DEF. From 6/1/99).

Grayson Hanes, Attorney, came forward, stating that he wanted to address a request to defer the subject appeal and another appeal, Heritage Citgo, A 95-B-045, which was on the after agenda for request for reconsideration; to a time certain to review the interesting legal issues involved in the case. He stated that Jane Kelsey, Kelsey and Associates had represented the latter case. She had contacted him and he only had a chance to briefly review it. Mr. Hanes stated that he had given William E. Shoup, Deputy Zoning Administrator, a copy of a circuit court case that seemed to be in conflict with the one the BZA relied upon by Judge Morris in 1972. He said he'd like to address a deferral and he didn't believe there was anyone present to oppose the appeal.

Chairman DiGiulian told Mr. Hanes to proceed with his deferral request.

Mr. Hanes said the reason for deferral was that both cases dealt with issues of nonconforming uses going back to the 1960's. He said he was aware of the reluctance of the BZA to put people out of business and the upshot of this could be that could happen. Mr. Hanes said that the Board of Supervisors had created a special exception possibility for those types of uses and both appeals had filed for special exceptions. He said even though they had been pending for a period of time, if the special exceptions were approved the whole issue goes away. Mr. Hanes said there were no issues relating to the neighborhood. He said they were basically trying to re-create history and all of the history was not always readily available. Mr. Hanes referenced a circuit court case that was not submitted to the BZA but ruled in the opposite direction of the circuit court case that was submitted. He distributed the referenced circuit court cases to the BZA.

Mr. Dively asked when the special exception was expected to go before the Board of Supervisors. Diane Johnson-Quinn, Zoning Administration, replied that the Dawson application was about to be accepted, which would take approximately four months before going to the Planning Commission and Board of Supervisors. Ms. Johnson-Quinn said the Heritage Citgo case was accepted a few weeks prior.

Mr. Dively asked Mr. Hanes how much of a deferral was he requesting. He replied he would like to have 30 days, but he would work with whatever time frame the Board was willing to grant.

Mr. Pammel said his preference was not to be in the dilemma of rendering a decision on the appeal if there were applications before the Board of Supervisors.

William E. Shoup, Deputy Zoning Administrator, said staff understood that there was a new court case found and they weren't aware of it. He noted that the case cited by Mr. Hanes was ruled on prior to the one staff had provided to the BZA. Mr. Shoup said the whole issue boiled down to whether truck rental was permitted as an accessory use to a service station use under the 1959 Zoning Ordinance. He suggested that the argument was made when the appeals were first raised and staff didn't think that argument was embraced by the BZA and he noted that the BZA had asked the Board of Supervisors to consider amending the Zoning Ordinance, which occurred in December of 1997. Mr. Shoup said the appellants had ample opportunity to pursue the special exception process and weren't very diligent in doing so. Consequently, staff requested that the appeals go forward as scheduled and did not support the request for deferral.

Mr. Dively asked what the track record was for special exception approval for U-Haul cases. Mr. Shoup said none of them had gone before the Board of Supervisors yet.

Mr. Pammel said the deferral request was reasonable and 30 days was appropriate.

Chairman DiGiulian agreed, stating that the BZA normally allowed a deferral when an attorney had just been retained.

Mr. Dively said he would be willing to continue the appeal for 5-6 months to see how the legislative option

was resolved.

Mr. Kelley said he agreed with Mr. Dively and moved to schedule the appeals for the first BZA date in January of 2000. Mr. Dively seconded the motion which carried by a vote of 6-1. Mr. Pammel voted against the motion.

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Page 011, June 8, 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. 1117,411 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, 12/1/98, AND 3/9/99).

Chairman DiGiulian noted the intent to defer that was granted on May 18, 1999. Mr. Hammack moved to defer the subject appeal to September 7, 1999 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 011, June 8, 1999, (Tape 1) After Agenda Item:

Approval of March 9 and March 16, 1999 Minutes

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

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Page 011, June 8, 1999, (Tape 1) After Agenda Item:

Request for Additional Time
Apostolic Church of Washington, Inc.
SP 91-Y-036

Ms. Gibb moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration dated was February 27, 2001.

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Page 011, June 8, 1999, (Tape 1) After Agenda Item:

Request for Additional Time
Lincolnia Private Day School
SPA 74-M-042 and VC 97-M-042

Mr. Pammel moved to approve the request for additional time. Mr. Dively seconded the motion which carried by a vote of 7-0. The new expiration date was August 21, 1999.

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Page 011, June 8, 1999, (Tape 1) After Agenda Item:

Request for Reconsideration
Heritage Citgo

Page 012, June 8, 1999, (Tape 1), After Agenda Item, continued from Page 011

A 95-B-045

Deferred to first available Board of Zoning Appeals hearing in January 2000. See Dawson case above for details.

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Page 012, June 8, 1999, (Tape 1) After Agenda Item:

Request for Reconsideration
Westerra Reston, LLC and Kindercare Learning Center
VC 99-H-012

The request was denied due to lack of interest.

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Page 012, June 8, 1999, (Tape 1) After Agenda Item:

Approval of June 1, 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 012, June 8, 1999, (Tape 1) After Agenda Item:

Out-of-Turn Hearing Request
Raymond C. and Sandra K. Tuberson
VC 99-Y-073

Staff noted that the request for out-of-turn hearing was withdrawn.

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Regina Thorn

Approved on:

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, June 15, 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 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 013 June 15, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PHILLIP GALLO AND ROSEMARY GWYNN, VC 99-M-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 24.9 ft. from the front lot line. Located at 6318 Seventh St. on approx. 3.52 ac. of land zoned R-2. Mason District. Tax Map 72-3 ((10)) 4A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Dorn, 4004 Gregg Court, Fairfax, 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 detached garage addition to be located 24.9 feet from the front lot line. The minimum front yard required is 35 feet; therefore, the applicants requested a variance of 10.1 feet.

Mr. Dorn, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He said the reason for the variance was based on the topography of the lot and explained that the front yard was the only suitable place on the property.

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

Mr. Pammel moved to approve VC 99-M-046 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILLIP GALLO AND ROSEMARY GWYNN, VC 99-M-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 24.9 ft. from front lot line. Located at 6318 Seventh St. on approx. 3.52 ac. of land zoned R-2. Mason District. Tax Map 72-3 ((19)) 4A.
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 15, 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 topography of the land is a factor.
4. The property is low where a garage would normally be found and there is also a stream valley located in that area.

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

continued from Page 013

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 D. J. Dorn, stamp dated April 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.

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Dively abstained from the vote and 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 June 23, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHARLES AND HOPE L. DODSON, VC 99-P-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of deck 15.9 ft. and addition 19.4 ft. from the front lot line of a corner lot. Located at 3509 Chambray Wy. On approx. 12,141 sq. ft. of land zoned R-3. Providence District. Tax Map 60-3 ((48)) 6.

Chairman DiGiulian called applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Czaplicki, 7535 Little River Turnpike, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested variances to permit the construction of a deck to be located 15.9 feet from the front lot line and a screened porch addition to be located 19.4 feet from the front lot line of a corner lot. The minimum front yard required is 30 feet; therefore, variances 14.1 feet for the deck and 10.6 feet for the screened porch were requested.

Mr. Czaplicki, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the unique shape of the lot prevented construction of the porch and the deck without acquiring a variance.

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

Mr. Dively moved to approve VC 99-P-047 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES L. AND HOPE L. DODSON, VC 99-P-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of deck 15.9 ft. and addition 19.4 ft. from the front lot line of a corner lot. Located at 3509 Chambray Wy. on approx. 12,141 sq. ft. of land zoned R-3. Providence District. Tax Map 60-3 ((48)) 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 June 15, 1999; and

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

1. The applicants are the owners of the land.
2. The lot was unique with regard to having this many front yards as defined under the Code.

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

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

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 and porch addition as shown on the plat prepared by Raymond A. Frost, dated August 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 deck and porch 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. 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 June 23, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 016 June 15, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GERARD AND ANN QUINN, VC 99-P-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 3.0 ft. from side lot line. Located at 2429 Rockbridge St. on approx. 10,550 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 133.

Chairman DiGiulian called the applicant to the podium asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gerard Quinn, 2529 Rockbridge Street, Vienna, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The

applicants requested a variance to permit the construction of a garage addition 3 feet from the side lot line. The minimum side yard required is 12 feet; therefore, a variance of 9 feet was requested.

Mr. Quinn presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that that garage would provide protection from the elements, be an attractive addition to the home, and would eliminate the external storage of items.

Mr. Hammack asked for clarification that the dimensions of the garage that was being requested was not what was reflected on the plat. Mr. Quinn answered that was the case.

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

Mr. Pammel asked if this request had been modified and if the applicant needed to submit a new plat. Chairman DiGiulian answered that the request had been modified and a new plat needed to be submitted within 30 days.

Mr. Hammack voiced his opposition by saying that he thought the garage was too large and that it could be arranged on the lot where it would require a lesser variance.

Mr. Ribble moved to approve VC 99-P-048 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERARD AND ANN QUINN, VC 99-P-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 3.0 ft. from side lot line. Located at 2429 Rockbridge St. on approx. 10,550 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 133. 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 15 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 Peter R. Moran, Land Surveyor, dated March 8, 1999 as revised through July 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 garage addition shall be architecturally compatible with the existing dwelling.

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

Ms. Gibb seconded the motion which carried by a vote of 6-1. Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 018 June 15, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CONGREGATION ADAT REYIM, SPA 85-S-057-3 Appl. under Sect(s) 3-503 of the Zoning Ordinance to amend SP 85-S-057 for church and related facilities to permit increase in enrollment for nursery school, building additions and site modifications. Located at 6500 Westbury Oaks Ct. on approx. 4.41 ac. of land zoned R-5. Springfield District. Tax Map 88-2 ((13)) (6B) and B1. (MOVED FROM 5/11/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 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 a Special Permit Amendment to allow an increase in enrollment in the nursery school, provide additional congregational seating, and to permit building additions and site modifications. Ms. Wilson informed the Board that the building construction was proposed to be completed in two phases.

Ms. Strobel, agent for the applicant, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the church was currently approved for 250 seats and a nursery school with an enrollment of 40 children. She stated that the request of 50 additional seats and the ability to have an enrollment of 45 children was a very modest increase. She said that the applicants intended to begin phase one improvements upon approval and that the second phase would begin in several years and it would be depended upon fund raising and congregation needs. Ms. Strobel informed the Board that the applicant had notified adjacent property owners of the proposed construction and held a meeting to address their concerns. She said that there was no opposition to the proposal, but there were issues regarding future construction associated with the improvements and that the applicant was committed to continue a dialogue with the community during the phases of construction.

Chairman DiGiulian called for speakers.

Colleen Madigan, 6605 Keene Drive, Springfield, Virginia, came forward to speak in opposition stating there were 13 children living in her neighborhood and that their subdivision was being used as a cut through by members of the congregation. She voided her concern about the proposed decrease of trees, due to the church expansion that buffer her neighborhood from the traffic and noise of Old Keene Mill Road. She said that at the current time the congregation members continued to park on both sides of the street in their neighborhood even though they have been asked not to do so. Ms. Madigan stated that the construction equipment would be hazardous to the safety of the children waiting at the bus stop.

Ms. Gibb asked if the congregation members cut through her neighborhood at the present time. Ms. Madigan replied that they currently cut through the neighborhood at speeds in excess of 50 miles per hour and that increased traffic to the area would prove to be increasingly hazardous. She said that the homeowners in her neighborhood were in the process of requesting the installment of speed bumps and were tying to relocate the bus stop.

Ms. Strobel reiterated, in her rebuttal, that the church would continue to meet with the neighbors to address concerns regarding the construction and the church would improve their efforts of notifying the congregation where not to park.

Mr. Pammel voiced his concern about the number of trees that would need to be removed to construct the proposed storm water management facility. He asked if there was a possible alternate location. Ms. Strobel answered that an alternative location might not be possible due to the topography of the land, but that was an issue that the applicant's engineer would try to address at the time of site plan.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 85-S-057-3 for the reasons stated in the resolution.

Mr. Hammack pointed out, to Ms. Madigan, the Development Condition that pertained to on-site parking limitations and he informed her of her right to contact the Zoning Administrator with any violation of this condition. Ms. Gibb voiced her concern regarding the storm water management facility and said that the Board of Supervisors was attempting to do something about the placement of these facilities.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CONGREGATION ADAT REYIM, SPA 85-S-057-3 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 85-S-057 for church and related facilities to permit increase in enrollment for nursery school, building additions and site modifications. Located at 6500 Westbury Oaks Ct. on approx.

4.41 ac. of land zoned R-5. Springfield District. Tax Map 88-2 ((13))(6B) B and B1. (MOVED FROM 5/11/99). 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 June 15, 1999; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-5.
3. The area of the lot is 4.41 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 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 applicants, Trustees of the Congregation Adat Reyim and is not transferable without further action of this Board, and is for the location indicated on the application, 6500 Westbury Oaks Court, 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 Greenhorne & O'Mara, dated December 1, 1998, as revised through May 4, 1999, 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 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.

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 total daily enrollment shall be limited to 40 students until issuance of a Non-Residential Use Permit for Phase 1, at which time the maximum total daily enrollment for the nursery school shall be limited to forty-five (45) children.

6. Maximum hours of operation for the nursery school shall be limited to 7:30 A.M. through 6:00 P.M., Monday through Friday.

7. Phase 1 development shall be limited to the construction as depicted on page 2 of 4 of the special permit plat, to include a building addition containing a maximum of 5,680 square feet, a play area, retaining wall, relocation of the dumpster area and landscaping. Phase 2 development shall be limited to the construction as depicted on page 3 of 4 of the special permit plat, to include a building addition containing a maximum of 17,360 square feet, relocation of the stormwater management pond, reconfiguration and expansion of the parking lot and relocation of the playground area. Landscaping shall be provided as indicated on page 4 of 4 of the special permit plat and as indicated below.

8. Parking spaces shall number a maximum of seventy-two (72) spaces upon completion of Phase I development. Upon completion of Phase 2 development, eighty-four (84) parking spaces shall be provided as shown on the special permit plat. All parking shall be limited to on site. All new parking spaces shall measure the minimum size required by the PFM in order to minimize additional impervious surface on the site.

9. Any required installation of fencing associated with the play area, and/or any other health or safety issues identified by the Fairfax County Health Department, shall be completed and resolved to the satisfaction of the Health Department prior to the issuance of the Non-Residential Use permit for the new building addition.

10. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

11. Synagogue seating capacity shall be limited to a maximum of 250 with the completion of Phase 1. Upon issuance of the Non-Residential Use Permit for Phase 2, the synagogue seating capacity shall be limited to a maximum of 300.

12. Prior to site plan approval for Phase 2 construction, the applicant shall prepare and submit a tree preservation and supplemental planting plan to the Urban Forester for review and approval. Prior to site plan approval for Phase 2 construction, the applicant shall conduct an on-site meeting with the Urban Forester for an assessment of the proposed tree preservation and supplementation plan for effectiveness in creating a year -around effective screening for residential properties to the south, to the satisfaction of the Urban Forester. Final choice of tree and shrub species to achieve effective screening shall be as determined by the Urban Forester.

13. All plantings installed pursuant to the special permit amendment plat and the preservation and supplemental planting plan, and all existing trees within the site peripheral transitional screening area, shall be continuously maintained and replaced with equivalent species as necessary. All replacement evergreen trees shall measure a minimum height of six (6) feet at time of planting. All replacement deciduous trees shall measure a minimum of two and one-half inches in diameter.

14. A modification of the transitional screening requirements shall be permitted in favor of conditions shown on the Plat, and as directed by the Urban Forester pursuant to Development Condition Number 12. Barrier requirements shall be waived for the perimeter of the site.

15. Limits of clearing and grading shall be configured to preserve natural vegetation to the maximum extent possible, to the satisfaction of DPWES.

16. Lighting for the synagogue property shall focus only onto the subject property. Any and all parking lot lighting fixtures added to the site shall be limited in height to twelve (12) feet. All existing and all additional lighting fixtures shall be full cut-off lights, and shall be fully shielded in such a manner to prevent light from projecting onto adjacent residential property.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 23, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. ROSENTHAL INFINITIY, A 1999-HM-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the denial of a sign permit application for a separate freestanding sign for appellant's car dealership. Located at 8527 Leesburg Pi. On approx. 521,087 sq. ft. of land zoned C-7, SC and HC. Hunter Mill District. Tax Map 29-3 ((1)) 3B.

Laura Clarke, Zoning Administration Division, presented staff's opinion as contained in the staff report. She informed the Board that the property was located in a Regional Retail Commercial District and in a Sign Control Overlay District. She stated that the appellants were appealing the denial of a sign permit application to allow a second freestanding sign for their auto park. Ms. Clarke said that there was an existing sign that displayed their company logo and that the appellants wanted to have a second sign to set them apart from the other businesses located in the auto park. She voiced staff's position that the second sign could not be authorized based on the Ordinance provisions currently in effect, limiting individual enterprises and shopping centers to one freestanding sign per site. She said the one exception to these provisions was if the shopping center faced two major thoroughfares and that this was not applicable in this instance. Ms. Clarke stated that even though there were three independent dealerships operating on the site, it was designed in a manner that presented the appearance of a single business operation. She informed the Board that there had been a special exception granted for the construction of the two buildings in which the business was based. In closing, she reiterated staff's position that the site was considered to be a single commercial group and that the development, under the Ordinance, fit the criteria for a shopping center; therefore, only one freestanding sign was permitted.

There was discussion between the Board and Mr. Shop regarding whether the site had been determined to be a shopping center and whether it mattered if the businesses all had the same owner. It was staff's position that the site did fit the definition of the criteria for a shopping center and whether all of the businesses had the same owner was irrelevant.

Mr. Griffin, agent for the appellant, illustrated the positions of each business on the site and indicated that a second sign was needed due o the large size of the property. He said that due to the fact that this was only one of two particular businesses in the State, it should be considered to be a separate enterprise operating on the site. Mr. Griffin stressed that this business had separate parking, service facilities, and employees and that it operated under a different motor vehicle dealer franchise and a different dealer license than the other on site businesses. He explained that upon approval of the sign, they would remove any verbiage from the existing sign and he illustrated where on the site the new sign would be placed. Mr. Griffin assured the Board that if this was approved they would not request any additional signs at any point in the future. In closing, he reiterated his opinion that this was a separate business and it was entitled to its own free standing sign.

Ms. Gibb asked for clarification of how long the existing free standing sign had been up and how many signs were actually on the building itself. Mr. Griffin answered that the existing sign had been there for approximately 10 years and currently there were two signs on their building.

Ms. Gibb asked whether the sign overlay district went all the way down Route 7. William E. Shoup, Deputy Zoning Administrator, replied that it did and illustrated this for the Board.

Mr. Kelley asked what would happen to the signage if one of the enterprises exchanged locations. Ms. Clarke replied that the existing signs could be refaced with the new business logo and verbiage.

There were no speakers and Chairman DiGiulian closed the public hearing.
Mr. Hammack stated that it was a difficult call because the appellant's opinion held a lot of validity due to the number of combinations there could be if dealerships were mixed in the operation of a business.

Mr. Pammel said that he completely concurred with the position of the Zoning Administrator and added that he was on staff at the time of the first revision to the sign Ordinance. He explained that the reason for this revision was to reduce the number of free standing signs to address the problem of visual pollution.

Mr. Hammack moved to uphold the determination of the Zoning Administrator regarding A 1999-HM-008. Mr. Pammel seconded the motion which carried by a vote of 5-2. Chairman DiGiulian and Mr. Kelley voted nay.

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Page 023 June 15, 1999, (Tape 1), Scheduled case of:

9:30 A.M. DARIO DAVIES, A 1998-BR-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant erected a fence exceeding 4.0 ft. in height in the front yard of a corner lot, in violation of Zoning Ordinance provisions. Located at 4100 Pineridge Dr. on appox. 46,534 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-4 ((10)) 5. (MOVED FROM 5/11/99).

William E. Shoup, Deputy Zoning Administrator, requested that the Board dismiss the appeal. Mr. Shoup informed the Board that after filing the appeal the appellant met with staff to discuss his options regarding the fence. He said the outcome of the meeting was for the appellant to apply for a variance to install a new fence that exceeded 4 feet in height. He stated that at that time, the appeal was deferred to give the appellant adequate time to file for the variance. Mr. Shoup announced that a recent inspection of the property revealed that new fencing had been installed and no variance application had been filed. He also added that the appellant did not mail the notification notices to adjoining neighbors and only after he was informed of staff's request that the Board dismiss the appeal, did he file a variance application. Mr. Shoup said that staff had found many major deficiencies in the plat that was prepared and submitted by the appellant.

Mr. Hammack asked if the new fence was in the same location as the previous fence. Mr. Shoup answered that it was not and said the new fence ran along the full frontage of the corner lot.

Mr. Kelley moved to dismiss A 1998-BR-049. Mr. Dively and Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 023 June 15, 1999, (Tape 1), Scheduled case of:

Approval of June 8, 1999 Resolutions

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

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Page 023 June 15, 1999, (Tape 1), Scheduled case of:

Out-of-Turn Hearing Request
Trustees of Crossroads Baptist Church
SPA 90-M-036

There was conversation between the Board and Susan Langdon, Chief, Special Permit and Variance Branch, regarding the next available hearing date. Ms. Langdon brought to the Board's attention the fact that this was a major application that would have to be staffed and pre-staffed and suggested keeping the September 7, 1999, hearing date.

Mr. Dively moved to approve the Out-of-Turn Hearing Request regarding SPA 90-M-036. Mr. Kelley seconded the motion which carried by a vote of 7-0. The application was scheduled for August 10, 1999, at 9:00 a.m.

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

Minutes by: Lori M. Mallam

Approved: 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, June 22, 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 025, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M. AND MELANIE A. SAMSON, VC 99-B-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.8 ft. and 19.1 ft. from side lot line. Located at 8600 Chapel Drive on approx. 21,852 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 187.

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 Samson, 8600 Chapel 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 additions 7.8 feet and 19.1 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, variances of 12.2 feet and 0.9 feet were requested.

Mr. Samson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Samson stated it was important to have the study and garage additions to gain living space for his family.

Mr. Hammack asked why he was requesting such a large garage. Mr. Samson stated the garage was 21 feet deep and 26 feet wide and was requested to balance both side of the house to make the addition look aesthetically pleasing.

Chairman DiGiulian called for speakers.

Scott Durum, son of Winifred Durum, 8518 Chapel Drive, Annandale, Virginia, came to the podium to speak in opposition of the application. Mr. Durum introduced Ms. Carolyn Blevins, Landscape Architect, 8705 Little River Turnpike, Annandale, Virginia, who came to the podium with a proposed plan showing a reasonable sized garage, accommodating the space needs Mr. Samson requested, without impacting into the side yard setback as much. Ms. Blevins stated that a 26 foot wide garage was excessive and that the proposed plan reduced the garage to 20 to 22 feet in width, which would require only a 15 foot side yard setback. Ms. Blevins stated that she had reviewed the alternative plan with Ms. Samson.

Mr. Pammel noted that there were two additional letters in opposition, as well as Ms. Durum's letter.

Mr. Samson came to the podium and reviewed the proposed plan submitted by Ms. Blevins on behalf of Ms. Durum. Mr. Samson stated that he had proposed a plan which would balance the house in its entirety and said that a 20 foot wide garage was too narrow; however, would compromise with a 24 foot wide garage, making the encroachment into the side yard setback 10 feet.

Ms. Gibb referred to a letter received in opposition which stated that there was a restrictive covenant within the subdivision against building closer than 15 feet from the side lot line. Ms. Gibb stated that the Zoning Ordinance regulations were separate from homeowners association restrictive covenants and suggested to Mr. Samson to check with an attorney on this issue prior to construction; even if a variance was granted to allow him to build within the 15 foot setback, he might still be limited by the covenants.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to approve-in-part VC 99-B-049 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT M. AND MELANIE A. SAMSON, VC 99-B-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.8 ft. and 19.1 ft. from side lot line. **(THE GARAGE WAS DENIED)**. Located at 8600 Chapel Drive on approx. 21,852 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 187. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 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 not satisfied the Board with respect to the garage.
3. The request is approved for the sunroom addition only, and denied for the garage addition and addition "B" due to an architectural design which requires the garage to be excessive in size and a convenience to the applicant.
4. There is nothing that says an applicant is entitled to a two car garage.
5. The garage could possibly be designed to meet 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-IN-PART** with the following limitations:

1. This variance is approved for the location of the sunroom addition only, shown on the plat prepared by Alexandria Surveys, Inc., dated March 19, 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 7-0. Mr. Hammack made a motion to waive the one-year waiting period for refiling an application. 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 June 30, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 027, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN H. AND JUDITH A. HOUSE, VC 99-B-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.3 ft. and 8.0 ft. from side lot line. Located at 4616 Duncan Dr. on approx. 23,897 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 71.

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 House, 4616 Duncan 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 7.3 feet and 8.0 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.7 feet and 4.0 feet was requested.

Mike Chauncey, Agent, Rice Associates, 4001 West Fax Drive, Chantilly, Virginia, presented the variance request as outlined in the statement of justification submitted with the application. Mr. Chauncey stated that the request was for a one car garage addition which would increase the value of the property and would be architecturally compatible within the established neighborhood.

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

Mr. Pammel made a motion to approve VC 99-B-050 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN H. AND JUDITH A. HOUSE, VC 99-B-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 7.3 ft. and 8.0 ft. from side lot line. Located at 4616 Duncan Dr. on approx. 23,897 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 71. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 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 a narrow lot with a lot width of approximately 80 feet.
3. The positioning of the house on the lot, not being parallel with the side lot line, required the need for the variance.
4. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance.
5. The request is for only a 12 foot wide one car 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 garage and sunroom additions shown on the plat prepared by Rice Associates, certified on February 25, 1999, by Robert J. Simpson, submitted with this application 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. Dively and Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 029, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BUI (KIM) PHUONG, VA 95-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.7 ft. from a side lot line and permit additions 9.8 ft. and 9.9 ft. from side lot line. Located at 6528 Annandale St. on approx. 12,558 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 29 and 29A.

Chairman DiGiulian noted that the application had been administratively moved to July 13, 1999, at 9:30 a.m.

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Page 029, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BILLY C. AND CAROL E. BEVILL, VC 99-D-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.7 ft. from side lot line. Located at 6700 Kirkley Ave. on approx. 12,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((9)) 63.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Billy Bevill, 6700 Kirkley 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 an accessory structure to be located 5.7 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.3 feet was requested.

Mr. Bevill presented the variance request as outlined in the statement of justification submitted with the application. Mr. Bevill stated that the request was for a small 20 x 24 foot garage and said he had received approval from his immediate neighbors. He stated that it would not be detrimental to the surroundings because there were no houses to the rear of the property, which abutted parkland and asked for the Board's approval.

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

Mr. Dively made a motion to approve VC 99-D-051 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BILLY C. AND CAROL E. BEVILL, VC 99-D-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.7 ft. from side lot line. Located at 6700 Kirkley Ave. on approx. 12,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((9)) 63.
Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1999; and

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

1. The applicants are the owners of the land.
2. The request was reasonable due to the narrowness of the lot and the applicant had explained that the addition could not be attached due to a side entrance on the house.
3. There was no objection to the addition by the neighbor and there was no development to the rear of the lot due to the property adjoining parkland.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 March 19, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 031, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS C. AND DENEEN N. BUCKLEY, VC 99-Y-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.6 ft. from rear lot line. Located at 5712 Flagler Dr. on approx. 5,040 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6))(9) 31.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Buckley, 5712 Flagler Drive, 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 the construction of a screened porch addition 6.6 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 18.4 feet was requested.

Mr. Buckley presented the variance request as outlined in the statement of justification submitted with the application. Mr. Buckley stated that the house itself was 22.5 feet from the rear lot line; therefore, it would not be possible to build anything with a roof on the property. He stated that the rear yard was very narrow with a hill at the end, which received water runoff for the entire area. Mr. Buckley stated that 13 of 15 homes within the development currently had decks, 2 had screened in porches; therefore, requested the Board's approval. Mr. Buckley said that he had approval of the structure from the community association as well.

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

Mr. Ribble made a motion to approve VC 99-Y-052 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS C. AND DENEEN N. BUCKLEY, VC 99-Y-052 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit construction of addition 6.6 ft. from rear lot line. Located at 5712 Flagler Dr. on approx. 5,040 sq. ft. of land zoned PDH-4 and WS. Sully District. Tax Map 53-2 ((6))(9) 31. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 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 request was necessary due to the shallowness and topography 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 screen porch addition shown on the plat prepared by L. S. Whitson, dated April 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 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 June 30, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 033, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. VASANA VUTHIWONG, SP 99-D-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 5.0 ft. and 4.7 ft. from rear lot line and 6.2 ft. from side lot line. Located at 7432 Patterson Rd. on approx. 10,668 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5))(H) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was correct and accurate. Vasana Vuthiwong, 7432 Patterson 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 special permit to permit reduction of the minimum yard requirements based on an error in building location to permit a detached garage to remain 4.7 feet from the rear lot line and 6.2 feet from the side lot line and for a greenhouse to remain 5.0 feet from the rear lot line. A minimum rear and side yard setback of 11.5 feet and 10.0 feet for the garage and 10.6 feet for the greenhouse were required; therefore, modifications of 6.8 feet and 3.8 feet were requested for the garage and 5.6 feet for the greenhouse.

Ms. Vuthiwong presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Vuthiwong stated that the additions made the property look nice and neat and did not create a visual eyesore to the public. She said there had been no objection to the buildings and she had her neighbors' support. Ms. Vuthiwong stated that if the structures had to be removed, it would cause her serious financial hardship.

Ms. Gibb asked how the applicant found out she needed a special permit. Ms. Langdon stated that there was not a Notice of Violation on record and was unsure.

Ms. Vuthiwong replied that County staff had informed her of the need for a special permit when she applied for a building permit.

There was discussion among the Board members and the applicant regarding the demolition of two sheds and the construction of a garage and a greenhouse; however, the Board had difficulty in understanding Ms. Vuthiwong's responses; therefore, Mr. Dively stated that a one week deferral would be appropriate to allow the applicant an opportunity to obtain an interpreter.

Mr. Kelley made a motion agreeing with Mr. Dively that the applicant needed an interpreter to assist in the explanation of the application to determine exactly what had transpired on the property. Mr. Dively seconded the motion to defer the application to June 29, 1999, at 9:00 a.m., which carried by a vote of 7-0.

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9:00 A.M. BUSH HILL PRESBYTERIAN CHURCH, SP 99-L-024 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities, nursery school and child care center. Located at 4916 Franconia Rd. on approx. 3.30 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2))(1) A; 82-3 ((3))(B) 8. (Concurrent with VC 99-L-045).

9:00 A.M. BUSH HILL PRESBYTERIAN CHURCH, VC 99-L-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from right of way of public streets. Located at 4916 Franconia Rd. on approx. 3.30 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2))(1) A; 82-3 ((3))(B) 8. (Concurrent with SP 99-L-024).

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, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a church and related facilities and a nursery school with a total maximum daily enrollment of 68 students; the variance request was to allow parking spaces to remain less than 10 feet from the right-of-way of public streets from both Franconia Road and Jane Way. Ms. Schilling stated there were no physical changes proposed to the site and that the church had been in existence since 1958, prior to the requirement for a special permit; however, is now subject to approval with the request for a special permit for a nursery school and child care center.

Mr. Smith presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Smith stated the applications were requested to make legitimate a use which had existed since 1968 and said that the applicant was in complete agreement with staff's proposed development conditions.

Mr. Kelley asked if the reason for the variance request was due to the Virginia Department of Transportation (VDOT) taking church property for the expansion of Franconia Road. Mr. Smith agreed and stated that in the agreement with the dedication of land, VDOT had made improvements to the church's parking lot, which in turn made the parking lot too close to the property line.

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

Mr. Kelley made a motion to approve SP 99-L-024 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BUSH HILL PRESBYTERIAN CHURCH, SP 99-L-024 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities, nursery school and child care center. Located at 4916 Franconia Rd. on approx. 3.30 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2))(1) A; 82-3 ((3))(B) 8. (Concurrent with VC 99-L-045). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 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 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, 4916 Franconia Road, (3.30 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 Mahendra N. Shah, P.E. dated February 12, 1998 as revised through May 19, 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 transitional screening and barrier requirements shall be waived, provided that the existing landscaping on the site and the natural vegetation located in the northern portion of the lot are maintained in good condition. Dead or unhealthy plant materials shall be replaced within 30 days, weather permitting.

6. The seating capacity of the main sanctuary shall not exceed 432 seats.

7. The maximum number of students in the nursery school/child care center shall not exceed a total maximum daily enrollment of 68 students. There shall be no more than 47 students present on the playground at one time.

8. The normal hours of operation for the nursery school/ child care center shall be limited to: 9:00 a.m. to 12 noon, Monday, Thursday and Friday, and 9:00 a.m. to 1:00 p.m., Tuesday and Wednesday.

9. There shall be 121 parking spaces provided on site in the locations shown on the plat. Two of the required parking spaces shall be reserved for pick-up and drop off of children, to be located closest to the playground and sidewalk for the child care center and nursery school. All parking shall be on-site.

10. All signs on the site comply with the provisions of Article 12, Signs.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval* unless the a Non-Residential Use Permit has been issued for the uses. The Board of Zoning Appeals may grant additional time to establish the use or 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 June 30, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to approve VC 99-L-045 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BUSH HILL PRESBYTERIAN CHURCH, VC 99-L-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from right of way of public streets. Located at 4916 Franconia Rd. on approx. 3.30 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((2))(1) A; 82-3 ((3))(B) 8. (Concurrent with SP 99-L-024). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 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 necessary due to the taking of property by VDOT to accommodate the widening of Franconia Road in the early 1980s.

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

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

confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 spaces shown on the plat prepared by Mahendra N. Shah, P.E., dated February 12, 1998, as revised through May 19, 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. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 037, June 22, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM J. HUFF, SP 99-V-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 6.3 ft. from rear lot line and 11.2 ft. from side lot line. Located at 9405 Ferry Landing Ct. on approx. 20,738 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((9)) 14. (MOVED FROM 6/15/99).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the BZA was correct and accurate. Jane Kelsey, Agent, Kelsey and Associates, 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for an error in building location to allow a shed to remain 6.3 feet from the rear lot line and 11.2 feet from the side lot line. A minimum rear yard of 11 feet is required; therefore, the amount of error is 4.7 feet or 43% for the shed. A minimum side yard of 15 feet is required; therefore, the amount of error is 3.8 feet or 25%.

Ms. Kelsey presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Kelsey stated that the application met all standards for a special permit and that the shed was not larger than the 200 square feet allowed. Ms. Kelsey stated that the shed was attractive and compatible with the neighborhood and that all affected neighbors were in support of the shed.

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

Ms. Gibb made a motion to approve SP 99-V-026 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 15, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM J. HUFF, SP 99-V-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirements based on error in building location to permit shed to remain 6.3 ft. from rear lot line and 11.2 ft. from side lot line. Located at 9405 Ferry Landing Ct. on approx. 20,738 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-3 ((9)) 14. (MOVED FROM 6/15/99). 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 June 22, 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 shed with a total height of 11.0 feet shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 23, 1999, as revised through May 10, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 039, June 22, 1999, (Tape 1), After Agenda Item:

Approval of February 17, 1998, March 17, 1998, March 23, 1999 and March 30, 1999 Minutes.

Mr. Pammel made a motion to approve the February 17, 1998, March 17, 1998, March 23, 1999 and March 30, 1999 Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 039, June 22, 1999, (Tape 1), After Agenda Item:

Approval of June 15, 1999 Resolutions

Mr. Pammel made a motion to approve the June 15, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 039, June 22, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
Ruth A. Gaskins, VC 99-P-079

Mr. Dively made a motion to deny the out-of-turn hearing request. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 039, June 22, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
O-Luck, Inc. t/a Happi Billiards & Cafe by Mi Y. Kim, SP 99-M-037

Mr. Dively made a motion to deny the out-of-turn hearing request. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 039, June 22, 1999, (Tape 1), After Agenda Item:

Request for Continuance
Appeal A 1998-DR-032 First Virginia Bank, c/o Ralph Evans

Ms. Gibb made a motion to continue the appeal application to January 4, 2000. Mr. Kelley 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 10:21 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

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 29, 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.

Page 041, June 29, 1999, (Tape 1), Scheduled case of:

9:00 A.M. VASANA VUTHIWONG, SP 99-D-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 5.0 ft. and 4.7 ft. from rear lot line and 6.2 ft. from side lot line. Located at 7432 Patterson Rd. on approx. 10,668 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5))(H) 1. (Continued from 6/22/99)

Juan Bernal, Staff Coordinator, indicated that the subject application was deferred from the previous week so the applicant could obtain an interpreter. Mr. Bernal also noted that he prepared a memorandum to address questions raised by the Board from the previous week.

The applicant introduced Janet Thompson, 12300 Arrow Park, Fort Washington, Maryland, who was present to speak on her behalf.

Ms. Gibb said there were questions regarding electricity in the shed. Ms. Thompson said electricity was in the shed when the applicant purchased the property.

Ms. Gibb noted a letter which referred to an exposed wire. Ms. Thompson said the garage replaced the previous shed and the wire was there when the applicant purchased the property.

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

Mr. Pammel moved to approve SP 99-D-020 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VASANA VUTHIWONG, SP 99-D-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 5.0 ft. and 4.7 ft. from rear lot line and 6.2 ft. from side lot line. Located at 7432 Patterson Rd. on approx. 10,668 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((5))(H) 1. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 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 accessory structures (Garage and Greenhouse) as shown on the plat prepared by Kenneth W. White, Certified Land Surveyor, dated March 24, 1999, submitted with this application and is not transferable to other land.

2. Building Permits and Inspections shall be obtained for the garage and greenhouse.

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 5-0. 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 July 7, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 042, June 29, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM S. BUTLER, SP 99-V-007 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 2412 Huntington Ave. on approx. 3,558 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((16)) 32A. (MOVED FROM 4/27/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Butler, 2412 Huntington Avenue, 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 modification to the limitation on the keeping of animals to allow one pygmy goat on a lot containing less than two acres.

Mr. Butler presented the special permit request as outlined in the statement of justification submitted with the application. He submitted a letter in support of the application and a petition signed by the neighbors. Mr. Butler said the goat weighs no more than 30 lbs, has no odor, and was smaller than most of the other

animals in the neighborhood. He said the complainant lived ½ mile away.

Ms. Gibb asked how long pygmy goats live. Mr. Butler replied approximately 10 years.

Chairman DiGiulian called for speakers.

Brenda Boyle, 2202 Huntington Avenue, came forward to speak in support of the application. She stated that the goat was not visible to people passing by and that most of the neighborhood enjoyed having the goat in the neighborhood, especially the children.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 99-V-007 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM S. BUTLER, SP 99-V-007 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 2412 Huntington Ave. on approx. 3,558 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 83-1 ((16)) 32A. (MOVED FROM 4/27/99). 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 June 29, 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, 2412 Huntington Avenue, 3,558 square feet lot shown on the plat prepared by Alexandria Surveys, Inc., as revised and submitted by William S. Butler, dated January 11, 1999, 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 pygmy goat. If this specific animal dies or is sold or given away, the goat shall not be replaced.

4. The yard areas where the goat is walked or allowed to run free shall be cleaned of animal waste every day, and the wastes shall be disposed of in a method which prevents odors from reaching adjacent properties. Animal waste shall be disposed of in a method approved by the Fairfax County Health Department.

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

Mr. Pammel 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 044, June 29, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHARLIE E. KIM, SP 99-B-001 Appl. under Sect(s). 4-803 of the Zoning Ordinance to permit a commercial recreation use. Located at 7331 Little River Tpk. on approx. 26,219 sq. ft. of land zoned C-8 and CRD. Braddock District. Tax Map 71-1 ((1)) 14. (MOVED FROM 3/30/99 AND 5/25/99).

Chairman DiGiulian noted that the subject application had been administratively withdrawn.

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Page 044, June 29, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TEMPLE BAPTIST CHURCH, SPA 85-D-009-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-D-009 for a church and related facilities, with a child care center and school of general education which has an enrollment of 100 or more students daily to permit an increase in number of students. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 7A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey and Associates, 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 increase student enrollment for a previously approved School of General Education, and to increase the total maximum daily enrollment for the nursery school and school of general education, combined. The currently approved conditions limited the combined maximum daily enrollment of the child care center and school of general education to 160; with the maximum daily enrollment for the child care center at 64 children. The applicant proposed an increase in total maximum daily enrollment to 240, with the child care maximum daily enrollment to remain at 64 children. The result would be an additional 80 students, with a total of 176 students, for the school of general education. No building additions or increase in sanctuary seating was proposed.

The applicant also requested modification of the previously approved Development Condition Number 10. This condition required that a minimum of fifty percent of the students of the school of general education be car pooled to the site, until the scheduled improvements to Dranesville Road was completed. The applicant stated that the road improvements were completed and asked that this portion of the condition be deleted. Staff recommended approval with the implementation of the proposed development conditions contained in the staff report.

Ms. Kelsey, the applicant's agent, presented the special permit amendment request as outlined in the statement of justification submitted with the application. She said the applicant met the standards of the Zoning Ordinance and was in conformance with the Comprehensive Plan. She stated there had been no complaints from neighbors. Ms. Kelsey distributed revised development conditions to the Board. She requested that Condition 3 be deleted, Condition 11 be removed or reworded, and that the 2nd paragraph of Condition 8 could be misinterpreted.

Mr. Hammack asked staff their position on the requested condition changes. Ms. Wilson replied that Condition 3 was standard language that staff would like to remain. She said Condition 8 was a carryover

condition and she didn't see the purpose in removing it. Ms. Wilson stated that staff did not object to the removal of Condition 11.

Ms. Kelsey asked for a waiver of the 8-day waiting period.

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

Mr. Dively moved to approve SPA 85-D-009-5 for the reasons noted in the Resolution subject to the applicant's proposed conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TEMPLE BAPTIST CHURCH, SPA 85-D-009-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 85-D-009 for a church and related facilities, with a child care center and school of general education which has an enrollment of 100 or more students daily to permit an increase in number of students. Located at 1545 Dranesville Rd. on approx. 5.65 ac. of land zoned R-3. Dranesville District. Tax Map 10-2 ((1)) 7 and 7A. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 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). 3-303 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, Temple Baptist 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 Alexandria Surveys, Inc., dated June 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. The maximum seating capacity for the sanctuary shall be limited to 300.

5. The hours of operation of the child care center shall be limited to 6:30 A.M. to 6:00 P.M., Monday through Friday, and the hours of operation of the school of general educations shall be limited to 8:00 A.M. to 3:15 P.M., Monday through Friday.

6. One-hundred twenty-six parking spaces shall be provided in the location shown on the plat. All parking for the uses shall be on-site.

7. All transitional screening planting shall be approved by the Urban Forester under Site Plan No. SP 3120-SP-03-2 approved in conjunction with SPA 85-D-009-4 and shall be maintained to the satisfaction of the Urban Forester. Dead or dying plants shall be replaced with like-kind plantings, as needed, as directed by the Urban Forester.

8. The barrier requirement shall be waived along the north and west lot lines.

9. Upon issuance of the Non-Residential Use Permit for this Special Permit Amendment, the combined maximum daily enrollment of the child care center and school of general education shall not exceed 240; the maximum daily enrollment for the child care center shall not exceed 64 students.

10. Any proposed lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve feet.

    - 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 or glare from projecting beyond the facility.

11. All signs shall be in accordance with Article 12 of the Zoning Ordinance.

12. The structure noted on the plat to be a two-story dwelling, shall be for the use of church members and guests for dwelling purposes only.

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. Pammel 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. Mr. Dively moved to waive the 8-day waiting period. Mr. Pammel 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 046, June 29, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF MOUNT VERNON CONGREGATION OF JEHOVAH'S WITNESSES, SP 99-V-013 Appl. under Sect(s). 3-503 of the Zoning Ordinance to permit a church and related facilities. Located on the W. side of Holland Rd., approx. 250 ft. S. of its intersection with Sherwood Hall Ln. on approx. 4.04 ac. of land zoned R-5. Mt. Vernon District. Tax Map 102-1 ((1)) 38A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Getsinger, 1015 Priscilla Lane, Alexandria, Virginia, replied that it was.

Cathy Lewis, Staff Coordinator, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. On June 28, 1999, the Board of Supervisors approved a rezoning from PDH-8 to R-5 District. The applicants requested approval of a special permit to allow a church and related facilities on the subject site. The proposed church would be 5,500 square feet in size, with a floor area ratio of 0.03, and would have 220 seats and 55 parking spaces. Access to the site would be provided via a single driveway, located off of Holland Road. Hours for the church would be limited to 7:00 p.m. to 10:00 p.m., Monday through Friday, and 9:00 a.m. to 9:00 p.m., Saturday through Sunday. No outdoor activities were proposed. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Therefore, staff recommended approval of SP 99-V-013 in conformance with the proposed development conditions, dated June 28, 1999.

Mr. Getsinger, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He said the applicant's had a pre-application meeting and met with the neighbors. Mr. Getsinger said he appreciated the help of staff. He said the church would be an asset to the community.

Mr. Dively asked the applicant if they agreed with the new conditions. Mr. Getsinger replied yes.

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

Ms. Gibb moved to approve SP 99-V-013 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF MOUNT VERNON CONGREGATION OF JEHOVAH'S WITNESSES, SP 99-V-013 Appl. under Sect(s). 3-503 of the Zoning Ordinance to permit a church and related facilities. Located on the W. side of Holland Rd., approx. 250 ft. S. of its intersection with Sherwood Hall Ln. on approx. 4.04 ac. of land zoned R-5. Mt. Vernon District. Tax Map 102-1 ((1)) 38A. 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 June 29, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant made every effort to comply with the Zoning Ordinance and met with neighboring associations.
3. The use is appropriate for the area.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-503 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, Tax Map 102-1 ((1)) 38A (4.04 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 Joseph Philip and Associates and Toan T.V. Nguyen and Associates dated January 1999, as revised through June 25, 1999, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and 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 plat may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The seating capacity of the church shall not exceed 220. There shall be a minimum of 55 parking spaces. All parking shall be on-site as shown on the special permit plat.

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

7. Lighting for the church property shall focus only onto the subject property. Any and all parking lot lighting fixtures shall be limited in height to twelve (12) feet. All lighting shall be full cut-off lights, and shall be shielded in such a manner as to prevent light from projecting onto adjacent residential property.

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

9. Transitional screening shall be modified in favor of the existing vegetation as shown on the Special Permit Plat.

10. Barrier requirements shall be modified in favor of that shown on the Special Permit Plat.

11. The hours of the church shall be limited to 7:00 p.m. to 10:00 p.m., Monday through Friday, and 9:00 a.m. to 9:00 p.m., Saturday through Sunday.

12. There shall be no outdoor activities permitted.

This approval, contingent on the above-noted conditions, shall not relieve 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 (Non-RUP) through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Pammel seconded the motion which carried by a vote of 5-0.

Page 049, June 29, 1999, (Tape 1), TRUSTEES OF MOUNT VERNON CONGREGATION OF JEHOVAH'S WITNESSES, SP 99-V-013, continued from Page 048

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 049, June 29, 1999, (Tape 1), After Agenda Item:

Approval of April 6, 1999 and April 13, 1999 Minutes

Mr. Pammel moved to approve the Minutes. 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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Page 049, June 29, 1999, (Tape 1), After Agenda Item:

Status Update for Craven's Nursery

There was no action required.

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Page 049, June 29, 1999, (Tape 1), After Agenda Item:

Approval of June 22, 1999 Resolutions

Mr. Dively moved to approve the 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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Page 049, June 29, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request
Daniel W. Catlett, VC 99-H-082

Mr. Dively moved to approve the out-of-turn hearing request. 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. The application was scheduled for August 10, 1999.

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As there was no other business to come before the Board, the meeting was adjourned at 9:45 a.m.

Minutes by: Regina Thorn

Approved on: September 21, 1999

Regina Thorn

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, July 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 9:00 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 051, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. IMMANUEL CHRISTIAN SCHOOL AND IMMANUEL BIBLE CHURCH, SPA 80-A-058-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities with school of general education which has an enrollment of 100 or more students daily to permit an increase in enrollment and to modify development conditions. Located at 6915 and 6911 Braddock Rd. on approx. 13.02 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 35, 36A; 71-4 ((2)) 1, 2, 2A, 3, 3A, B.

Julie Schilling, Senior Staff Coordinator, stated that the applicant had requested a deferral to July 13, 1999, at 9:00 a.m., and noted that staff had no objection to the deferral request.

Mr. Dively moved to defer SPA 80-A-058-4 to July 13, 1999, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Hammack, Mr. Pammel and Mr. Ribble were not present for the vote.

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Page 051, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ANA C. NAVARRO, VC 99-M-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard. Located at 3530 Lacy Blvd. on approx. 21,244 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((23)) 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. Gloria Navarro, 3530 Lacy Boulevard, 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 6.0 foot high fence to remain in the front yard. The Zoning Ordinance permits a maximum fence height of 4 feet in the front yard; therefore, a variance of 2.0 feet was requested.

Ms. Navarro presented the variance request as outlined in the statement of justification submitted with the application. Ms. Navarro stated the fence was needed for a family home day care facility for the safety of the children. Ms. Navarro stated that she did not know that she had violated any County regulations with the construction of the fence, and asked the Board to allow the fence to remain.

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

Mr. Hammack moved to approve VC 99-M-055 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANA C. NAVARRO, VC 99-M-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence to remain in front yard. Located at 3530 Lacy Blvd. on approx. 21,244 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((23)) 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 July 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 has satisfied the nine required standards for the granting of a variance application.
3. The house is set well to the rear of the property and gives very little rear yard usage.
4. The applicant has a day care operation which requires additional security.
5. The photographs show a lower fence in the functional front yard, the six (6) foot high fence is along the side property lines that intrude, but under the circumstances, meet the standards.
6. There was a chain link fence prior to the purchase of the house that apparently had existed for some time with no complaints; the applicant's testimony indicates that the wood fence was built inside of the existing fence as a guide.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 shown on the plat prepared by Kenneth W. White, dated February 8, 1999, submitted with this application and is not transferable to other land.

2. The six (6) foot frame fence extending off the applicant's property to the rear, shall be relocated onto

3. the applicant's property.

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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 053, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOSE POSTIGO, VC 99-P-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 25.0 ft. from front lot line and 9.0 ft. from side lot line. Located at 2926 Meadow Ln. on approx. 5,313 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 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. Jose Postigo, 2926 Meadow Lane, Falls Church, 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 a second story addition above the existing dwelling. The variances requested were for 25.0 feet from the front lot line and 9.0 feet from a side lot line. The minimum front and side yard requirements are 30 feet and 10 feet respectively; therefore, a variance of 5.0 feet for the front lot line and 1.0 foot for the side lot line were requested.

Mr. Postigo presented the variance request as outlined in the statement of justification submitted with the application. Mr. Postigo stated that the addition was necessary in order to accommodate his family's needs and asked for the Board's approval of the application.

Chairman DiGiulian asked if the addition would come any closer to the property line than the existing dwelling. Mr. Postigo stated that the addition would be on top of the existing dwelling.

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

Mr. Pammel moved to approve VC 99-P-058 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSE POSTIGO, VC 99-P-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 25.0 ft. from front lot line and 9.0 ft. from side lot line. Located at 2926 Meadow Ln. on approx. 5,313 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((9)) 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 July 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 has satisfied the nine required standards for the granting of a variance application.
3. There is no enlargement of the existing non-conformity.
4. The addition will come no closer to the existing property lines than the current one story 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 second story addition as shown on the plat prepared by William E. Ramsey, dated April 19, 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 additions shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 055, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAUL NELSON, SP 99-B-027 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 10.6 ft. from side lot line. Located at 8602 Norfolk Ave. on approx. 21,860 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 117. (Concurrent with VC 99-B-053).

9:00 A.M. PAUL NELSON, VC 99-B-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from side lot line and an accessory structure 10.0 ft. from rear lot line and 9.0 ft. from side lot line. Located at 8602 Norfolk Ave. on approx. 21,860 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 117. (Concurrent with SP 99-B-027).

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 Nelson, 8602 Norfolk Avenue, Annandale, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to minimum yards based on error in building location to permit a sunroom addition to remain 10.6 feet from the side lot line. A variance was also requested to allow the construction of a garage 11 feet from the side lot line and a variance to allow a shed 10 feet from the rear lot line and 9 feet from the side lot line. For the special permit, the required minimum yard is 20 feet; therefore, the amount of the error is 9.4 feet or 47%. For the variance for the garage, the minimum required side yard is 20 feet; therefore, a variance of 11 feet is requested. For the variance for the shed, the minimum rear yard is 12.5 feet and the minimum side yard is 20 feet; therefore, variances of 2.5 feet and 13 feet respectively, were requested.

Mr. Nelson presented the variance and special permit requests as outlined in the statement of justification submitted with the application. With regard to the special permit, Mr. Nelson stated that the request was necessary due to the construction of a home office which was built over an existing patio and sidewalk and that he was not aware of setback requirements at the time of construction. With regard to the variance request, Mr. Nelson stated that the garage and shed were older and in a deteriorating condition and needed either extensive work or reconstruction. Therefore, Mr. Nelson asked for the Board's approval of the applications.

Chairman DiGiulian asked if the garage was going to be larger than the existing carport. Mr. Nelson replied that the garage would extend 2 additional feet into the property line. Chairman DiGiulian asked how wide the garage would be. Mr. Nelson stated that the current garage was 19 feet and the proposed garage was 21 feet.

Mr. Hammack referred to the justification for the shed where it mentioned demolishing the old shed and replacing it and asked if there was any reason why the shed couldn't be replaced in conformance with the setback lines. Mr. Nelson stated that in order to do this it would require removing mature oak trees; therefore, he felt the application was necessary.

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

Mr. Dively moved to approve SP 99-B-027 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL NELSON, SP 99-B-027 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 10.6 ft. from side lot line. Located at 8602 Norfolk Ave. on approx. 21,860 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 117. (Concurrent with VC 99-B-053). Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 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 sunroom addition shown on the plat prepared by William S. Sikes, Jr., dated June 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.

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 July 14, 1999. 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 99-B-053 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL NELSON, VC 99-B-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line and an accessory structure 10.0 ft. from rear lot line and 7.0 ft. from side lot line. Located at 8602 Norfolk Ave. on approx. 21,860 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 117. (Concurrent with SP 99-B-027). Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1999; and

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

1. The applicant is the owner of the land.
2. The garage is to be constructed where the carport currently is and will only extend two feet over.
3. The garage will only be 21 feet in width, which is not unreasonable.
4. The length of the garage tracks the length of the house; therefore, it is not overly large in that direction as well.
5. The shed would only be an improvement to the existing shed and will go in the same place as the existing shed.

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

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

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

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

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

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

1. This variance is approved for the location of a garage addition and shed shown on the plat prepared by William S. Sikes, Jr., dated June 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 July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 058, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DONALD C. AND SHIRLEY S. STRATTON, SP 99-L-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.4 ft. from side lot line. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5))(A) 1. (Concurrent with VC 99-L-054).

9:00 A.M. DONALD C. AND SHIRLEY S. STRATTON, VC 99-L-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.7 ft. from street line of a corner lot. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5))(A) 1. (Concurrent with SP 99-L-028).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald Stratton, 5700 Norton Road, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to minimum yards based on error in building location to permit a covered deck addition to remain 6.4 feet from the side lot line. A variance was also requested to allow the construction of a garage addition 23.7 feet from the front lot line. For the special permit, the minimum required side yard is 12 feet; therefore, the amount of the error is 5.6 feet or 47%. For the variance, the minimum required front yard is 30 feet; therefore, a variance of 6.3 feet was requested.

Mr. Stratton presented the special permit and variance requests as outlined in the statement of justification submitted with the application. With regard to the special permit, Mr. Stratton stated that he had lived in his home for 42 years and soon after the purchase of the home he had enlarged the back porch, and the roof over the porch, and added a deck to the side of the porch; however, had not realized that a permit was required since it was an existing structure. With regard to the variance, Mr. Stratton stated that he would like to add a garage to his home; however, he noted that due to an easement diagonally through the rear, there was no other location for a garage except where it was noted on the plat.

Ms. Gibb questioned the current asphalt and gravel driveways and asked if they would remain. Mr. Stratton replied that they would remain.

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

Mr. Ribble moved to approve SP 99-L-028 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD C. AND SHIRLEY S. STRATTON, SP 99-L-028 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.4 ft. from side lot line. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5)) (A) 1. (Concurrent with VC 99-L-054).
Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 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 deck addition shown on the plat prepared by Kenneth W. White, dated March 24, 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.

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 July 14, 1999. 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 99-L-054 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

Mr. Hammack made a motion to add a condition that the existing gravel and asphalt driveways be removed, and that part of the yard be restored. Mr. Hammack stated that the applicant should not need the additional parking area. Mr. Pammel seconded the motion.

Mr. Stratton stated that the gravel pad had existed for 30 years and was for parking a travel trailer and that the concrete driveway was needed because of Burgundy Road.

Mr. Kelley stated that there was not a necessity for the amendment. He stated that the applicant had kept up his property for 40 years and that the Board could expect him to do so for the next 40 years.

Mr. Stratton stated that the asphalt driveway had been the main driveway to his home for 42 years and that its removal, in his opinion, would not add to the property.

The motion carried with a vote of 4-3. Chairman DiGiulian, Mr. Kelley and Mr. Ribble voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD C. AND SHIRLEY S. STRATTON, VC 99-L-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.7 ft. from street line of a corner lot. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5))(A) 1. (Concurrent with SP 99-L-028). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 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 satisfied the nine required standards for the granting of a variance application.
3. The siting of a sanitary sewer easement, which runs diagonally across the lot, prevents building the garage in any other location.
4. The lot has double front yards.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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, Land Surveyor, dated March 24, 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.

4. Upon completion of the garage addition with driveways, the existing asphalt and gravel drives shall be removed and the yard shall be restored.

Pursuant to Sect. 18-407 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 July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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NOTE: The Board of Zoning Appeals granted a Request for Reconsideration for the above referenced applications on July 13, 1999. A new public hearing has been scheduled for September 14, 1999, at 9:00 a.m.

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Page 062, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RITA POWELL, SP 94-Y-059 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit a kennel. Located at 4500 Upper Cub Run Drive on approx. 6.0 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (Concurrent with VC 99-Y-060). (MOVED FROM 4/27/99 AND 5/25/99).

9:00 A.M. RITA POWELL, VC 99-Y-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory service use (caretaker's dwelling) to be located in a building separate from the building which contains the principal use (kennel). Located at 4500 Upper Cub Run Dr. on approx. 6.00 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (Concurrent with SP 94-Y-059).

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 L. Shumate, Agent, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit to allow a kennel with outdoor runs. The kennel had been in existence since 1980, under a previous special permit; however, that permit had expired. The applicant also requested a variance to allow the location of the caretakers dwelling to be separate from that of the main building. Ms. Schilling noted that when the applicant applied for a new special permit, it was discovered that while the kennel property was originally in the R-1 District, which permits kennels with approval of a special permit, the site had been rezoned to the I-3 District, which did not permit kennels. The Board of Zoning Appeals deferred the hearing on the special permit to allow time for the Board of Supervisors to consider a Zoning Ordinance Amendment to allow kennels in the I-3 District. That amendment was approved in November of 1998. In staff's evaluation, all land use, transportation, and environmental issues had been addressed with the development conditions dated July 6, 1999, which reflected a corrected plat submitted by the applicant.

Mr. Shumate presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Shumate stated the request was to allow a use which had existed on the site for 20 years and said that the use would continue as is, with no enlargement of the use and no new construction or physical improvements. Mr. Shumate stated that the applicant was in agreement with the development conditions for the special permit with the exception of Condition 9 regarding a conservation plan. He said that measures had already been implemented with past approvals and asked the Board for its deletion. With regard to the variance, Mr. Shumate said that the dwelling unit had existed for 20 years and asked for the approval of the application.

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

The Board discussed with staff the issue of a conservation plan.

Ms. Gibb moved to approve SP 94-Y-059 for the reasons noted in the Resolution subject to the revised Development Conditions dated July 6, 1999, with deletion of Condition 9.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RITA POWELL, SP 94-Y-059 Appl. under Sect(s). 5-303 of the Zoning Ordinance to permit a kennel. Located at 4500 Upper Cub Run Drive on approx. 6.0 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (Concurrent with VC 99-Y-060). (Moved from 4/27/99 and 5/25/99). 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 July 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 has presented testimony indicating compliance with the general standards for the granting of a special permit application.
3. The use is existing and was very well maintained and staff has reported that it meets all the requirements.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 5-303 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, 4500 Upper Cub Run Drive, (6.0 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 Dewberry and Davis dated August 9, 1994, as revised through July 2, 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 kennel shall be for the use of household pets only. The number of household pets in the facility shall not exceed 200 at any one time.

6. The hours of operation shall be limited to 8:00 a.m. to 7:00 p.m., Monday through Friday, Saturdays, 8 a.m. to 5 p.m., and Sundays, 1 p.m. to 5 p.m.

7. There shall be a maximum of five (5) full time employees and six (6) part-time employees associated with this use.

8. There shall be 16 parking spaces as shown on the special permit plat. All parking shall be on-site.

9. All signs shall conform with the provisions of Article 12, Signs.

10. The accessory dwelling shall be limited only to use by an employee of the kennel to assist in operation of the kennel after hours.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval* unless the use has been 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 July 14, 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-Y-060 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RITA POWELL, VC 99-Y-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory service use (caretaker's dwelling) to be located in a building separate from the building which contains the principal use (kennel). Located at 4500 Upper Cub Run Dr. on approx. 6.00 ac. of land zoned I-3, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (Concurrent with SP 94-Y-059).
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 July 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 has satisfied the nine required standards for the granting of a variance application.
3. In order to best take care of the animals, a caretaker should be on the premises for 24 hours a day.
4. The subject property is very well maintained.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 caretakers dwelling shown on the plat prepared by Dewberry and Davis, dated August 9, 1994, as revised through July 2, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 065, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. LANDON AND NELLIE MORGAN, VC 99-L-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots with proposed lot 2-A having a lot width of 80.0 ft. Located at 4722 Pole Rd. and 8307 Carlwood Road on approx. 1.05 ac. of land zoned R-3. Lee District. Tax Map 101-3 ((1)) 3D and 3F.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Landon Morgan, 4722 Pole Road, Alexandria, 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 allow the subdivision of two lots into three lots, with proposed lot 2A having a lot width of 80 feet. The minimum lot width requirement is 105 feet. It was noted that lot 3F would not be altered by the proposed subdivision, but is incorporated because the subdivision of lots 2A and 2B alone did not meet the density requirements of the R-3 District. This lot was the subject of a previous variance with the same configuration; however, it expired on October 2, 1998. In staff's evaluation, the proposed variance did not meet the required standards for approval of a variance and lots 2A and 2B would only be 11,067 square feet and 12,864 square feet in size. The property not only required a lot width variance to subdivide, but also must use lot 3F as a device to meet the density requirements of the R-3 District.

Mr. Morgan presented the variance request as outlined in the statement of justification submitted with the application. Mr. Morgan stated that the request was necessary because he had run out of the allotted time after the approval of the application in April, 1996, and therefore had to resubmit a new variance application.

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

Mr. Kelley moved to approve VC 99-L-056 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LANDON AND NELLIE MORGAN, VC 99-L-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots with proposed lot 2-A having a lot width of 80.0 ft. Located at 4722 Pole Rd. and 8307 Carlwood Road on approx. 1.05 ac. of land zoned R-3. Lee District. Tax Map 101-3 ((1)) 3D and 3F. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 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 satisfied the nine required standards for the granting of a variance application.
3. The application is identical to VC 96-L-007, passed by the Board in 1996.

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

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

the same vicinity.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 3D and 3F as shown on the plat prepared by Robert L. Franca, Land Surveyor, dated March 7, 1996. 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 applicant shall dedicate in fee simple to the Board of Supervisors 45 feet of right-of-way from the centerline of Pole Road for public street purposes upon demand. Ancillary easements shall be provided upon request if necessary to facilitate any improvements.

Pursuant 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.

Ms. Gibb seconded the motion which carried by a vote of 5-2. 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 July 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 067, July 6, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KATHLEEN PACE, SP 99-V-023 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. 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.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kathleen Pace, 8816 McNair Drive, Alexandria, 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 allow the operation of a home child care facility with a maximum number of 10 children on site at any one time. The proposed hours of operation would be 5:30 a.m. to 6:00 p.m. A proposed play area of approximately 1,625 square feet was to be located along the eastern side of the existing dwelling while a parking area for 2 additional vehicles was proposed along the northeastern portion of the driveway. Mr. Bernal stated that staff believed that the subject application had met all the

required standards of the Zoning Ordinance for a special permit. The proposed use of a single family dwelling to a home child care facility would not be too intense located near the periphery of an established residential neighborhood. Staff recommended approval of the application.

Ms. Pace presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Pace stated that she had provided child care for 17 years and asked for approval of the special permit application to remain in compliance with the County regulations.

Chairman DiGiulian called for speakers and noted that all those in support of the application should limit their comments to the land use issues only.

The following citizens came forward to speak in support of the application: Katherine Stevens (no address given for the record); Keith Maxwell (no address given for the record); Susan McKenzie (no address given for the record); Ross Cox, 8642 Braddock Avenue, Alexandria, Virginia; Kelley Sever (no address given for the record); Alan Sever (no address given for the record); Loraine Birch (no address given for the record); Catherine Teshner, 8816 McNair Drive, Alexandria, Virginia.

The following were comments in support of the application: Traffic issues were unfounded; quality day care was hard to find in the area; Ms. Pace helped children with special needs; there would be no increased traffic due to the day care; there were no problems or complaints from other parents; never more than 10 children at one time in her care; there was more traffic due to County parkland at the end of the street than the facility itself; commercial day care facilities were not flexibility with their hours of operation; Ms. Pace's facility did not create extraordinary noise in the neighborhood; and, commercial day care facilities do not provide one-on-one care.

Mr. Pammel noted a petition of support and approximately 20 letters of support which were submitted to the Board for the record.

Chairman DiGiulian called for speakers in opposition.

The following citizens came forward to speak in opposition of the application: Stephen Burnett, 8804 McNair Drive, Alexandria, Virginia; Margaret Fuller, 8813 McNair Drive, Alexandria, Virginia; Lieselotte Chedester, 8817 McNair Drive, Alexandria, Virginia.

The following were comments in opposition of the application: the area needs to remain residential and not commercial; there were numerous commercial sites available for the facility; the license only allows 12 children; there will be employees in her business; the application should not be based on the applicant's financial consideration; and, they would like to maintain a quite neighborhood.

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

Mr. Hammack moved to approve SP 99-V-023 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated June 29, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHLEEN PACE, SP 99-V-023 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. 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. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 6, 1999; and

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

1. The applicant is the owner of the land.
2. Even though there is a concern of commercialization within a residential area, this special permit would only result in an increase of three (3) more children on-site at any one time.
3. The policy to allow this type of facility in a residential neighborhood is well established at the County and State levels.
4. There was quite a lot of support for the application by satisfied parents and users.
5. With regard to the traffic concerns, it did not seem to present a real obstacle to this application. It would seem there would be more traffic going to the County park than associated with this facility.

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, 8816 McNair Drive (21,768 square feet) lot 4, 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 Laura L. Scott, Land Surveyor, dated October 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. A circular driveway and four (4) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on site.

5. The maximum hours of operation for the home child care facility shall be limited to 5:30 a.m. to 6:00 p.m. Monday through Friday.

6. The total maximum daily enrollment for the home child care facility shall be 12 children with a maximum of 10 children on site being cared for at any one time.

7. A four (4) foot high chain-link fence shall enclose the designated play area.

8. The maximum number of employees for the nursery school shall be 4.

9. There shall be no signs associated with this use.

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

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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 14, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 070, July 6, 1999, (Tape 2), 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. (Continued from 1-2-99).

Ms. Pace requested a withdrawal of the appeal application due to the approval of the special permit application.

Mr. Dively moved to withdraw appeal application A 1998-MV-042. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 070, July 6, 1999, (Tape 2), Scheduled case of:

9:30 A.M. TRANH V. TRAN; KIM L. PHAN, A 1999-SU-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellants are operating a place of worship on property in an R-C District without Special Permit approval in violation of Par. 1 of Sect. 2-303 of the Zoning Ordinance. Located at 7605 Bull Run Dr. on approx. 5.10 ac. of land zoned R-C. Sully District. Tax Map 73-1 ((2)) 13.

Diane Johnson-Quinn, Zoning Administration Division, made staff's presentation as contained in the staff report. Ms. Johnson-Quinn stated that the issue on appeal was the Zoning Administrator's determination that a place of worship, specifically a Buddhist temple, was being operated on the property by Mr. Tran, without a special permit. The Ordinance provides that any use designated as a special permit use should not be established without first obtaining such approval. Also, the district regulations for the R-C District designates churches, chapels, temples, synagogues and other places of worship as uses allowed by special permit; therefore, the BZA's approval was required to establish a temple on the property. Ms. Johnson-Quinn said that the appellants challenged this decision, claiming that there was insufficient evidence to substantiate the determination, that the Zoning Ordinance did not contain a definition of the term place of worship and that there was no basis for concluding that the gatherings on the property were anything other than social in nature. Staff did not concur with these claims. Ms. Johnson-Quinn stated that it was staff's position that the evidence supported the determination; and she noted that contained in the staff report, is the evidence as well as factors used in determining whether a use is a Place of Worship, which included: frequency of the gatherings; the services are presided over by a professional practitioner of the faith; the number of attendees and impact on the neighborhood; the worship services or religious rituals involved; the space used as the place of worship was designed or arranged for services (i.e., pews, altars, prayer books, large assembly area); and, the manner in which the gathering is made known to potential attendees.

Ms. Johnson-Quinn said that evidence showed that the appellants advertised the property as a Buddhist temple, and stated that evidence showed that services occurred every Sunday morning with approximately 40 to 50 cars arriving during a short period of time with approximately 100 people, and that attendees had identified the garage structure and use of the property as a Buddhist temple in which Sunday services, weddings and memorial services were conducted by the appellant.

Ms. Johnson-Quinn said that the garage structure was at least 31 x 31 feet and contained a wide open interior space which could readily accommodate a large number of worshipers. Three Notices of Violation had been issued to Mr. Tran, who had been identified as the Pastor of the Vietnamese Buddhist Association, for operating a place of worship. None of these Notices of Violation were ever appealed. The property was advertised on the Internet as a Buddhist temple providing the address, phone number and directions to the location. Ms. Johnson-Quinn stated that it was also significant that Mr. Tran was involved in the filing of two special permit applications in which he considered the proposed use of the property to be a place of worship

within the meaning of the Zoning Ordinance.

Mr. Dively expressed that the most appropriate way to proceed would be through a special permit application.

Mr. Thao, Attorney for Appellant and Member of the Vietnamese Buddhist Association, responded by stating that the appellant had applied for a special permit twice; however, was advised by counsel that the use was within their rights as a tenant of a private residence; therefore, there was no need for a special permit. Mr. Thao stated that the applications were withdrawn with this understanding; however, if the Board believed a special permit should be applied for, the appellant asked for additional time to proceed with the submission of a special permit application.

Mr. Dively stated that he would be open minded to a special permit application because it would be a more appropriate application than the appeal.

Mr. Thao stated that the reason for the appeal was because the appellant did not know what had been done to violate the laws and regulations and did not know where the limits were of their rights because they were unsure when to apply for a special permit and when they could use their own home for their entertainment.

Mr. Kelley stated that he agreed with Mr. Dively.

Chairman DiGiulian asked Mr. Thao if worship services were held on the property.

Mr. Thao stated that the home did not hold worship services. He said that the resident of the home was a Buddhist monk who was required to pray and study the Buddhist bible at least three times a day; however, there were no regularly scheduled services for the public.

Chairman DiGiulian referred to pictures presented to the Board showing 30 to 40 vehicles outside the home and asked if they all belonged to the monk.

Mr. Thao replied that the monk did not invite people to come into his home; however, according to the religion, wherever the monk lived, it must be open to everyone for counseling, prayer and meditation. Mr. Thao said that the monk was not allowed to refuse anyone in his home and stated that the visits were not regularly scheduled.

Mr. Hammack stated that the Board should not advise the appellant of what action to take and said that he had chosen to appeal and believed the Board should hear the application. Mr. Hammack stated that the appellant had filed for a special permit and withdrew it, had been cited several times for zoning violations and never appealed and said there was a pattern of conduct.

Mr. Thao stated that the appellant was confused over their rights and asked for extra time to seek more counsel to attempt to comply with the regulations of the County regarding what the terms were of a place of worship. He specifically asked how many people would be allowed in a person's home or how the interior of a home could be decorated before it would be considered a place of worship.

Mr. Hammack referred to a letter which stated there was a two-ton statue of Buddha in the garage and asked if that information was correct. Mr. Thao stated the statue was inside the home and did not bother anyone around the community and emphasized that the house was on 10 acres of land.

Mr. Hammack asked Mr. Thao and Mr. Norris, an attorney also representing the appellant, how much time they would need to consult counsel to determine the definition of a place of worship.

Mr. Thao said that two law firms had been obtained specializing in zoning laws regarding the issue, which gave conflicting advice over the last 15 years, and asked for a one or two month deferral.

Mr. Dively asked Mr. Shoup if the option of pursuing a special permit was discussed with the appellant.

Mr. Shoup replied that not since the appeal had been filed; however, in the past that discussion had taken place with the appellants.

Ms. Gibb stated that this use had existed for 15 years and at one time a law firm was obtained to file a special permit application in which the request was for a place of worship. She asked Mr. Thao if anything had changed since that request.

Mr. Thao stated that when the special permit was applied for, the appellant had planned to advertise and invite the public to come into the home and share the services, and now they were not doing that.

Ms. Gibb questioned the Internet website address which stated that there was a Buddhist temple at the appellant's address. Mr. Thao stated he believed there needed to be verification of a temple and a church with the Asian Buddhism, explaining that in this Country a temple or church represented a building; however, in Buddhism, wherever a monk lived was a temple.

Mr. Dively made a motion to continue the application for two weeks so that the appellant could decide how to proceed, whether through the appeal or with the filing of a special permit application. Mr. Kelley seconded the motion.

Ms. Gibb expressed her concern and said the issue should be resolved with a special permit; however, that with the appellant having already filed two separate applications and then withdrawing them, the issue should not be open ended and disagreed with the motion to continue the hearing.

Chairman DiGiulian stated he believed the appeal should go forward. Mr. Hammack agreed with Chairman DiGiulian.

Mr. Pammel noted that the audience held citizens to speak to the application and that they should have the opportunity to present their views in the public hearing process.

The motion failed by a vote of 2-5. Chairman DiGiulian, Ms. Gibb, Mr. Hammack, Mr. Pammel and Mr. Ribble voted against the motion.

Arthur Norris, Attorney for the appellant, said that the Notice of Violation stated that the property should not be used as a place of worship; however, that the statute would permit some worship related activities in a residence. Mr. Norris said the appellant questioned what was permitted up to the limits of residential use without creating a place of worship and asked for the Board's clarification on the matter.

Mr. Hammack stated that the Board was to decide on the appeal issue only, not for clarification of the Zoning Ordinance.

Mr. Norris asked for a two week deferral of the appeal application and stated that the appellant was not prepared to present the application.

Mr. Kelley said the only issue was whether or not the Zoning Administrator had made an appropriate decision in the case and told the appellant that they must convince the Board that the residence was not used for a place of worship, in accordance with the Ordinance.

Mr. Norris replied that he would not be able to convince the Board of this with the assumption that there were 40 to 50 cars at the location every Sunday and asked for Mr. Thao's assistance with the questions presented.

Mr. Thao stated that the issue was very important to the appellant, not only because it was the monk's residence, but also because of spiritual leadership. Mr. Thao stated that the monk was a religious person who must study the bible three times a day and the residence was open to everyone for prayer. Mr. Thao said there was no regularly scheduled mass on Sunday morning. He said that it was very seldom for 40 cars to be at the residence at any one time; usually, he stated, it would be 10 to 15 people to sit with the monk to meditate.

Mr. Hammack asked how people knew that a monk lived at the residence. Mr. Thao replied that everyone knew because it was a small community; however, stressed that the monk did not invite people for services.

Mr. Hammack again questioned the Internet website address. Mr. Thao stated he was not aware of such a website and said that the residence was for the monk and was only used as a private residence for prayer

and meditation and to study the bible.

Mr. Ribble said that the statement submitted with the original special permit application stated that there would be more than 40 people on weekends and on certain religious holidays.

Mr. Thao stated that at no time, regularly, were there 40 to 50 cars at the location, except during the new year. Mr. Thao stressed that the purpose of the special permit application was that the monk had planned to open all services to the public and said that now it was treated as a private residence and was not advertised and no contributions were received.

Mr. Dively asked Mr. Thao what other action would need to occur for the appellant to determine the location a place of worship. Mr. Thao responded that he would consider it a place of worship if there were regularly scheduled services on weekends which were advertised, a membership and contributions for maintenance and upkeep of the temple.

Chairman DiGiulian asked if the people who came to the monk's home made monetary contributions. Mr. Thao stated that anyone could make offerings to the spirit of the Buddha, but not to the monk or the church. He further stated that the monk did not perform weddings or funerals but did perform memorials for family prayer.

Ms. Gibb referred to the statement of justification which referenced the use as a church, in many instances, and stated that the purpose of requiring a special permit was because of the impact on the neighbors in a residential area of a church, or the effect of people coming and going in an intense way that was not natural to the residential neighborhood. Ms. Gibb said that even if the appellant did not call the use a church or a temple, the impact was the same, and that was what the Zoning Administrator and the Board would look at with the application. Ms. Gibb stated that the Board encouraged churches in neighborhoods; however, needed to protect the adjacent neighbors.

Mr. Hammack asked if the monk had approved of the advertisement of the temple on the Internet. Mr. Thao stated that the monk had nothing to do with the information on the Internet and said it was a group in Chantilly who had placed the information on the Internet.

Mr. Hammack asked if the monk would conduct bible study with people who come into his home. Mr. Thao stated the monk conducts his prayer with or without anyone present because it was a requirement of the religion.

Mr. Pammel stated that one of the community concerns was the limit on the septic field and asked if the appellant had tested the septic field to determine what the rated capacity was for the field. Mr. Thao stated the issue was resolved.

Chairman DiGiulian called for speakers.

Laura Hargis, 7600 Bull Run Drive, Centreville, Virginia; Duane Heisinger, 7401 Bull Run Drive, Centreville, Virginia; Judith Heisinger, 7401 Bull Run Drive, Bull Run Civic Association, Centreville, Virginia; came to the podium to address their opposition to include the following: Services include several hundred people on Sunday from 11:00 a.m. to 12:00 p.m.; sometimes over 300 are cars parked on the property; there are vehicles coming and going from the property at all hours of the day; the residential neighborhood of 13 homes was generally developed at 1 home per 5 acres; the watershed point was not raised in the staff report; the temple was built for worship services; the website page indicates services are being held; no successful perk test have been done on the property; a three car garage was razed and a temple was built which appeared to be larger than the original dwelling; County inspectors had not been allowed to enter the temple; the use had been in existence for over 10 years; the community was greatly impacted by the use; there was concern with a fragile water table because all homes depend on wells; numerous ongoing and outstanding Notices of Violation had been issued and the issue needed to be addressed; the Bull Run Civic Association did not approve of the use; and, Ordinances and covenants had been ignored repeatedly.

Mr. Thao made his rebuttal, stating that when the appellant had applied for a special permit in the past, one of their requests was to hold Sunday masses. Upon the withdrawal of the application, their counsel had advised them to discontinue all masses on Sunday, in which Mr. Thao stated there were no regularly scheduled services; therefore, there was no need for the special permit application. He stated that the

neighbors and Zoning Inspectors were on the property at all times and said that there was no other private residence that went through such scrutiny.

Mr. Shoup noted that the intensity of the use had been increased since the filing and withdrawal of the special permit applications and that staff believed that there were regularly scheduled services taking place. He stated that the Zoning Inspectors went to the site three times prior to the issuance of the Notice of Violation and again three times after the appeal was filed, and on all 6 occasions there were at least 40 vehicles and as many as 100 people, on site. Mr. Shoup stated that the criteria set forth in the staff report explained what a place of worship is and that the evidence showed that the appellants' use met that criteria.

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

Mr. Dively stated that the evidence was overwhelming that the Zoning Administrator had made the correct assessment given the Ordinance. Mr. Dively made a motion to uphold the Zoning Administrator's decision in Appeal Application A 1999-SU-014. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 074, July 6, 1999, (Tape 2), After Agenda Item:

Approval of April 20, 1999 Minutes

Mr. Pammel made a motion to approve the April 20, 1999 Minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 074, July 6, 1999, (Tape 2), After Agenda Item:

Approval of June 29, 1999 Resolutions

Mr. Pammel made a motion to approve the June 29, 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 11:37 a.m.

Minutes by: Deborah Hedrick

Approved on: October 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, July 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.

Page 075, July 13, 1999, (Tape 1), Scheduled case of:

9:00 a.m. IMMANUEL CHRISTIAN SCHOOL AND IMMANUEL BIBLE CHURCH, SPA 80-A-058-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities with school of general education which has an enrollment of 100 or more students daily to permit an increase in enrollment and to modify development conditions. Located at 6915 and 6911 Braddock Rd. on approx. 13.02 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 35, 36A; 71-4 ((2)) 1, 2, 2A, 3, 3A, B. (Def. from 7/6/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin F. Tompkins, Hazel & Thomas, P.O. Box 12001, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant requested approval of a special permit amendment to allow an increase in students for the private school of general education from 370 to 500, and a change in the hours of operation from 8:30 a.m. to 3:15 p.m. to 7:45 a.m. to 3:45 p.m. Monday through Friday. She informed the Board that there were no other physical changes proposed to the site, which currently was developed with on-site parking lots with 420 spaces.

Ms. Schilling said that it was staff's evaluation that all land use, transportation and environmental issues had been addressed with the proposed development conditions dated July 8, 1999. She stated that the revised development conditions reflected changes that were the result of ongoing discussions between staff and the applicant and the most notable was Development Condition 11, which allowed the applicant to increase the number of students on site with the first additional 25 students upon the final date of approval of this Special Permit, with the balance of the increase in students with issuance of a Non-Residential Use Permit for the Special Permit. She explained that the second was Development Condition 15, which allowed overflow parking off-site subject to the express consent of the property owner and approval of an off site parking arrangement by the Department of Public Works and Environmental Services (DPWES). Ms. Schilling stated that without this condition allowing off-site parking, all parking was required to be on-site, and an off-site parking arrangement was required to make sure that the overflow parking was not taking up parking spaces that were required for the off site use on Sunday mornings.

Mr. Thompkins presented the special permit amendment request as outlined in the statement of justification submitted with the application. He informed the Board of the beneficial cost cutting effects that enlarging the enrollment in the private school would provide for the County. He stated that the maximum enrollment would generate no more than 47 vehicle trips per day in the AM and PM during Monday through Friday. Mr. Thompkins said that a conversation with the Office of Transportation revealed that there was no significant transportation improvements needed. He stated that the applicants were in agreement with all of the Development Conditions except Condition #15 which dealt with parking that occurred only on Sunday and was associated with the church. Mr. Thompkins pointed out that the current special permit amendment was only dealing with parking during Monday through Friday and was only associated with the school. However, he mentioned, to bypass any problems of getting a shared parking arrangement through DPWES, the church had an informal agreement with the owner of a nearby shopping center to permit parishioners to park in designated areas and that there was a shuttle on Sunday mornings to transport the parishioners to and from the designated parking area to the church. He added that upon any termination of this informal agreement the church had agreed to provide additional the spaces needed either through other neighbors or on-site arrangements. He proposed a new version of Development Condition #15 and asked that this be substituted for the version submitted by staff.

Ms. Gibb asked what problems had been anticipated with relation to parking approval from DPWES. Mr. Thompkins answered that the process of getting a shared parking agreement approved by DPWES was cumbersome, it involved application fees, parking consultants and was a lengthy process.

Mr. Hammack asked if the owner of the shopping center had ever expressed objection to the arrangement. Mr. Thompkins replied that the arrangement had been in existence for over 9 years and over that period of time there had been an occasional complaint from a tenant regarding parishioners parking in the spaces that were needed for their customers. He said that these complaints were addressed by instituting specific parishioner parking spaces and that signs were put up on Sunday mornings to designate those spaces. Mr. Hammack asked how many vehicles were parked off-site on Sunday mornings. Mr. Thompkins answered 100-150. Mr. Hammack asked if there was any off-site parking with relation to the school. Mr. Thompkins replied that there was none. There was conversation between staff and Mr. Hammack regarding his concern of staff's recommendation to change Development Condition #15 to include church parking. The result of this conversation was the replacement of Development Condition #15 submitted by staff with the version proposed by the applicant.

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

Mr. Hammack moved to approve SPA 80-A-058 for the reasons stated in the Resolution with the addition of the applicant's Development Condition #15.

Mr. Kelley asked for clarification of whether or not the original motion included the revised Development Conditions dated July 8, 1999. Mr. Kelley also suggested that the Board delete Development Condition #5.

Mr. Hammack revised the motion to include the revised Development Conditions dated July 8, 1999 and to delete Development Condition #5.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

IMMANUEL CHRISTIAN SCHOOL AND IMMANUEL BIBLE CHURCH, SPA 80-A-058-04 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities with school of general education which has an enrollment of 100 or more students daily to permit an increase in enrollment and to modify development conditions. Located at 6915 and 6911 Braddock Rd. on approx. 13.02 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 35, 36A; 71-4 ((2)) 1, 2, 2A, 3, 3A, B. (Def. from 7/6/99) 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 July 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 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, 6911 Braddock Road, (13.02 acres), and is not transferable to other land.

2. This Special Permit is granted only for the church, school, and related facilities, structures and/or use(s) indicated on the special permit plat prepared by Crigler Burke Architects (Donald S. Crigler, Architect) dated February 17, 1999, as revised through June 18, 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. 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. Transitional Screening I shall be maintained in the following areas:

   - Along the portion of the eastern lot line adjacent to Lot 34;
   - Along the southern lot line
   - Along the side and rear lot lines of Lot 1;

   Existing vegetation and additional plantings along the southern and eastern lot lines shall be maintained to satisfy the intent of Transitional Screening I. Dead and/or dying vegetation shall be replaced as determined by the Urban Forestry Branch of DPWES. The type, quality, size and location of these plantings shall be reviewed and approved by the Urban Forestry Branch, DPWES. Plantings along the western lot line shall be maintained as shown on the approved site plan for the existing buildings shown on the site. The purpose of the plantings adjacent to the western lot line shall be primarily to screen the parking lot and provide visual relief from the building addition. A fifteen foot wide strip of plantings shall be provided and maintained along the western side of the L-shaped addition as shown on the approved special permit plat. The purpose of these plantings shall be to screen the building addition. The Urban Forestry Branch, DPWES shall determine the type, quality, size and location for the plantings in these areas.

6. Foundation plantings shall be maintained around the buildings which soften and screen the visual impact of the buildings from surrounding streets. Dead and/or dying vegetation shall be replaced as determined by the Urban Forestry Branch of DPWES.

7. A six foot high solid wood fence shall be provided and maintained along the southern lot line as shown on the special permit plat. A split rail fence shall be provided around Lot 1 as shown on the approved special permit plat. A 7 foot high solid wood fence shall be provided along the portion of the eastern lot line adjacent to Lot 34, as shown on the approved special permit plat. There shall be no outdoor storage of vehicles or equipment within any transitional screening yard along the eastern lot line.

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

9. There shall be a maximum of 1,000 seats in the main area of worship and a corresponding minimum of 250 parking spaces. The minimum required number of parking spaces shall be provided on-site as shown on the Special Permit Plat. All parking for the church use shall be on-site, except as permitted by Development Condition 15.

10. Upon the final approval date of this Special Permit, the maximum daily enrollment for the private school of general education shall be limited to 395 students. Upon issuance of a Non-Residential Use Permit for SPA 80-A-058-4, the maximum daily enrollment for the private school of general education shall be limited to 500 students. Of the total 420 parking spaces provided on the site, 57 of those spaces shall be provided for the private school of general education. All parking for the school use shall be on-site.

11. Prescribed square footage of usable outdoor and indoor play area shall be provided in accordance with Sect. 8-307 of the Zoning Ordinance, and the Fairfax County Code, respectively.

12. Upon the final date of approval of this Special Permit, the hours of operation for the school use shall be limited to 7:45 a.m. to 3:45 p.m., Monday through Friday.

13. An average of 2.75 persons per vehicle arriving at the school shall be maintained. This average shall be achieved by car pools and the operation of school vans. The car pool program for the school shall incorporate the requirement that all vehicles enter and exit the site from Braddock Road and from Matthew Place, by right in/right out turning movements only.

14. Additional off-site parking in excess of the Ordinance requirements may be permitted during Sunday services only on property, adjacent to or across a street from the site, subject to the express consent of the property owner of the affected property. A van shall be provided to shuttle the parishioners to and from off-site parking areas, if not contiguous to the site. If no off-site parking areas are available, all parking shall be on-site.

15. The temporary use of three (3) trailers is approved for a period of five years from the final approval of date of SPA 80-A-058-3.

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. Issuance of a Non-Residential Use Permit pursuant to SPA 80-A-058-4 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 July 21, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 078, July 13, 1999, (Tape 1), Scheduled case of:

9:00 a.m. BARBARA FARISHIAN, VC 99-D-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.5 ft. and 9.4 ft. from side lot line. Located at 7724 Canal Ct. on approx. 40,982 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((3)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara Farishian, 7724 Canal Court, 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 allow the construction of a greenhouse 4.5 feet from the side lot line and a roofed deck with trellis 9.4 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, variances of 15.5 feet and 10.6 feet were requested.

Ms. Farishian presented the variance request as outlined in the statement of justification submitted with the application. She stated that she had owned the house for more than 12 years and the property had exceptional topographical conditions due to the location of the septic field and her desire to keep from removing a mature tree. She said the addition of the deck and the greenhouse would be in character with, and not detrimental to the neighborhood.

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

Mr. Pammel moved to approve VC 99-D-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA FARISHIAN, VC 99-D-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.5 ft. and 9.4 ft. from side lot line. Located at 7724 Canal Ct. on approx. 40,982 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((3)) 8. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 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 encroachment will not do harm to the community nor is it incompatible with the adjoining structures.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 greenhouse addition and roofed deck with trellis shown on the plat prepared by Kenneth W. White, dated May 13, 1992, as revised through May 29, 1992, submitted with this application and is not transferable to other land.

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

3. The greenhouse addition and roofed deck with trellis shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 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 July 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 080, July 13, 1999, (Tape 1), Scheduled case of:

9:00 a.m. BUI (KIM) PHUONG, VA 95-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.7 ft. from a side lot line and permit additions 9.8 ft. and 9.9 ft. from side lot line. Located at 6528 Annandale St. on approx. 12,558 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 29 and 29A. (Moved from 6/22/99 for notices)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Ba Pham, 2499 Willston Place, Suite 201, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report.
She said the applicant requested approval for construction of several additions to the existing house which would encroach into the minimum required side yard of 15 feet. She informed the Board that the additions included a second story addition 9.8 feet from the east side lot line and 14.7 feet from the west side lot line and a 2 story addition which would also be 9.8 feet from the east side lot line and 14.7 feet from the west side lot line; therefore, variances of 5.2 feet and 0.2 feet were requested. She stated that the applicant also

requested a variance to permit the construction of a porch addition 9.9 feet from the side lot line and a greenhouse addition 9.9 feet from the side lot line; therefore an additional variance of 5.1 feet was requested.

Ms. Wilson noted that on July 25, 1995, the Board of Zoning Appeals (BZA) granted approval of VC 95-M-057 for the subject property and that this approval permitted additions to 9.9 feet from the side lot line and 14.7 feet from a front lot line. She explained that subsequent to the approval date the Zoning Administrator determined that the street right-of-way easement adjoining the western property boundary was not to be considered a street; therefore; the yard area abutting the easement was deemed as side yard instead of front yard. She reported that Comprehensive Plan language regarding the area stated that infill residential development should be of a similar type and intensity to the existing uses and that reduction in yard requirements were inappropriate since they had resulted in incompatible infill development and spot densities greater than the plan density. Ms. Wilson stated, in closing, that the house in question was originally constructed in 1949 and improvements and enlargements to the house had been completed as approved with the original variance VC 95-M-057.

Mr. Dively asked staff how the proposed construction compared to the other houses in the neighborhood. Ms. Wilson answered that the neighborhood consisted of older houses which had additions added and improvements made but the full extent of the improvements was not known.

Mr. Pham presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the applicant requested to amend the previous variance that was approved two years prior and that it was a minor request that only required 5 additional feet in the front of the house.

There was conversation between Mr. Dively and Mr. Pham regarding the total square footage of the house at the present time and then upon approval of the proposed variance amendment. Mr. Pham was unable to provide an answer to these questions.

Mr. Dively asked staff what was the normal square footage of the houses in the neighborhood. Ms. Wilson replied that the houses in the neighborhood were generally smaller, one story older homes typical of the late 1940's.

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

The Board estimated the square footage of the home after the proposed variance amendment would total approximately 2,000 square feet.

Mr. Dively moved to defer decision of VA 99-M-057 for one week. He asked that staff research the neighborhood and provide the Board a chronology of the square footage of the property from the time of the first variance to present. Mr. Kelley seconded the motion.

Mr. Hammack voiced his opinion that the variance amendment request was justified without having to look at the neighborhood, it was a private development of the applicant's own property, it did not require any variances that did not already exist and that it should be approved.

Mr. Pammel stated that the variance amendment was within reason and he voiced his opinion for approval. Mr. Dively moved to defer decision of VA 95-M-057 until July 20, 1999 at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted nay.

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Page 081, July 13, 1999, (Tape 1), Scheduled case of:

9:00 a.m. LYNN E. SHULSINGER, A 1999-MA-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7308 Beverly St. on approx. 0.82 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 62.

Page 082, July 13, 1999, (Tape 1), LYNN E. SHULSINGER, A 1999-MA-015, continued from Page 081

Ms. Maggie E. Stehman, Zoning Administration Division, informed the Board that the notices were not in order. She said staff felt that the appellant made a good faith effort to prepare and send out the notices; therefore, they would support a deferral of the appeal. Ms. Stehman suggested a new hearing date of September 28, 1999. She stated that this date would give the appellant adequate time to prepare and send out new notices.

Chairman DiGiulian called the appellant to the podium and asked if this hearing date was acceptable. Ms. Shulsinger answered that the date was acceptable.

Mr. Dively moved to defer A 1999-MA-015 to September 28, 1999 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 082, July 13, 1999, (Tape 1), After Agenda Item:

Approval of May 4, 1999 and May 11, 1999 Minutes

Mr. Pammel moved to approve May 4, 1999 and May 11, 1999 Minutes with one correction. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 082, July 13, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration
Donald and Shirley S. Stratton
VC 99-L-054.

Page 082, July 13, 1999, (Tape 1), After Agenda Item, Continued from Page

Ms. Gibb moved to approve the Request for Reconsideration regarding Donald and Shirley S. Stratton, VC 99-L-054. Mr. Dively seconded the motion which carried by a vote of 7-0. The new hearing date is September 14, 1999 at 9:00 a.m.

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Page 082, July 13, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration
Kathleen G. Pace
SP 99-V-023

Mr. Dively moved to deny the Request for Reconsideration regarding Kathleen G. Pace, SP 99-V-023. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 082, July 13, 1999, (Tape 1), After Agenda Item:

Approval of Revised Plat
Gerard and Ann Quinn
VC 99-P-048

Mr. Hammack moved to approve the Revised Plat for Gerard and Ann Quinn, VC 99-P-048. There was no second and the motion carried by a vote of 7-0.

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Page 083, July 13, 1999, (Tape 1), After Agenda Item:

Approval of July 6, 1999 Resolutions

Mr. Pammel moved to approve July 6, 1999 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 9:48 a.m.

Minutes by: Lori M. Mallam

Approved on: October 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, July 20, 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 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the third After Agenda Item.

Page 085, July 20, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Falls Reach, L.L.C., VCA 98-D-094

Mr. Kelley moved to approve the out-of-turn hearing request. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Dively were not present for the vote.

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Page 085, July 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY AND CAROL LOVE HARRISON GRADY, VCA 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.

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 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 applicant 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. Wilson noted that the original application also proposed an addition 15.9 feet from the rear lot line and the design of the proposed screened porch addition had been modified from that originally approved. The proposed screened porch addition currently measures 8 feet wider and 10 feet shorter in height than the design previously approved.

Ms. Grady presented the variance request as outlined in the statement of justification submitted with the application. She said the prior design was more expensive than they thought so they designed the addition to be smaller.

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

Mr. Pammel moved to approve VCA 98-D-125 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY AND CAROL LOVE HARRISON GRADY, VCA 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. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 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 the granting of a variance.
3. A variance had been previously granted for this property for an addition that was slightly higher than that proposed by the applicants.
4. The lot has an irregular lot size.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 screened porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated August 25, 1998, and certified on May 11, 1999 by Mark Allen 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. Ribble seconded the motion which carried by a vote of 5-0-2. Mr. Dively and Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 087, July 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID AND LAURA SOZIO, VC 99-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line such that side yards total 31.9 ft. Located at 3010 Miller Heights Rd. on approx. 26,457 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((6)) 129.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Grina, Architect, 4626 Green Place, N.W., Washington D.C., 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 8 feet from the side lot line such that side yards total 31.9 feet. A minimum side yard of 12 feet is required; therefore, a variance of 4 feet was requested. The total side yard requirement is 40 feet; therefore, a variance of 8.1 feet was requested.

Mr. Grina, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was irregularly shaped and the house was irregularly placed on the lot. Mr. Grina said they were allowed up to 30% of lot coverage and they were well under that amount.

Mr. Sozio said he was looking to gain additional space.

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

Mr. Dively moved to approve VC 99-P-064 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID AND LAURA SOZIO, VC 99-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line such that side yards total 31.9 ft. Located at 3010 Miller Heights Rd. on approx. 26,457 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((6)) 129. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1999; and

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

1. The applicants are the owners of the land.
2. The applicants explained that the property is narrow and the house is placed on the property in an awkward manner.

3. In the staff report, there seems to be ample precedence for a variance of this modest nature.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Grina-Lavie Architects, received by the Department of Planning and Zoning on April 28, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RAYMOND C. AND SANDRA K. TUBERSON, VC 99-Y-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from rear lot line. Located at 4127 Meadow Hill Ln. on approx. 10,640 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 45-4 ((3))(27) 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. Raymond Tuberson, 4127 Meadow Hill Lane, Fairfax, 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 14.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 10.8 feet was requested.

Mr. Tuberson presented the variance request as outlined in the statement of justification submitted with the application. He said the addition was requested to have more living space for family gatherings.

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

Mr. Ribble moved to approve VC 99-Y-073 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND C. AND SANDRA K. TUBERSON, VC 99-Y-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from rear lot line. Located at 4127 Meadow Hill Ln. on approx. 10,640 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 45-4 ((3))(27) 17. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 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.
3. The house is situated on the property in such a manner as to cause a shallow back 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 shown on the plat prepared by Alexandria Surveys, Inc., dated April 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 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 July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 090, July 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BUI (KIM) PHUONG, VA 95-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.7 ft. from a side lot line and permit additions 9.8 ft. and 9.9 ft. from side lot line. Located at 6528 Annandale St. on approx. 12,558 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((7)) 29 and 29A. (Moved from 6/22/99 for notices)(Def. From 7/13/99)

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 Ba Pham, Agent, 2922 Willston Place, 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 construction of a second-story addition 9.8 feet from one side lot line and 14.7 feet from the other side lot line, a two-story addition 9.8 feet from one side lot line and 14.7 feet from the

other side lot line, a porch addition 9.9 feet from a side lot line, and a greenhouse addition 9.9 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, variances of 5.2 feet were requested for the east side lot lines and 0.3 feet for the west side lot lines for both the second-story and the two-story addition. Variances of 5.1 feet were requested for the porch and greenhouse additions. On July 25, 1995, the BZA approved VC 95-M-057 for the subject property. The approval permitted additions to 9.9 feet from the side lot line and 14.7 feet from a front lot line. Subsequent to the approval date, the Zoning Administrator determined that the street right-of-way easement adjoining the western property boundary should not be considered as a street; therefore, the yard area abutting the easement is deemed as side yard rather than a front yard. Ms. Wilson said at last week's hearing, the BZA expressed concerns regarding the potential for the proposed building additions to cause the subject dwelling to become out of character with the surrounding neighborhood. She indicated that the applicant provided photographs to demonstrate the compatibility of the proposed additions.

Mr. Dively asked what was the increase in the square footage of the dwelling. Mr. Pham responded the first level and second story addition would be 60 square feet. He said the greenhouse would be 256 square feet, but said if the BZA thought that was too big, they could drop off the greenhouse.

Mr. Hammack asked if the proposed second-story addition would encroach any closer to the side lot line than the existing building. Mr. Pham replied no.

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

Ms. Gibb moved to approve VA 95-M-057 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BUI (KIM) PHUONG, VA 95-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 14.7 ft. from a side lot line and permit additions 9.8 ft. and 9.9 ft. from side lot line. Located at 6528 Annandale St. on approx. 12,558 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3((7)) 29 and 29A. (Moved from 6/22/99 for notices) (Def. from 6/13/99) 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 July 20, 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 written evidence indicating compliance with the required standards for a variance.
3. The lot is very narrow.
4. The addition will follow the existing footprint of the house.
5. The proposed dwelling would be consistent with other houses in 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 the second-story addition, the two- story addition, the porch addition and the one-story greenhouse addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 15, 1998, as revised through March 29, 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 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 July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 092, July 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. LOISELLE, VC 99-D-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 10.5 ft. from side lot line. Located at 1718 Forest Ln. on approx. 17,991 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 25A.

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 Loiselle, 1718 Forest Lane, 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 deck 10.5 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 4.5 feet was requested.

Mr. Loiselle presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to put a deck behind the screened porch that would be the same width. Mr. Loiselle presented a letter from the affected neighbor supporting the application. He said the addition would be in harmony with the nature of the house and the neighborhood.

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

Mr. Kelley moved to approve VC 99-D-069 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES M. LOISELLE, VC 99-D-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 10.5 ft. from side lot line. Located at 1718 Forest Ln. on approx. 17,991 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((9)) 25A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 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 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 addition shown on the plat prepared by Laura L. Scott, dated May 21, 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 094, July 20, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MATTHEW GIBBONS AND HENRY CORTESINI, JR., VC 99-D-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line. Located at 1840 Peabody Dr. on approx. 10,000 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 438.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Matthew Gibbons and Henry Cortesini, Jr., 1840 Peabody Drive, 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 an accessory structure 5 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 5 feet was requested.

Mr. Hammack asked what the length was of the proposed garage. Mr. Gibbons replied 13 feet by 32 feet.

Mr. Hammack asked the applicant why he needed a garage that size.

Mr. Gibbons said he wanted the garage to be used for storage of his old car. He stated that originally he wanted a two-car garage, but that exceeded the yard percentage. Mr. Gibbons said because of a large maple tree and dogwood tree, he could only build in the proposed location. He presented photographs of other garages in the neighborhood.

Mr. Hammack asked the applicant if he discussed the proposal with the owner of Lot 439. Mr. Gibbons replied that he had not because the owner lived elsewhere and rented that property.

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

Mr. Hammack moved to approve VC 99-D-071 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTHEW GIBBONS AND HENRY CORTESINI, JR., VC 99-D-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line. Located at 1840 Peabody Dr. on approx. 10,000 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 438. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 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 standard for the granting of a variance.
3. The lot is truncated and has converging lot lines towards the rear of the property.
4. The applicants made a good argument of having a little oversized garage.
5. The variance is a reasonable request.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 30, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 096, July 20, 1999, (Tape 1 & 2), Scheduled case of:

9:30 A.M. CAFFERTY BREN MAR ASSOCIATES L.P. & 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. (DEFERRED FROM 5/18/99).

Jane Gwinn, Zoning Administrator, said this was an appeal of a decision that there was a continuing nonconforming right to warehouse use. The property at issue was rezoned the I-P District in 1961 under the previous Zoning Ordinance. Later that year site plan and building permit approval were obtained for a warehouse and in 1962 an occupancy permit was issued for a warehouse. In August 1978, the property was rezoned to the I-3 District under the current Zoning Ordinance and that district did not allow warehouses as a permitted use. At that point in time, the warehouse use became nonconforming and as a nonconforming use it could be continued, but it could not be enlarged or expanded in any manner and the use could not cease for a continuous period of two years or more. In February 1998, the appellant wrote a letter contending that the warehouse use had ceased for two years or more and asked for a finding that the warehouse use was no longer permitted on the property. In response to the inquiry, the Zoning Administrator received numerous letters from the appellant, the abutting citizens, and documents from CVS, the current lease holder of the property and subsequent tenants of the building. Based on a review of those documents, it was determined that the warehouse use had continued on the property. Ms. Gwinn said there may have been occasions where the amount of warehouse use was less than the 200,000 square feet maximum that's currently allowed. Ms. Gwinn said she did not find convincing evidence that there was a period of two years or more where there was no warehouse use at all being conducted on the property.

Ms. Gwinn said there were two issues concerning the current tenant, which was "Impressions". She said one of the questions was whether Impressions was a warehouse use or whether their use was an establishment for production, processing, assembling, and manufacturing which was a permitted use in the I-3 District. Ms. Gwinn said based on a staff inspection of the property, and representations from Impressions,

as well as the letter agreements between CVS and Impressions, it was determined that the use was still considered to be a warehouse under the Zoning Ordinance. She said the use consisted of materials for cosmetic display which were manufactured off-site and then brought to the subject location for storage. The primary use and primary floor area was storage of the displays with a minor component devoted to the repackaging or the reshipment. She said it was staff's judgment that its use was consistent with the definition of warehouse and that the use therefore, was still considered to be warehousing use.

Ms. Gwinn said the second issue concerns the lack of the Non Residential Use Permit (Non-RUP) for Impressions which she did not view as unimportant, as a Non-RUP needs to be obtained for the use. In May 1998, when the omission was brought to their attention they did file an application for a Non-RUP; however, staff was dealing with the issue whether there was nonconforming right for a warehouse, therefore it was not issued. Ms. Gwinn said it was not uncommon for someone to fail to obtain Non-RUPs and as a rule it had been staff's practice not to automatically determine that a use was not valid because there was no Non-RUP. The Ordinance at issue was whether the nonconforming use had ceased for a continuous period of two years. Ms. Gwinn said the lack of the Non-RUP did not negate the evidence that Impressions had been on the property and it did not override the evidence that there had not been a cessation in the nonconforming use.

Ms. Gwinn said the last issue related to the posting of the building by the Fire Marshall; that the structure was unsafe to use or occupy. She said staff confirmed with the Fire Marshall that the posting only applied to the office portion of the warehouse structure; it did not apply to the warehouse portion. Ms. Gwinn said the office use was not nonconforming, because it was allowed in the I-3 District, it was her judgment that the fact that the office use may not be occupied did not negate the nonconforming right to the warehouse.

Mr. Hammack said a memorandum provided to them by Mr. Connor from the Board of Equalization determined that the building was 100% vacant and the property had been on the market since 1991 and asked if staff considered that information and how did it factor into the determination.

Ms. Gwinn said she did consider that information and didn't believe that the Board of Equalization determined it was vacant, but what was referenced was the fact that documents were submitted on behalf of an appeal of the assessment represented as being vacant. She said there was a response which stated it was considered to be economically vacant. Ms. Gwinn said she didn't disregard it, but had evidence at the same time that demonstrated it was being used based on the letter agreements between CVS and Impressions that it wasn't vacant from a Zoning Ordinance perspective; there was a use and tenant in the space. She said someone from CVS or Impression could better speak to that issue.

Ms. Gibb asked how little of use would the warehouse have to have in order for it to be non-used. Ms. Gwinn said it wasn't just the amount of warehouse, but the Ordinance mandated that the use had to totally cease for two years and she was focusing on that. She said there may have been times when there wasn't tremendous use but she didn't think there was evidence that the warehouse only stored one or two boxes for two years or more.

Mr. Hammack asked if the use had been abandoned for 2 years, would it be within staff's power to issue a Non-RUP to cover that period. Ms. Gwinn replied no. Mr. Hammack asked if the owner of the property was not using the property, could a 3rd party come in without a Non-RUP and acquire their nonconforming right. Ms. Gwinn said the Non-RUP runs with the land and was not owner specific.

Ms. Gwinn said the question was whether the failure to obtain the Non-RUP makes the nonconforming right cease.

Mr. Hammack said Ms. Gwinn's determination indicated that was not a fatal defect in the application. Ms. Gwinn concurred. Mr. Hammack asked if she had obtained an opinion from the County Attorney. Ms. Gwinn replied yes.

Mr. Pammel said the staff was looking at the time frame form 1996 to current where the other activities had moved to part of the premises and the continuity of the nonconforming use then is the decision that is relied upon based on Impressions occupying the premises and continuing the nonconformity.

Ms. Gwinn replied that when the question was posed to her, she investigated from 1986 to the current time

because the question was first alleged that the use had ceased to 1986, then it was suggested it was 1992-93, then it was 1994 and what Mr. Connors had just filed was contending it stopped at the end of 1995. She said when she wrote the letter and looked at the issue she looked at the entire time frame from 1986 forward. Ms. Gwinn said it seemed that the period currently in question was 1996 to current.

Mr. Pammel asked whether the determination made was that Impressions was in fact a permitted use in I-3. Ms. Gwinn said she made the decision that Impressions was a warehouse use and so it was a continuation of the warehouse.

Mr. Pammel asked what was the process that Impressions was using the building for. Ms. Gwinn said it was her understanding that there may be some cleaning or assembly.

Mr. Pammel asked if there was an overlapping situation where there were uses warehousing and the activities associated with that were also similar activities contained in the I-3 permitted by right. Ms. Gwinn said if they were using 190,000 or 200,000 square feet, 9,000 square feet could be devoted to assembly and packaging.

Mr. Pammel asked if they were using the entire building. Ms. Gwinn said it consisted of 90,000 square feet of office, and the warehouse portion was 200,000 square feet and it was her understanding that they were using all of the warehouse and their lease applied to all of the warehouse portion.

Mr. Pammel asked if staff knew whether they were using it all in reality. Ms. Gwinn replied staff did a site inspection and they were using the majority of the warehouse.

Mr. Dively asked what was the real underlying issue. He said the I-3 use was more intensive than the warehouse use; he asked what was the real objection. Ms. Gwinn said the appellant would answer that question better, but she thought the objection was to a warehouse use on the property and the associated truck traffic with that use.

Mr. Pammel noted a letter from John McBride suggesting that the appellants really didn't have an interest or the ability to appeal, unlike adjoining residents who would be aggrieved by an activity on the subject property. He asked if there was any substance to the argument that the appellants had less of a right to appeal as an aggrieved party than do adjoining residential.

Ms. Gwinn said any abutting property owner who said the use was impacting them, had the right to challenge it.

Jack Connor, agent for the appellant, presented 2 large photographs indicating the orientation of the property to the surrounding property. He said staff had done an excellent job in preparing the report. Mr. Connor said the basic problem was not of the staff's creation; he said the basic issue was when Mr. Cafferty bought his properties, the subject property was a warehouse, but the difference was that in the middle 1980s it was used as a warehouse. It was maintained as a valuable property in Fairfax County, the way it was run was as a property should be run, but since then there had been a tremendous decline and abandonment, leading to the present state of affairs where it was a property that the documentation showed had virtually ceased to exist as an operating property. That had created several problems and that's why they were here. It was not that it wasn't an initial warehouse use. He said the use had been abandoned and discontinued. Mr. Connor suggested that the papers staff reviewed spoke for themselves. He said the issue was what had been done to the property to create the current state of affairs. Mr. Connor said the property had deteriorated. He said the relevant time period was 1995 to the present because of the documents submitted in the staff report. He referenced a marketing brochure of the property in 1994 which was described as available immediately-vacant. He said the property owner made a filing under oath to the Board of Equalization that the property was 100% vacant. Mr. Connor said the Fire Marshal has said that the property was unsafe; and none of the tenants obtained a Non-RUP and if you have an illegal use, you lose your nonconforming use.

Mr. Hammack asked Mr. Connor what proof did he have that the building was abandoned for 2 years. Mr. Connor replied that there was no independent evidence nor did he have any means of getting any. Mr. Hammack asked if it was the appellant's observation that the property was being used currently. Mr. Connor said the appellant wasn't there all the time but the citizens present would address that issue because they were there every single day.

Mr. Dively asked what was the ultimate objective of the appellant. Mr. Connors said the objective was to bring the property into compliance with the Zoning Ordinance. Mr. Dively asked what triggered the appeal. Mr. Connor said the appellant's property was on top of a hill and overlooked the subject property and the appellant had received complaints from his tenant because of the unsightly appearance of the subject property.

Chairman DiGiulian called for speakers.

Joella Nosestrander said she represented 439 single family dwelling homes and was President Bren Mar Park community. She said neighbors submitted documents to express concern with the subject property. Ms. Nosestrander indicated that Mr. Cafferty had always been a good neighbor, but his tenants never made any attempts to contact or consult the neighbors. She stated that the neighbors gave their honest testimony and they all knew that nothing had been going on on the subject property for a very long time.

Mr. Dively questioned the speaker about the length of time that the property was vacant. Ms. Nosestrander said approximately 2 ½ years. Mr. Dively asked Ms. Nosestrander if she preferred the property vacant or with a more intense use. Ms. Nosestrander replied that she was thankful when the property was vacant.

Mr. Hammack asked Ms. Nosestrander whether she could be more specific regarding the time frame of vacancy. She replied that she could not, that she could only offer a general time frame.

John McBride, Hazel & Thomas, representing the Pennsylvania Real Estate Investment Trust Associates L.P. which was the underlying owner of the property. He said the project was subject to long term leases. Mr. McBride said it was the warehouse use that was at issue in the appeal, not the condition of the property or its state of maintenance or its appearance. He said it was not an issue as to who the next purchaser of the property would be; all of that was irrelevant to the BZA's determination. Mr. McBride said the BZA only had to answer three questions to resolve the appeal: was the warehouse use legally established; has the use ceased for a period of more than two years; and, is the appellant aggrieved by the use. In response to those questions, Mr. McBride said it was undisputed that the use was a lawful nonconforming use for the subject property and the appellant never identified a two-year period when the use ceased to exist. He said with regard to the Board of Equalization, it focuses on one day, the tax day at issue, and there was a difference between an economic vacancy and non use of a property. Mr. McBride said the BZA had to determine if the appellant was aggrieved by the use and not by the condition of the property.

Mr. Dively asked was there going to be an attempt by the landowner or the lessee to try to improve the condition of the property. Mr. McBride said he couldn't speak on behalf of the lessee but there was a prospect of a sale of the property to a new user and that would be an opportunity for the market itself to cause a substantial change in the condition of the property.

Brian Lanier said he lived in the Bren Mar community for several years. He said when he moved into Bren Mar the CVS building was in a reasonable state, but as time went on the property deteriorated. Mr. Lanier said he worked at home and between 1995-1997 there was no activity.

Joe Allison, 5415 Colliers Lane, said the major issue was whether the property was occupied. He said the residents living adjacent to the subject property were qualified to state whether the property was being used or not.

Richard Hobson, Attorney, McGuire, Woods, Battle & Boothe, representing CVS of D.C. and Virginia Inc. which was the long term lessee of the property. He submitted documents to the BZA attesting to the use of the property. Mr. Hobson said he concurred with Mr. McBride about the appellants being an aggrieved party. He said the site was a well buffered site from the residences and the adjacent neighborhood could not see the loading docks. Mr. Hobson said in September 1998, a water line broke and the Fire Marshal said they could not use the office portion of the site. He said the pedestrian gate that led to the office space was padlocked. Mr. Hobson stated that Impressions had been using the warehouse portion since 1996 and there was no period when the warehouse wasn't being used. He said Linens and Things used the warehouse from January 1995- December 1995. Mr. Hobson said the use had always been storing, warehousing and shipping.

Mr. Pammel said he didn't understand going to the Board of Equalization indicating that the property was

vacant. Mr. Hobson said he would address the issue and a representative from CVS who was in charge of that would also address that question. He said the representation made was by an agent of CVS, a firm hired to take the tax appeal. Mr. Hobson said there was no determination by the Board of Equalization that it was vacant; a representation was made to the Board of Equalization that it was 100% vacant in a tax appeal. He said the firm who made that representation presented an affidavit clarifying that the 100% vacancy representation was economic vacancy i.e. no rent being paid and therefore, it did not have any value for tax purposes.

Mr. Dively asked when representation was made that there was a 100% lack of economic value as far as use, if Mr. Hobson was contending that there was almost 100% actual use, but not economic. Mr. Hobson replied that there was not rent paid that was it was an affiliated corporation and Linens and Things were utilizing the property and utilizing 200,000 square feet of warehouse space. Mr. Dively asked how could that be of no economic value. Mr. Hobson said because the owner was receiving no rent from the property, the lease arrangement didn't add any value to the property.

Mr. Hammack asked what was the corporate relationship between CVS and Linens and Things. Mr. Hobson replied at the time it was an affiliated corporation because they were both owned by a common parent company.

Mr. Hammack asked about Impressions. Mr. Hobson said Impression was never affiliated.

Mr. Dively asked Mr. Hobson to address the issue of being a lousy neighbor. Mr. Hobson said they had addressed those issues. He said the grass had been cut and the repairs were underway for the water line.

Marilyn Dolan-Crowson, Director of Property Taxation and Property Disposition with CVS, said CVS had never forfeited or intended to forfeit or waive its right to warehouse use for the subject property. She said they were very aware of the two-year grandfathered issue and that was one of the reasons they worked out some of their relationships like Linens and Things and Impressions to ensure they would maintain the warehouse right and ensure that they were never vacant for a period of two years. Ms. Dolan-Crowson said all of the uses that were warehouse were all of the same use, but maybe not to the magnitude as when CVS was operating full force. She said they had been working on addressing the condition of the property dealing with the landscaping and the Fire Marshal for the sprinkler lines. Ms. Dolan-Crowson said they were installing new lighting. Ms. Dolan-Crowson said they had an appeal that had been outstanding since 1992 and part of the appeal indicated that there was vacancy at the subject location and what they were referring to was the fact that although, they were paying rent to their landlord, they were not receiving any subtenant income and therefore, there was not an increase in value through the sublet. She said the wording that was used was incorrect and it should have been clearly stated as an economic vacancy.

Mr. Pammel asked Ms. Dolan-Crowson what was their relationship to Pennsylvania Real Estate Trust. She replied that they were the tenants of Pennsylvania Real Estate Trust.

Jack Dabowski, Manager Corporate Properties, CVS said he frequently visited the Bren Mar Drive facility specifically in 1995 during Linens and Things occupancy.

Mary Theresa Flynn, representing Impressions Marketing, said the office area could not be used but the warehouse area could. Ms. Flynn stated that Impressions had applied for a Non-Rup but could not obtain it until the appeal was resolved.

Rick Gerber, President of Impressions, stated the warehouse was used primarily to store and distribute the CVS products. He said they occupied the building in 1996 and the company had 30-50 employees on that site. Mr. Gerber stated that he had no idea the neighbors were disturbed.

Ms. Gwinn noted that on page 412 of the staff report, staff attempted to put together a time line. She said when she laid out the time frame, the biggest question was between the spring of 1993 and the beginning of January 1995. In 1995 Linens and Things came in and utilized the whole structure and in 1996 Impressions came in. Ms. Gwinn said she questioned the representation by the appellant and then noted various affidavits submitted indicating occupancy during the subject time frames. She said she didn't think there was evidence that indicated that there was a time when the use only occupied 2,000 square feet of space. Mr. Connors said the documents provided indicated that between 1995 and1997, the subject property was

vacant. He submitted a photograph for the record reflecting Mr. Cafferty's property of the operations center for the United States Security and Exchange Commission (SEC).

Tom Cafferty came forward, stating that there had been questions regarding the aggrieved nature of why they filed the appeal. He said the primary reason was to protect their landlord/tenant relationship with the United States Security and Exchange Commission. Mr. Cafferty said they had observed a substantial increase in trucking related activities in the December 1997, which is what prompted their action to file an appeal. He said they observed, as an adjoining property owner, a substantial increase in the December 1997, time frame.

Mr. Hammack asked when the SEC moved in. Mr. Cafferty replied November 1991. Mr. Hammack asked what the subject property was being used for at that time. Mr. Cafferty responded that it was his observation that it was being used for office use.

Mr. Connors said the record was clear that the use expired for a period in excess of two years.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to uphold the Zoning Administrator's determination for A 1999-MA-006. He said this was a lengthy case with a lot testimony and documents before the BZA. Mr. Pammel said the underlying issue in which he made his motion were the facts that were presented which reflected that the building had been used continuously for purposes of warehousing and associated activities, even though there were periods of time when it was less active than others. Mr. Pammel said it was clear that Impressions had occupied the building and was performing the function of warehousing during the period that Mr. Connors stated that the Equalization Board had an appeal and a representation made by the entities of the building declaring that it was 100% vacant. He said that was further defined in testimony as to vacant in actuality versus economic vacancy and he was satisfied with that explanation. Mr. Pammel said it did concern him that there was a representation made by a very competent firm that states that the building was 100% vacant. He said there was inaccuracy in that statement. Mr. Pammel stated his motion was based on looking at the facts that were presented and the evidence presented by the Zoning Administrator showing the continuity and the testimony further reflected the continuity.

Mr. Dively seconded the motion.

Mr. Kelley said what was done before the Board of Equalization was indefensible. He said he hoped someone looked into that issue.

The motion carried by a vote of 7-0.

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Page 101, July 20, 1999, (Tape 2), Scheduled case of:

9:30 A.M. NABIL MANSOUR, OAKWOOD ROAD ASSOCIATES, LLC, A 1999-LE-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination that Non-Residential Use Permits issued in 1993 and 1994 are null and void and that a motor vehicle storage and impoundment yard is being operated on the property without an approved site plan and valid Non-RUP. Located at 5605 Vine St. on approx. 17,166 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 31.

Chairman DiGiulian noted that the notices were not in order.

William Shoup, Deputy Zoning Administrator, said that was correct. He said staff was concerned about prolonging the case. Mr. Shoup said the appeal was from a March 1999, Notice for the operation of a motor vehicle impoundment yard without valid site plan approval and a Non Residential Use Permit (NonRUP). He said the same determination was upheld by the BZA on July 29, 1997, in an appeal that was filed solely in the name of Mr. Mansour. Mr. Shoup said subsequent to that decision Mr. Mansour attempted to obtain site plan approval, that was denied and in preparing the case for court, it was discovered that subsequent to the Notice of Violation in 1996, the subject property changed hands and was conveyed to Oakwood Road

Associates. Mr. Shoup said the County Attorney's office advised staff since it was a different owner than at the time of the first Notice of Violation, that staff should issue a new Notice to Oakwood Road Associates. He said staff did that. Mr. Shoup said Mr. Mansour was President of Oakwood Road Associates and he filed an appeal of that Notice on behalf of Oakwood Road Associates and also in his name. Mr. Shoup added that the previous appeal was deferred several times because of the failure to do notices and staff was concerned about that again in the subject case. He said Mr. Mansour had finally contacted staff after several phone calls to inform staff that he didn't do notices because he had back surgery. Mr. Shoup said while staff was sympathetic, they were concerned about the appellant's effort to delay the public hearing and recommended dismissal of the subject appeal.

Mr. Kelley said the appellant had been through this exercise before and based on Mr. Shoup's comments he moved to dismiss the appeal. Mr. Pammel seconded the motion which carried by a vote 7-0.

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Page 102, July 20, 1999, (Tape 2), After Agenda Item:

Approval of BZA Meeting Dates for 1st Six months of 2000

Mr. Dively moved to approve the meeting dates. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 102, July 20, 1999, (Tape 2), After Agenda Item:

Approval of July 13, 1999 Resolutions

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

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Page 102, July 20, 1999, (Tape 2), After Agenda Item:

Approval of Letter from Brian McCormack
RE: Wolfe Brothers

Mr. Hammack moved to approve the request from Brian McCormack to prepare a short brief in regard to the Wolfe Brothers Court Case. 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 11:37 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, July 27, 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.

Page 103, July 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD K. AND JANET C. PRICE, VC 99-V-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 24.61 ft. and portico 20.0 ft. from front lot line. Located at 6004 Grove Dr. on approx. 10,080 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard K. Price, 6004 Grove Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant requested a variance to permit the construction of a second story addition 24.61 feet from the front lot line and a portico 20 feet from the front lot line. A minimum 30 foot front yard is required; therefore, a variance of 5.39 feet was requested for the addition and a variance of 10 feet was requested for the portico.

Mr. Price presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he had purchased the property in 1997 without the knowledge that a variance was necessary for the construction of the addition and portico. He said that the reason for the construction was to provide an adequate living environment for his expanding family. Mr. Price stated that the topography of his property limited the expansion of the home in any other way besides that of the request and the proposal would not expand the footprint of the house.

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

Mr. Dively moved to approve VC 99-V-078 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD K. AND JANET C. PRICE, VC 99-V-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 24.61 ft. and portico 20.0 ft. from front lot line. Located at 6004 Grove Dr. on approx. 10,080 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 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 July 27, 1999; and

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

1. The applicants are the owners of the land.
2. These types of variances have been frequently requested in Belle Haven.
3. The request is very reasonable.
4. There are considerable topographical considerations due to the steepness of the property.

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

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

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

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

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

1. This variance is approved for the location of a second story addition and a portico shown on the plat prepared by Philip L. Vander Myde, received by the Department of Planning and Zoning on June 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 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 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 August 4, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-4 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 82-S-102 for a country club to permit building additions and site modifications. Located at 5110 Ox Rd. on approx. 150.92 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-1 ((1)) 17, 18 and 20. (In association with SE 99-S-012). (MOVED FROM 5/25/99 and 7/13/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frank McDermott, Hunton & Williams, 1751 Pinnacle Drive, Suite 1700, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants requested an amendment of the current special permit to allow for extensive refurbishing and modernization of the entire golf course and the alteration and construction of accessory buildings and parking lots. She informed the Board that the special permit was concurrent with a special exception application for fill in the flood plain, which was heard and approved by the Board of Supervisors (BOS), on July 26, 1999. Ms. Wilson pointed out that the construction within the flood plain proposed with the special exception application was an intricate part of the refurbishing plan for the entire golf course and staff had revised the special permit amendment conditions to be consistent with the conditions imposed and approved by the BOS. She informed the Board that revised development conditions had been submitted at the last minute by the applicant and that staff had not been able to adequately review them. She noted that Condition #16 had been struck from the conditions and that this condition dealt with limiting the operation of any noise producing maintenance equipment within 100 yards of residential property before 8:00 a.m. and after 9:00 p.m. Ms. Wilson said that this condition was in response to citizen complaints regarding the noise level in the early morning hours.

Mr. McDermott presented the special permit amendment request as outlined in the statement of justification submitted with the application. He informed the Board that the use pre-existed the Ordinance requirements and the residential homes located around the property. He illustrated the need to remove piping in a stream on the 15th Fairway that, over the years, had become an obstruction to the flow of the stream and the need to restore the stream's natural banks. Mr. McDermott stated that upon removal of these pipes, the flood plain and the RPA would substantially narrow. He said that the embankment of the pond on the 14th Fairway was eroded due to an increased flow of the stream. Mr. McDermott illustrated the need to build up the embankment of the pond.

Mr. McDermott reviewed the revised development conditions that were submitted by the applicant and referred to changes to Conditions #9, #11, #13, #14, and the striking of #16. He informed the Board that there was no Ordinance limitation prohibiting the mowing of the greens before 7:00 a.m. He explained that the first tee time was 7:00 a.m. and that the greens needed to be mowed before this time.

Mr. Hammack asked staff if Condition #16 was standard for golf courses. Ms. Wilson replied that the condition was standard for all newer uses and the implementation of this condition was to bring the existing uses in line with the newer uses.

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

Mr. Kelley moved to approve SPA 82-S-102-4 with the applicant's revised Development Conditions including the deletion of conditions 16 and 17, 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

COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-4 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 82-S-102 for a country club to permit building additions and site modifications. Located at 5110 Ox Rd. on approx. 150.92 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-1 ((1)) 17, 18 and 20. (In association with SE 99-S-012). (MOVED FROM 5/25/99 and 7/13/99). Mr. Kelley moved that the

Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 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). 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, 5110 Ox Road (150.92 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or uses(s) indicated on the special permit plat prepared by William H. Gordon Associates, Inc., and dated February 9, 1999, as revised through June 11, 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 provision of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Management (DPWES). Any plan submitted pursuant to this special permit shall be in 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. 804 of the Zoning Ordinance.

5. The hours of operation shall be limited to the following: Use of the clubhouse shall be limited to 7:00 a.m. to 10:30 p.m. on Sundays through Thursdays, and 7:00 a.m. to 1:00 a.m. on Fridays and Saturdays; occasional exceptions to these hours of operation shall be allowed to accommodate special functions. These functions shall not include the use of the lighted tennis courts and the special functions shall conclude by 1:30 a.m.

   Use of the seasonally enclosed tennis courts shall be limited to 7:00 a.m. to midnight, seven days a week.

   Use of the lighted outdoor tennis courts shall be limited to 7:00 a.m. to 10:00 p.m., seven days a week.

   Use of the swimming pool and all golf course facilities shall be limited to hours between sunrise and sunset, seven days a week.

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

7. There shall be a maximum of 375 parking spaces as shown on the plat. Accessible parking shall be provided in accordance with Article 11 of the Zoning Ordinance, as determined by DPWES. All

parking shall be on site.

8. The total membership shall not exceed 900 members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.

9. In order to address the objectives of the Water Supply Protection Overlay District (WSPOD) and to protect the water quality of the East Fork Branch of Popes Head Creek, a Golf Course Water Quality Management Plan for the 18-hole golf course shall be developed and implemented. This Plan shall consist of the following elements:

   A. An Integrated Pest Management (IPM) Plan, which shall be developed using the guidelines established by the Virginia Cooperative Extension Service Pest Management Guide, and which shall be designed to manage and limit the excessive applications of fertilizers, herbicides and other chemicals. The IPM Plan shall provide for periodic monitoring and adjustments in order to achieve the objective of reducing the overall amounts of nutrients and pesticides applied to the property over time. The IPM and all parameters to be monitored shall be reviewed by the Fairfax County Office of the Virginia Cooperative Extension Service and/or the Northern Virginia Soil and Water Conservation District Office, as determined by DPWES, prior to site plan approval; and

   B. A long term Stream Restoration Management Plan (SRMP), which shall be designed to provide for erosion control for those areas of the proposed construction improvements noted in the Stream Restoration Plan (Sheet 9 of 9 of the SE Plat). The SRMP shall include the establishment of riparian buffers and guidelines for streambank stabilization, and shall be reviewed and approved by the Northern Virginia Soil and Water Conservation District Office, prior to approval of the site plan.

10. Best Management Practices (BMPs) and stormwater management provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance and all other relative County, State and Federal regulations, shall be provided to the satisfaction of DPWES.

11. Any new lighting of the parking areas shall be in accordance with the following:

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

    B. The lights shall focus directly on the subject property.

    C. Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

12. Existing vegetation along all lot lines shall fulfill the requirements of the Transitional Screening, except on the northern property boundary in the vicinity of the proposed accessory buildings, where installation of additional plantings shall be completed in a buffer area to measure a minimum of thirty-two (32) feet in width, as depicted on the Plat, subject to review and approval by the Urban Forestry Branch, DPWES. Existing barriers shall fulfill the Barrier requirements.

13. All proposed evergreen trees shall measure a minimum of six (6) feet in height at time of planting. All other proposed landscaping species and methods of installation shall be to the satisfaction of the Urban Forestry Branch, DPWES. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary, as determined by the Urban Forestry Branch, DPWES. Prior to the issuance of a Non-Residential Use permit for the service building and/or cart barn, an effective vegetated screening and buffer area shall be provided, as determined by the Urban Forester, consistent with the SE/SPA Plat.

14. At the time of site plan submission, an alternative stormwater drainage system shall be proposed along the area of the 14th fairway to re-direct the existing drainage outfall away from property noted on the Plat as the Linne property (Tax Map Parcel 68-1 ((6)) 26), subject to authorization by the affected off-site property owners (of Tax Map Parcels 68-1 ((5)) 9A-10 and 68-1 ((6)) 26) to the

diversion of this water; the redirected water shall drain through Country Club of Fairfax property as determined with final engineering and as approved by DPWES. Should the redirected water drain directly into the stream rather than the 14th fairway pond, it shall be demonstrated to the satisfaction of DPWES that said drainage shall not further degrade the downstream channel.

15. No plans or permits shall be approved/issued for any area affected by SE 99-S-012 unless and until a floodplain study has been approved by DPWES; however, with approval of SPA 82-S-102-4, the applicant may proceed only with construction activities outside the boundaries of the floodplain, as defined by DPWES.

16. Maintenance materials, fuels, herbicides, pesticides and fertilizers shall be stored outside of the 100-year floodplain zone, as approved by DPWES. The applicant shall implement appropriate measures for the storage and use of potentially hazardous materials associated with the golf course operation. These measures shall be contained in the Golf Course Water Quality Management Plan and reviewed by the Northern Virginia Soil and Water Conservation District and DPWES.

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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 108, July 27, 1999, (Tape 1)), Scheduled case of:

9:00 A.M. THE BOYD SCHOOL - A MONTESSORI LEARNING CENTER AND THE UNITARIAN/UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 90-C-026 for a church and related facilities and nursery school and child care center to permit change in permittee. Located at 1625 Wiehle Ave. on approx. 6.14 ac. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((1)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Javier Arencibia, Arencibia Architects, Inc, 13368 Point Rider Lane, Herndon, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She reported that the applicants requested the special permit amendment to allow for a change in permittee from Giant Steps Preschool Inc, to The Boyd School - A Montessori Learning Center. She informed the Board that there were no proposed structural or condition changes associated with the application.

Mr. Dively asked why this request had not been handled administratively. Ms. Langdon explained that the Development Conditions, which were adopted by the Board of Zoning Appeals, stated that they were granted to the applicant only; therefore, the only way to change a development condition was to amend the original application.

Mr. Arencibia presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the request was simply a change in permittee and voiced his opinion that this type of request should be handled administratively.

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

Mr. Hammack moved to approve SPA 90-C-026 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE BOYD SCHOOL - A MONTESSORI LEARNING CENTER AND THE UNITARIAN/UNIVERSALIST CHURCH IN RESTON, SPA 90-C-026 Appl. under Sect(s). 6-303 of the Zoning Ordinance to amend SP 90-C-026 for a church and related facilities and nursery school and child care center to permit change in permittee. Located at 1625 Wiehle Ave. on approx. 6.14 ac. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((1)) 15. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 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). 6-303 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 (The Boyd School - A Montessori Learning Center and Unitarian/ Universalist Church) only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles R. Johnson, dated January 16, 1990, as revised through June 13, 1990, and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article17, Site Plans, as may be determined by the Director, Department of Environmental Management. 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 Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum seating capacity for the Church shall be limited to a total of 150 seats, with a corresponding minimum number of 38 parking spaces located on site.

6. A maximum total daily enrollment for the child care center/nursery school shall be limited to 50 children, 35 of preschool age and 15 of kindergarten age with a corresponding number of 10 parking spaces located on site. The total number of parking spaces on site for both uses shall be 48.

7. The number of employees for the child care center/nursery school on the property at any one time shall total five (5).

8. The child care center/nursery school shall operate between the hours of 7:00 a.m. and 6:30 p.m. weekdays. A sign shall be installed prohibiting any left turn from Wiehle Avenue onto the church site, Monday through Friday.

9. Transitional Screening 1 (25') shall be provided, and shall be modified to allow the existing vegetation to be used to satisfy this requirement along all lot lines.

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

11. Pursuant to the Virginia Code Section of 10.1-1701, the applicant shall at the time of site plan approval, record among the land records of Fairfax County, an Open Space Easement to the Board of Supervisors. The easement shall include that land which was defined by the Environment and Development Review Branch, Department of Planning and Zoning (DPZ) on the Tax Map as Environmental Quality Corridor (EQC). The exact location of the boundary shall be determined at the time of Site Plan review by the Environment and Development Review Branch, DPZ in coordination with the Department of Public Works and Environmental Services (DPWES). There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading with the exception of the improvements necessary for upgrading the entrance road. Proposed grading for these facilities shall be approved by DPWES and the Environment and Development Review Branch, DPZ at the time of Site Plan review. There shall be no structures located in the EQC area except for those allowed on Page I/C - 74 of the Section titled "Open Space" in the Environmental Recommendations of the Comprehensive Plan.

12. Any proposed lighting of the parking areas shall be in accordance with the following:

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

    - The lights shall be 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 or glare from projecting beyond the facility.

13. A building permit shall be obtained prior to any construction or modification to the premises.

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

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

Mr. 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 August 4, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 111, July 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES F. DELEAN, VC 99-P-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 2717 Oldewood Dr. on approx. 21,781 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 127A.

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 F. Delean, 2717 Old Wood Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. She informed the Board that the applicants requested a variance to permit the construction of a two story addition consisting of a two car garage, work storage room, two bedrooms, two baths and a media room, with the edge of the addition 8.8 feet from the side lot line. She stated that the Zoning Ordinance required a minimum side yard of 12 feet; therefore, a variance of 3.2 feet was requested.

Mr. Delean presented the variance request as outlined in the statement of justification submitted with the application. He stated that the house was purchased 40 years ago and the rooms in the house were fairly small; therefore, the applicant wanted to construct this addition to provide an improved living environment for his family. Mr. Delean said that the lot was not unique or exceptionally narrow and that no one else in the neighborhood had ever requested a similar addition.

Mr. Hammack noted that 60 feet was a long encroachment and asked why the addition could not have been configured differently so it would comply with the Ordinance. Mr. Delean replied that if the garage was not the proposed size, the rooms would be smaller than the applicant desired.

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

Mr. Pammel moved to deny VC 99-P-063 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES F. DELEAN, VC 99-P-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line. Located at 2717 Oldewood Dr. on approx. 21,781 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 127A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 1999; and

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

1. The applicant is the owner of the land.
2. This is a large addition.
3. The lot is not unusual.

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

Zoning Ordinance:

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

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

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

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

Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote. Mr. Pammel moved to waive the 12 month waiting period. Mr. Dively seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1999.

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Page 112, July 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PETER AND LISA WILLIAMS, VC 99-S-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 7003 Ebbtide Ln. on approx. 8,833 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 280.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Paul Gremillion, 2849 Kaverton Road, Forestville, Maryland, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant requested a variance to allow a patio room addition 15.1 feet from the rear lot line. She informed the Board that the Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 9.9 feet was requested.

Mr. Gremillion presented the variance request as outlined in the statement of justification submitted with the application. He stated that the applicants were seeking the variance due to the shallowness and small size of the lot. He said that the addition would be in character with the neighborhood.

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

Ms. Gibb moved to approve VC 99-S-065 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND LISA WILLIAMS, VC 99-S-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 7003 Ebbtide Ln. on approx. 8,833 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 280. 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 July 27, 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 odd shaped and exceptionally shallow.
3. The applicants have 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 patio room addition shown on the plat prepared by R.C. Fields Jr., Land Surveyor, dated May 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 patio 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 5-0. Mr. Ribble 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 August 4, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 114, July 27, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF FULL GOSPEL KOREAN CHURCH OF WASHINGTON, SPA 89-M-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 for church and related facilities to permit additional parking and site modifications. Located at 6401 Lincolnia Rd. on approx. 3.24 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 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. Badreddin Plasied, Agent, 9713 Counsellor Drive, Vienna, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. She informed the Board that this application was being filed to assist the applicants in rectifying their Zoning Ordinance violations. She stated that the special permit amendment would cover the redesigning of the parking lot to provide additional parking, to allow parking off-site in the parking lot of Parklawn Elementary School, to relocate an existing playground area that had not previously been approved and to modify the landscaping to that shown on the proposed plan.

Mr. Plasied presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that it was his belief that the past violations were due to a language barrier and a change in trustees. Mr. Plasied informed the Board that the church, in addition to adding several on site parking spaces, had obtained permission from Parklawn Elementary School to utilize their parking lot on Sundays. He said that members of the congregation were stationed in both parking lots to assist parishioners and to prevent any parking violations.

Chairman DiGiulian asked if the applicants were in agreement with the development conditions. Mr. Plasied answered affirmatively.

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

Mr. Pammel mentioned a letter of concern from the Pinecrest Citizens Association Land Use and Zoning Committee and asked if the applicant was aware of these concerns. Mr. Plasied replied that the applicant was aware of this and they had met with the Association regarding the special permit amendment.

Mr. Kelley moved to approve SPA 89-M-041 for the reasons stated in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF FULL GOSPEL KOREAN CHURCH OF WASHINGTON, SPA 89-M-041 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 89-M-041 for church and related facilities to permit additional parking and site modifications. Located at 6401 Lincolnia Rd. on approx. 2.85 ac. of land zoned R-2. Mason District. Tax Map 72-1 ((1)) 59. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 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). 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, 6401 Lincolnia Road, (2.85 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 Badreddin Plaseid AIA. (Sheet 1), and FSI Design Group Inc. (Sheet 2) dated April 26, 1999, as revised through July 6, 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 seating capacity for the Full Gospel First Korean Church of Washington shall be limited to a total of 250.

6. Notwithstanding that shown on the special permit plat, the number of parking spaces provided on-site shall be a maximum of 84 parking spaces. Parking shall be provided as shown on the Special Permit Plat; however, the two parking spaces shown in Attachment A of these conditions shall be not be constructed but instead shall be a part of additional landscaping as required by Development Condition 7. All parking shall be on-site, except that off-site parking may be permitted during Sunday services only, and shall be confined to the Parklawn Elementary School, subject to the express consent of the school and to the review and approval of an off-site shared parking arrangement by DPWES. If an off-site parking arrangement is not approved, or if the consent of the school is terminated, all parking shall be on-site in the locations shown on the approved plat. If parking is limited to spaces on-site, the applicant shall set the time for church services on Sundays and religious holidays so that there is a separation of at least two (2) hours between the end of one service and the commencement of the next service to minimize traffic conflicts between parishioners coming to and leaving the church parking lot.

7. Transitional Screening and landscaping shall be provided as shown on sheets 1 and 2 of the Special Permit Plat, except that an additional planting bed with a minimum width of 8 feet, with landscaping consisting of a mixture of evergreen and deciduous trees with under story shrubs shall be provided, extending from the corner of the sidewalk adjacent to the northeast corner of the building, northward for a distance of approximately 80 feet, replacing the areas allocated for two parking spaces as shown in Attachment A of these development conditions. In addition, the landscape island shown on Sheet 2 of the Special Permit Plat that is not connected to existing parking shall be removed. All landscaping shown on the approved plat and required with these development conditions shall be subject to the review and approval of the Urban Forestry Branch of DPWES.

8. The barrier requirement shall be waived except for the fencing shown on the special permit plat.

9. Stormwater management shall be implemented and maintained as required by DPWES to retain stormwater runoff on the site, and may include, but not be limited to, the provision of an on-site stormwater detention pond as shown on the plat, and/or contribution to off-site drainage projects downstream or other measure as deemed appropriate by DPWES to alleviate flooding problems related to this site and the adjacent Braddock Road culvert.

10. Right-of-Way to 35 feet from the existing centerline of Braddock Road and to 45 feet from the centerline of Lincolnia Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements as determined by the County.

11. Right turn deceleration lanes shall be provided into the site from Braddock and Lincolnia Roads in accordance with Virginia Department of Transportation (VDOT) Specifications. An acceleration lane shall be provided from the site entrance on Lincolnia Road to the Braddock Road intersection in accordance with VDOT specifications. Equivalent funds in lieu of construction shall be placed in escrow as requested by VDOT and DPWES. The entrance to the site on Braddock Road shall be aligned with Brookside Drive if determined feasible by VDOT and DPWES.

12. A trail within a public access easement shall be provided along Braddock Road in accordance with the Countywide Trails Plan and Article 17 of the Zoning Ordinance.

13. Any proposed new lighting of the parking areas shall be in accordance with the following:

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

    - The lights shall focus directly onto the subject property.

    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility or off the property.

14. No outside public speakers or public address system shall be permitted.

15. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

16. The applicant shall submit a restoration plan for the review and approval of the Urban Forestry Branch of DPWES to restore the area in the southwest corner of the property to a point approximately 80 feet north of the southwest corner, and 170 feet east of the southwest corner of the property. The restoration plan shall provide to the greatest extent feasible for the replacement of the meadow wetlands habitats previously existing on the site. Once established, the restored area shall be maintained in an undisturbed state, and no clearing of vegetation shall be permitted except for dead or dying plant materials. The restoration plan shall be implemented prior to issuance of a Non-Rup for the 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 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 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.

Ms. Gibb 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 August 4, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 117, July 27, 1999, (Tape 1), Scheduled case of:

9:30 A.M. TAVARES CONCRETE CO., INC., A 1999-BR-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that lot identified as Tax Map Ref: 68-3 ((1)) 65 is not a buildable lot under Zoning Ordinance provisions. Located on the W. side of Ox Rd., approx. 100 ft. N. of its intersection with Popes Head Rd on approx. 0.42 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 65.

Jane Collins, Zoning Administration, presented staff's position as contained in the staff report. She stated staff's opinion that the lot in question was not a buildable lot under the Ordinance provisions.
She stated that the lot did not meet the current minimum lot width or lot area requirements of the R-1 District and the fact that the lot did not meet the minimum lot size requirement prompted the initial inquiry for determination of whether the lot was buildable under the Zoning Ordinance. Ms. Collins explained that in order to be considered a buildable lot, the Subdivision Ordinance requirements had to be met and a search of County records revealed that the lot in question was created by a metes and bounds description that was recorded in 1937 and, at that time, there was no Zoning Ordinance in effect; therefore, there were no restrictions with regard to lot width and lot area. She informed the Board that in 1979, the Virginia Department of Transportation (VDOT) acquired the entire lot for the widening of Route 123 and in 1988 VDOT sold the remnants of the lot to the appellant. Ms. Collins related that there had never been a house on the lot and no building permits had ever been issued. She stated that she sought advice from The Department of Public Works and Environmental Services (DPWES) regarding whether the lot satisfied the requirement of the Subdivision Ordinance in effect at the time of the recordation of the lot. She explained that DPWES advised that the subdivision Ordinance in effect in 1957 required the approval of a County Engineer for all subdivisions including the subject lot and that since there was no evidence that these approvals had ever been obtained, the lot was not considered buildable.

Mr. Dively asked staff if the description was recorded by the Circuit Court and if so, why that did not validate the lot. Ms. Collins replied that though it was legally recorded, it was not legally buildable because it had not been approved by a County Engineer. Mr. Dively stated his opinion that the burden was with the clerk who recorded the lot, instead of the property owner.

Mr. Hammack asked staff if there was anything that would show that the County Engineer approved the lot. Ms. Collins answered that there was no proof that the lot was County approved.

Mr. Keith Martin, Agent, stated that there was no evidence that the County Engineer did not approve the lot, the Clerk of Court did approve the lot before it was recorded and the lot had been recognized by Fairfax County as a parcel since 1937. He explained that VDOT acquired the lot in 1979 for right-of-way purposes, took that right-of-way and then sold it to the appellant in 1988, with the assumption that it was a buildable lot. Mr. Martin noted that Fairfax County taxed the property between 1937 and 1979 as a lot of record with other lots that were considered buildable and said that Fairfax County began taxing it again as soon as VDOT sold the property. Mr. Martin stressed that the only flaw with the lot was the lack of evidence of a County Engineer approval of the metes and bounds description in 1937. In closing, Mr. Martin voiced his opinion that the application met all of the Ordinance requirements and asked for the Board's consideration.

Mr. Dively asked if there could have been anything that would have prevented the County Engineer from approving the lot. Mr. Martin replied that based on the 1929 Ordinance there should not have been anything to prevent the approval.

Ms. Gibb referred to his May 5th letter to the Zoning Administrator and asked whether the lot described in the letter was a comparison to the subject appeal. Mr. Martin answered that there was a determination of a lot down the road from the subject property that was deemed a buildable lot and a building permit had been issued even though there had been no evidence of County approval.

Mr. Hammack asked if the parcel, from its creation, had been taxed as a residential buildable lot. Mr. Martin replied that it had been taxed as a residential buildable lot from creation until VDOT acquired it in 1979, and the taxing began again when the appellant acquired it in 1988.

Mr. Hammack asked staff if they had talked with VDOT regarding this appeal. Ms. Collins answered that staff had not spoken with VDOT.

Chairman DiGiulian called for speakers.

Bill Holcomb, 5398 Quincy Mar Drive, Fairfax, Virginia, informed the Board that the subject lot was adjacent to his home. He stated that he depended on the trees on the lot in question to buffer his home from Route123 traffic. He said that the former owner of Lot 37 advised them that he was interested in purchasing the lot in question with the intent of building 3 houses on the combined lots. Mr. Holcomb reported that this did not meet with his approval, therefore; he told VDOT that he was interested in purchasing the lot himself and upon that conversation he was informed that Lot 65 would not have access to Route 123 and could only be sold to adjacent property owners by sealed bid following an appraisal. He stated that VDOT again offered Lot 65 for sale without addressing access to Route 123 but, specifically stating that the lot was being sold "as is" and was eventually purchased. Mr. Holcomb reiterated that Lot 65 had never been built upon and asked that the Board concur that Lot 65 was not buildable. He stated that he and the adjoining neighbors had offered to purchase Lot 65 to serve as a permanent buffer.

Joseph Farrell, no address given for the record, stated that he lived north of the subject property. He read a letter that he received from VDOT illustrating that they were told the property could only be purchased by adjacent property owners and that the sound barrier would not be removed. He noted that a second letter from VDOT revealed that there could be no access to Route 123 from Lot 65 and that there were future plans to extend the noise barrier along the front of the property. Mr. Farrell informed the Board that most of the trees on this lot would have to be removed due to the size of the house and this would increase the noise level considerably. He said that having another driveway onto Route 123 would increase traffic and prove to be problematic due to the fact that a u-turn would have to be installed. Mr. Farrell mentioned a letter from an additional neighbor who strongly opposed any building on Lot 65.

Ms. Collins stated that although there were similarities to the Rinaldi case, there were houses on the lots

associated with that case and there were no houses on the lot in question. She also stated that VDOT and the Department of Public Works and Environmental Services (DPWES) would require access to the lot from Route 123, therefore; the appellants would be required to obtain a permit to allow access to the lot before any construction could begin.

Mr. Martin, in his rebuttal, stated that the appellant had already discussed the situation with VDOT and the result was that they could not deny access to the lot and it was expected that VDOT would grant access to the lot in the event it was deemed a buildable lot. He stated his opinion that the lot should be considered buildable.

Chairman DiGiulian closed the public hearing.

Mr. Dively stated that he was voting in favor of the appellant and shared his opinion that there had been no evidence that supported the theory that the clerk admitted the Deed to record without County approval and in effect acted unlawfully.

Mr. Dively moved to reverse the decision of the Zoning Administration regarding appeal application A 1999-BR-022. 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 119, July 27, 1999, (Tape 1), Scheduled case of:

9:30 A.M. JOAN M. EVANS, BRIAN G. EVANS, MCLEAN HAMLET CITIZENS, INC., A 1999-PR-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance Appeal the approval of Site Plan #9773-SP-01-2 regarding the determination that the helistop complies with Condition #11 of Special Exception SE 94-P-040. Located at 7950 Jones Branch Dr. on approx. 1,089,418 sq. ft. of land zoned C-3. Providence District. Tax Map 29-2 ((15)) 7A.

Bruce Nassimbeni, Department of Public Works and Environmental Services (DPWES) stated that the site plan for the subject property was for an office building approximately 822,535 square feet in size, with an associated parking structure. Mr. Nassimbeni informed the Board that the appellants had raised four arguments in their appeal and that their first issue was that the noise study was flawed since actual conditions were not analyzed. He said it was the Director's opinion that the noise study closely simulated actual conditions as near as possible without conducting the test after project completion. He explained that on September 10, 1998, a Gannett Company helicopter was flown into and out of the site several times and the flight paths followed by this helicopter simulated typical take off and approach landing scenarios coming in and out of the approximate future location of the landing area. He said that the result of sound study provided an analysis that represented true conditions.

Mr. Nassimbeni spoke to the second issue of argument, which was that the noise study was flawed, by voicing the Director's opinion that the term "noise abatement study" did not necessarily imply that specific measures must be included to reduce or lessen the noise and that Page 1 of the study included abatement measures which were to be adhered to.

Mr. Nassimbeni addressed the third issue of argument which was erroneous condition implementation, by relating the Director's opinion that Condition #11 of the Special Exception was properly adhered to and that the implementation was appropriate. He referred to Condition #11 of the Special Exception and explained that the condition specified the hours of operation, flight paths, and round trips permitted per day, however, this Condition did not specify acceptable or unacceptable decibel limits. Mr. Nassimbeni informed the Board that DPWES and the Department of Planning and Zoning (DPZ) reviewed the report and both agencies deemed the study acceptable with respect to compliance with the Special Exception. He said that the appellant's position that the County was precluded from requiring the applicant to make changes to the site plan was based on the assumption that the corrections were in fact needed and it was County Staff's opinion that the report and Condition #11 were acceptable; therefore, no changes were required. Mr. Nassimbeni explained that the Planning Commission voted that the Director of DPWES approve the site plan in accordance with normal procedures and the Planning Commission noted that the submitted plans were in conformance with the Fairfax County Zoning Ordinance and with the Development Conditions adopted with

the approval of the Special Exception.

Mr. Nassimbeni addressed the 4th issue, which was erroneous application of Paragraph 4 of Section 9-404 of the Zoning Ordinance, by referring to the 50-55 decibel hourly average daytime background noise level. He explained that, based on measured noise level profiles, hourly take offs and landings in the area of greatest impact on the subject property noise would increase the average of less than 1 decibel. Mr. Nassimbeni stated that an increase of that magnitude would not represent a significant impact to adjacent residential areas or major deviation from existing ambient noise conditions. He said that these findings were acceptable by DPWES and DPZ, in addition to the findings by the majority of the Planning Commission. He informed the Board of the Director's opinion that the site plan was in compliance with the Zoning Ordinance and that the proposed helistop location would not adversely effect the adjacent residential areas. He related staff's opinion that the site plan was properly submitted and that it complied with all regulations of the Zoning Ordinance and the Development Conditions of RZ 88-D-005 and SE 94-P-040. In closing, Mr. Nassimbeni reiterated that the plan was properly reviewed and subsequently approved in accordance with normal County procedures; therefore, he asked that the Board uphold the decision of the Director.

Ms. Gibb asked staff which of the 4 issues were litigated in the 1995 decision. Pat Taves, Deputy County Attorney, replied that the 3rd and 4th issues were litigated; however, at the time of litigation the location of the helistop had not been established. He also added that at the time of Board of Supervisors (BOS) approval, the location of the buildings also had not been established.

Mr. Pammel asked for clarification of the maximum amount of round trips the helicopters would be allowed to make each day. Mr. Nassimbeni replied that the maximum was 3 round trips per day on a 30 day rolling average. Mr. Pammel asked if accepted standards were used in the analysis to determine that the impact was not significant based on the dba of 77-80 on the 3 average trips. Mr. Nassimbeni answered that Mr. Pammel was correct and explained that the consultant provided that information to the County and upon review the County deemed those numbers acceptable. Mr. Pammel asked if the County had done any analysis of other helistops in Fairfax County that had similar topographical conditions. Mr. Nassembeni answered that the County did not perform any analysis or comparison of any other helistop locations within the County.

There was discussion between Mr. Dively and Mr. Taves regarding whether the proper parties were present and if they were able to proceed with the hearing. The decision was made that all of the appropriate parties were present and they could proceed with the appeal.

Michael McHugh, Attorney, representation for the appellant, 2000 N. 14th Street, Suite 210, Arlington, Virginia, stated that he disagreed over what issues had and had not been litigated in 1995 and suggested that staff, due to the tremendous pressure they were under, along with the applicant's powerful status in the community, could have approved an incomplete application just to give approval. He also stated that Mr. Nassembeni originally asked Gannett to change the location of the helistop and they had declined to do so. Mr. McHugh announced that, due to the applicant's status, the rules regarding Condition #11 had not been enforced; therefore, the noise study that they submitted did not cover alternatives to minimize the impact of the noise caused by the helistop.

There was conversation between Mr. Hammack and Mr. McHugh regarding Mr. Hammack's opinion that the noise study was accurate and acceptable under the Ordinance; and though, the appellants said that the noise study was flawed, they had not provided any evidence to show the contents were inaccurate or whether or not there would be any decibel level decrease if the helistop were relocated to another part of the property. Mr. McHugh stated his position that the noise study was based on a helicopter landing in an open field behind a sound barrier as opposed to landing on top of a garage. Mr. Hammack contended that the supplemental report revealed that due to distance, height and several other factors, this would not make a difference in the decibel levels. Mr. McHugh then said that there were several contradictions in the noise study and that from his many years of experience working with land use issues it was his opinion that consultants would write anything they were paid to write. He also stated that the appellants should have been held accountable to resubmit a noise study that covered noise abatement.

Chairman DiGiulian called for speakers.

George Smith 1327 Porsha Place, McLean, Virginia, Jane Edmunson, no address given for the record and Wade Smith, Burnwood Drive, McLean, Virginia, spoke in opposition to the appeal and stated the following:

That Gannett had not reviewed any other site on the property for the location of the helistop other than the site closest to the Hamlet and that the helistop, while it was a convenience to Gannett, was an intrusion to the Hamlet, an established community that had been in existence since 1964. They said that Condition #11 left Gannett open to have helicopters landing and taking off at any time during the day or the night and that the BOS approved the special exception without implementing certain conditions limiting Gannett to where they would be able to construct the helistop. They also stated that the noise abatement study was incorrect and incomplete because at the time it was taken the helistop had not been built and it did not address any noise abatement issues. They stated that County staff had recommended that Gannett construct the helistop in a different location on the site. They raised the issue that helistops for hospitals, police, and the armed forces benefited the public and the Gannett helistop only benefited Gannett.

Jerry Emrich, representation for Gannett Company, Inc., stated Gannett's position that the McLean Hamlet Citizens Association was not a proper party to file an appeal, the proper party were the Evans. He explained that the noise study was conducted from the closest point in McLean Hamlet and the Evans were located twice as far from the proposed helistop as where the noise recordings were taken. Mr. Emrich provided the Board with the tax map indicating where the Evans resided. He stated the BOS was not mandated to implement conditions limiting Gannett to where the helistop could be constructed. In closing, Mr. Emrich reiterated that the noise study revealed there would not be a significant difference in the decibel levels no matter where on the property the helistop was located.

Mr. Pammel asked what the criteria was for the location of the helistop. Mr. Emrich explained that the helistop was located where it was because: topographical conditions ruled out all other areas of the site, the necessity of extensive telecommunications; and, the need for the helistop to be located near Interstate 495 and Route 7 for safety reasons. Mr. Pammel asked if the pad was designed as an integral part of a parking structure. Mr. Emrich answered that it was and added that this location was closest to the helicopter routes.

Mr. Nassimbeni explained that County staff did ask that the helistop be located to a different area on the site, however, it was not a formal requirement and the County could not require that it be moved. He stated that all of the citizens concerns were related to the Gannett Company.

Mr. Taves spoke to the allegation by Mr. McHugh that the issues of discussion had not been litigated. He offered to provide to the Board copies of the Court decision and stated that the issue of conformance with the standards that were challenged that morning were at issue in the lawsuit.

Mr. McHugh stated that the appellants were not trying to relitigate the issues from the lawsuit and that the whole appeal centered around the noise abatement study and how, in the appellant's opinion, the noise abatement study was incomplete.

Chairman DiGiulian closed the public hearing.

Mr. Hammack voiced his concern that some of the issues raised had been previously litigated and decided upon in the lawsuit. He stated that the noise abatement study had been prepared and reviewed, the Planning Commission had reviewed the location and type of helistop proposed, it had been approved by the Planning Commission and DPWES. In closing, Mr. Hammack voiced his opinion that the appellants had not proven in any meaningful way that the report was flawed to the extent that the Board should not support the ruling of DPWES.

Mr. Kelley stated that just because the noise study did not satisfy the appellants, there was no reason to contend that Condition #11 was not met.

Mr. Hammack moved to uphold the decision of the Department of Public Works and Environmental Services regarding A 1999-PR-021. 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 122, July 27, 1999, (Tape 1), After Agenda Item:

Approval of April 22, 1999 Minutes

Mr. Pammel moved to approve April 22, 1999 Minutes. There was no second and the motion carried by 6-0. Mr. Ribble was not present for the vote.

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Page 122, July 27, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Brian L. Connor
VC 99-V-080

Mr. Dively moved to deny the Out of Turn Hearing Request for Brian L. Connor, VC 99-V-080. 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 122, July 27, 1999, (Tape 1), After Agenda Item:

Approval of July 20, 1999 Resolutions

Mr. Pammel moved to approve July 20, 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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Page 122, July 27, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
William and Joan Jolley
VC 99-D-094

Mr. Dively moved to deny the Out of Turn Hearing Request for William and Joan Jolley, VC 99-D-094. There was no second and the motion 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 11:25 a.m.

Minutes by: Lori M. Mallam

Approved on: October 19, 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, August 3, 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.

Page 123, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ELLEN R. WARREN AND JAMES R. NOEL, VC 99-V-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.5 ft. from rear lot line and 8.0 ft. from side lot line. Located at 1208 Shenandoah Rd. on approx. 21,875 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((9)) 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. James Noel, 1208 Shenandoah Road, 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, Staff Coordinator. The applicant requested a variance to permit the construction of a workshop 3.5 feet from the rear lot line and 8.0 feet from the side lot line. A minimum rear yard of 13.5 feet is required; therefore, a variance of 10.0 feet was requested. A minimum side yard of 15.0 feet is required; therefore, a variance of 7.0 feet was requested.

Mr. Dively asked how wide was the community property line. Mr. Noel replied that it was 10 feet wide and was an access for a well line which ran on both sides of the property.

Mr. Noel presented the variance request as outlined in the statement of justification submitted with the application. Mr. Noel stated that the reason for the location of the workshop was due to the topography and wooded lot. He stated that if the workshop was located within the setback it would require making the structure 6 feet higher and would be more noticeable to adjacent neighbors. Mr. Noel said that the current location was screened by existing trees and said there was no objection by his neighbors for the requested location; therefore, he asked for the Board's approval of the variance request.

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

Mr. Hammack moved to approve VC 99-V-061 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELLEN R. WARREN AND JAMES R. NOEL, VC 99-V-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.5 ft. from rear lot line and 8.0 ft. from side lot line. Located at 1208 Shenandoah Rd. on approx. 21,875 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((9)) 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 August 3, 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 satisfied the nine required standards for the granting of a variance application.

3. The placement of the structure was due to topographical considerations as well as tree removal.
4. There is a 10 foot community property easement behind the property line of the applicant, which more than compensates for the variance requested, so there would not be any impact on any other residences within the community.

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

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

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

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

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

1. This variance is approved for the location of an accessory structure shown on the plat prepared by James R. Noel, dated April 16, 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 accessory structure shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0-1. Ms. Gibb abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 125, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID H. MILBURN, SP 99-M-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 8.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6409 Eppard St. on approx. 16,361 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 15. (Concurrent with VC 99-M-066).

9:00 A.M. DAVID H. MILBURN, VC 99-M-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 6409 Eppard St. on approx. 16,361 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 15. (Concurrent with SP 99-M-031).

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 Berkon, Agent/Architect, 4918 N. 11th Street, Arlington, 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 for an error in building location to permit a shed to remain 5.0 feet from the rear lot line and a playhouse to remain 8.0 feet from the side lot line. A minimum rear yard of 13.4 feet is required for the shed; therefore, a modification of 8.4 feet was requested. A minimum side yard of 12.0 feet is required for the playhouse; therefore, a modification of 4.0 feet was requested. The applicant also requested a variance to permit the construction of a garage with a kitchen and family room above it to be located 9.4 feet from the side lot line. A minimum side yard of 12.0 feet is required; therefore, a variance of 2.6 feet was requested.

Mr. Berkon, Agent, presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Mr. Berkon stated that the applicants had owned the property for 18 years, that both accessory structures were located to the rear of the property and built 10 to 12 years ago, and that the owner was not aware of the setback requirements until he applied for the variance application; therefore, he requested approval of the special permit. With regard to the variance request, Mr. Berkon stated that the first floor of the two story addition would be a basement and garage and above that would be a kitchen and family room. Mr. Berkon said that the lot was very narrow in the front and only a corner of the new addition would go into the side yard setback. Mr. Berkon stated that the addition would be designed to be architecturally compatible with the existing home and would be a nice addition to the neighborhood.

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

Mr. Pammel moved to approve SP 99-M-031 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID H. MILBURN, SP 99-M-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 8.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6409 Eppard St. on approx. 16,361 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 15. (Concurrent with VC 99-M-066). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 accessory structures (shed and playhouse) as shown on the plat prepared by Kenneth W. White, dated April 7, 1999 as revised through May 11, 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. 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 August 11, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 99-M-066 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID H. MILBURN, VC 99-M-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 6409 Eppard St. on approx. 16,361 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 15. (Concurrent with SP 99-M-031). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 satisfied the nine required standards for the granting of a variance application.
3. The lot has an unusual configuration where the narrowest portion of the lot is at the street frontage and then broadens out as you go to the rear of the lot. The proposed addition, on the south side of the property, is minimal, and because of the shape of the lot, the applicant has no other alternative.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by Kenneth W. White, dated April 7, 1999, as revised through May 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 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. 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 August 11, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 128, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS L. AND JEFFREY L. MARCEY, VC 99-P-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7))(44) F1.

Chairman DiGiulian noted a memorandum received from the Fairfax County Planning Commission requesting that the Board of Zoning Appeals defer the application.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Planning Commission had scheduled an administrative hearing for September 22, 1999; and, therefore, requested a deferral of the public hearing until after that date. Ms. Langdon recommended a new public hearing date of September 28, 1999, at 9:00 a.m.

Mark Jenkins, Agent, stated that if the Board was inclined to hear from the Planning Commission in its administrative capacity, then the applicant would agree to a deferral to a time and date certain due to contract issues.

Mr. Pammel made a motion to defer VC 99-P-067 to September 28, 1999, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

Mr. Pammel asked staff to request the Planning Commission to make a decision at their administrative hearing so that the public hearing could go forward on September 28, 1999.

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Page 128, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HOANG X. NGUYEN, VC 99-M-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 9.0 ft. from one side lot line and 7.0 ft. from other side lot line. Located at 3428 Payne St. on approx. 12,000 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17))(C) 44.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Hoang Nguyen, 3428 Payne 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, as prepared by Juan Bernal, Staff Coordinator. The applicant requested a variance to permit construction of a second story addition above the existing dwelling 7.0 feet from one side lot line and 9.0 feet from the other side lot line. A minimum side yard of 12.0 feet is required; therefore, variances of 5.0 feet and 3.0 feet were requested.

Mr. Nguyen had an interpreter present; however, the interpreter did not state his name and address for the record. The variance request was presented as outlined in the statement of justification submitted with the application. The property was established in 1933 and was purchased in good faith. The request was necessary due to the narrowness of the lot and the modification would not have any impact on surrounding neighbors.

Chairman DiGiulian asked if the addition would come any closer to the side lot lines than the existing dwelling. The reply was that it would not.

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

Mr. Dively moved to approve VC 99-M-068 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOANG X. NGUYEN, VC 99-M-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 9.0 ft. from one side lot line and 7.0 ft. from other side lot line. Located at 3428 Payne St. on approx. 12,000 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17))(C) 44. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 satisfied the nine required standards for the granting of a variance application.
3. The addition would not move any further into the side lots than the currently existing house.
4. There is more than ample precedent for this type of extension and development, as shown in photographs presented to the Board.
5. The lot was 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 second story addition as shown on the plat prepared by Kiet T. Nguyen, dated April 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 August 11, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 130, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE HOLY CROSS, SPA 84-P-004-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-P-004 for church and related facilities to permit building additions, site modifications, and a school of general education and child care center with an enrollment of less than 100 students daily. Located at 2455 Gallows Rd. on approx. 3.54 ac. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 33A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich &

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 applicant requested a special permit amendment to permit building additions, site modifications and to add a private school of general education and a child care center with an enrollment of less than 100 students daily. Ms. Wilson stated that subject to approval of the application, the school and child care center were to begin immediately within the existing building. The proposed church building additions were to be constructed over time in three future phases. Ms. Wilson stated that staff had concluded that the application was in harmony with the Comprehensive Plan and in conformance with Zoning Ordinance provisions with the implementation of development conditions dated July 28, 1999.

Ms. Strobel, Agent, presented the special permit amendment request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the applicant proposed to expand the existing church facilities and to operate a school of general education and child care center. The school of general education and child care center would be the first phase implemented and would be in the existing building. The improvements associated with Phase III would be constructed within the next three years. The last two phases did not have a definite date of construction because that would be dependent upon fund raising. Ms. Strobel stated that the applicant had sent letters to all adjacent property owners for a meeting which was held in June; however, the meeting was not well attended. As a result of the meeting, the applicant had agreed to move the proposed playground so that it would be as far from the residential community as possible. Ms. Strobel recommended a revision to Development Condition Number 5 due to the current drought conditions. Ms. Strobel displayed drawings of the building elevation to show that the additions would be in harmony with the existing community and also to illustrate buffers showing that all proposed improvements were close to the existing building and Gallows Road. The applicant proposed to preserve as much of the existing vegetation as possible. Ms. Strobel acknowledged the support of adjacent property owners in the audience.

Chairman DiGiulian called for speakers in support of the application.

Gregg Burgess, 2307 Yvonnes Way, Dunn Loring, Virginia, came to the podium to speak in support of the application. Mr. Burgess stated that the plans would preserve existing trees and that the traffic patterns were not a problem. Mr. Burgess stated that the applicant presented a well laid out plan with minimal impact on the neighborhood.

Walker Smith, Board of Trustees of Bruen Chapel United Methodist Church, 3035 Cedar Lane, Fairfax, Virginia, came to the podium to speak in support of the application. Mr. Smith spoke on behalf of the Montessori School which would be operating on the site upon its approval. Mr. Smith stated that the school located in his church was highly efficient and well operated. Mr. Smith said that the addition of the Montessori School would cause no adverse impact on the neighborhood.

Chairman DiGiulian called for speakers in opposition of the application.

Richard Lisenby, 2447 Gallows Road, Dunn Loring, Virginia, came to the podium to speak in opposition of the application. Mr. Lisenby stated that he was not in opposition of the church, but was in opposition of a three-phased development plan. He recommended that the church come back at a later date to address other phases of development. Mr. Lisenby expressed his concern with the following: trailers and inadequate screening from his property; putting a commercial facility in a residential development with the addition of the Montessori School; and, traffic impact on Gallows Road. Mr. Lisenby stated that he supported the addition of a 4 foot high fence on the northern side of the property and a 6 foot high fence along his rear property line to be located 8 to 10 feet from the property line with vegetation.

Barbara Gorsen, 2405 Sagarmal Court, Dunn Loring, Virginia, came to the podium to speak in opposition of the application. Ms. Gorsen stated she was opposed to the Montessori School because she believed it was a commercial facility in a residential neighborhood. She expressed her concern with the disruption it may cause within the community, the noise impacts and decrease in property values.

Ms. Strobel came to the podium to rebut the opposition. Ms. Strobel displayed photographs showing the border of the property and the existing vegetation and said that there would be minimal impact on the community. Ms. Strobel stated that the applicant agreed to the installation of a 6 foot high fence and the

planting of additional vegetation to provide additional screening. The church had existed since 1984 and was a good neighbor proposing a long term plan due to funds and time and therefore had asked for all of their plans at one time, even though some would not be constructed for a number of years. Ms. Strobel said that the application limited the number of children to 99 and that there was no plan to install a second temporary trailer. With regard to the traffic concerns, Ms. Strobel stated that there was direct access to Gallows Road and believed it would operate efficiently.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 84-P-004-3 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CHURCH OF THE HOLY CROSS, SPA 84-P-004-03 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-P-004 for church and related facilities to permit building additions, site modifications, and a school of general education and child care center with an enrollment of less than 100 students daily. Located at 2455 Gallows Rd. on approx. 3.54 ac. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 33A. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 1999; and

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

1. The applicant is the owner of the land.
2. The screening concerns have been set forth in the conditions recommended by staff.
3. The trailers will be removed prior to the issuance of a Non-Residential Use Permit for the Phase III development.
4. There were no traffic concerns raised by staff within the staff report; therefore, there should not be any major traffic impact.

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 applicants, Trustees of the Church of the Holy Cross and is not transferable without further action of this Board, and is for the location indicated on the application, 2455 Gallows Road, 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 CAD-CON Consulting, Incorporated, dated April 20, 1999, as revised through July 12, 1999, 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 Environmental Management. 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. 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. Transitional screening shall be provided as depicted on the Special Permit Plat, with the following modifications:

   - Prior to the issuance of the Non-residential Use permit for the private school of general education and/or the child care center, or as soon as practical given weather conditions, in coordination with the Urban Forestry Branch, DPWES, all required plantings along the northern lot line, in the area where it adjoins the side and rear yards of Lot 33, shall be installed to create an effective year-round visual buffer for the residents of Lot 33, to the satisfaction of the Urban Forestry Branch, DPWES. All plantings installed pursuant to the special permit amendment and all existing trees within the site transitional screening areas, shall be maintained and replaced with equivalent species as necessary, to the satisfaction of the Urban Forester. All new or replacement evergreen trees shall measure a minimum height of six (6) feet at time of planting. All replacement deciduous trees shall measure a minimum of two and one-half inches in diameter.

6. The barrier requirement is waived, except that a six (6) foot high, solid wooden or masonry fence shall be installed in the vicinity of the northern lot line, in the area where it adjoins the side and rear yards of Lot 33, in order to buffer visual and noise impacts. Landscaping trees and vegetation shall be installed on the outside of the fence, facing Lot 33, as stipulated in Development Condition Number 5 above.

7. Limits of clearing and grading shall be configured to preserve natural vegetation to the maximum extent possible, to the satisfaction of DPWES.

8. Upon issuance of a Non-Residential Use Permit for the school of general education and/or the child care center, the maximum combined total daily enrollment shall be limited to 99.

9. Maximum hours of operation for the school of general education shall be limited to 8:30 A.M. to 3:30 P.M., Monday through Friday, September through May. Maximum hours of operation for the Child Care Center shall be limited to 7:00 A.M. through 6:30 P.M., Monday through Friday.

10. Each phase of development shall be limited to the construction as depicted on Sheet Number C-3 the special permit plat. Landscaping and parking spaces shall be provided for each additional phase of construction, as depicted on the special permit plat, and as determined by DPWES.

11. Parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be to on site.

12. Any required installation of fencing associated with the play area, and/or any other health or safety issues identified by the Fairfax County Health Department, shall be completed and resolved to the satisfaction of the Health Department prior to the issuance of the Non-Residential Use permit for the establishment of the private school of general education and/or the child care center.

13. All proposed signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance and shall not be erected without the appropriate sign permit approval.

14. Upon issuance of the Non-Residential Use Permit for Phase 3, the church seating capacity shall be limited to a maximum of 192. Upon issuance of the Non-Residential Use Permit for Phase 4, and thereafter, the church seating capacity shall be limited to a maximum of 288.

15. Lighting for the church property shall focus only onto the subject property. Any and all parking lot

lighting fixtures added to the site shall be limited in height to twelve (12) feet. All lighting fixtures shall be full cut-off lights, and shall be fully shielded in such a manner to prevent light from projecting onto adjacent residential property.

16. Stormwater management satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES. Subject to approval by DPWES, final stormwater management design shall provide for bioretention mechanisms within the site, where practical. Locations of any bioretention areas may be adjusted within the site to the satisfaction of DPWES.

17. Prior to the issuance of a Non-Residential Use Permit for the Phase 3 development, all trailers or free-standing classroom structures shall be removed from the site.

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 the use has been established or construction has commenced and been diligently prosecuted. Establishment of the school of general education and/or the child care center, 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. 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 August 11, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 134, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS M. AND JENNIFER W. GITTINS, SP 99-B-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 1.2 ft. and 0.5 ft. from rear lot line and 0.8 ft. from side lot line. Located at 4513 Banff St. on approx. 9,428 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-1 ((20)) 75.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jennifer Gittins, 4513 Banff 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 for an error in building location to permit an elevated playhouse to remain 1.2 feet from the rear lot line and 0.8 feet from the side lot line and a swing set play structure to remain 0.5 feet from the rear lot line. The playhouse error is 11.3 feet at the rear and 7.2 feet at the side, representing a 90% error for both locations. The swing play structure error is 7.1 feet or 93%.

Ms. Gittins presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Gittins stated that they were told by the County that a building permit was not required to build the structures and, therefore, built the play structures in good faith. She stated that due to the topography of the yard and trees, it was hard to place the structures, and therefore, they were built around the existing trees at the only location possible. Ms. Gittins referred to letters submitted to the Board in support of the request.

Ms. Gibb asked how much the play structures cost. Ms. Gittins replied approximately $7,000.00, not

including labor.

Mr. Kelley asked if the application was due to a complaint. Ms. Wilson replied that the neighbor directly behind the Gittins' property had filed the complaint.

Ms. Gittins stated that after the structures were built, her neighbor had expressed concern. Ms. Gittins stated that she had written her neighbor a letter with recommended screening measures and camouflage measures to accommodate the neighbors concerns. Ms. Gittins stated that the request was not received well by her neighbor. She stated that they had received verbal approval from the homeowners association.

Chairman DiGiulian noted that there was a letter submitted for the record from the homeowners association in support of the application.

Chairman DiGiulian called for speakers.

Nancy Van Orden, 44518 Fidelity Court, Annandale, Virginia, came to the podium to speak in opposition of the application. Ms. Van Orden stated that the play structures were built 5 inches from her property line and said that Mrs. Gittins had come to her after the construction of the play structures with options for screening. Ms. Van Orden stated that the homeowners association should not have supported the structure and was concerned that it made an easy access to the pool area at the rear of her home. Ms. Van Orden expressed her concern with property values and stated that the Ordinance requirements were violated with the construction of the play equipment.

Ms. Gittins came to the podium to rebut the opposition and stated that there was a low chain link fence on the property line and that her children would not cross the fence to enter into the neighbor's yard.

Mr. Hammack asked staff if the builder or contractor was notified by County staff to inform them of the Zoning Ordinance requirements. Ms. Wilson stated that the zoning violation was to the owner of the property and holds the owner responsible for the violation.

Mr. Hammack made a motion to have the contractor of the play structures come before the Board, prior to deciding on the application, to have an explanation on their understanding of the Zoning requirements, to determine if the error was made in good faith. Mr. Pammel seconded the motion.

Mr. Ribble stated that more information was required prior to a decision and also said that the Board should have the opportunity to review the contract submitted by the contractor.

Mr. Kelley made a motion to defer the application to September 7, 1999, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 135, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SARATOGA RECREATION GROUP, INC., SPA 74-S-023 Appl. under Sect(s). 3-803 of the Zoning Ordinance to amend SP 74-S-023 for community swimming pool and tennis club to permit change in permittee and change in development conditions. Located at 8070 Edinburgh Dr. on approx. 3.52 ac. of land zoned R-8. Springfield District. Tax Map 98-2 ((8)) F.

Chairman DiGiulian noted that the application had been administratively moved to September 21, 1999.

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Page 135, August 3, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BREVON DEVELOPERS, VC 99-Y-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 21.22 ft. from front lot line of a corner lot. Located at 4500 Forest Hill Dr. on approx. 28,341 sq. ft. of land zoned R-1. Sully District.

Tax Map 56-4 ((2)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charles Johnson, Agent, 12310 Pinecrest Road, Suite 103, Reston, 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 single family dwelling 21.22 feet from the front lot line of a corner lot. A minimum front yard of 40 feet is required; therefore, a variance of 18.78 feet was requested.

Mr. Hammack asked if there were any plans to improve the dedicated street that required the variance. Ms. Schilling stated that she was not aware of any plans of improvement and said that it was a preexisting street that was originally created with the subdivision.

Mr. Johnson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Johnson stated that the applicant purchased the lot in good faith; however, the lot was 100 feet wide and construction of a home required the variance and asked for the Board's approval of the request.

Ms. Gibb asked if the 30 foot Outlet Road, the Coleman property, had been dedicated or if it could be vacated. Mr. Johnson replied that there was an owner of the Outlet Road and referred to a public street that paralleled the applicant's lot line.

Mr. Pammel noted that there was no other access to the property except through the dedicated street.

Chairman DiGiulian called for speakers.

Roger Amendola, the builder on the application property, stated that the road and the Coleman property presently had a purchase contract. He stated that the property would be vacated once that contract was ratified.

Ms. Langdon stated that there was a rezoning application showing access further to the north from the undeveloped road; however, it had not been scheduled before the Board of Supervisors at this point.

Lynne Strobel, representing the contract purchaser for the property, stated that there was a proposed rezoning with alternative access. The applicant in that rezoning had filed for a vacation and abandonment of the roadway. Ms. Strobel stated that a hearing before the Planning Commission had been scheduled for the rezoning application in October; however, a date had not yet been scheduled for the abandonment.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 99-Y-062 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated July 27, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BREVON DEVELOPERS, VC 99-Y-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 21.22 ft. from front lot line of a corner lot. Located at 4500 Forest Hill Dr. on approx. 28,341 sq. ft. of land zoned R-1. Sully District. Tax Map 56-4 ((2)) 41. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 satisfied the nine required standards for the granting of a variance application.
3. The applicant's statement of justification indicates the granting of the variance and the application would stand on its own even if the unimproved street were not going to be vacated.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Charles R. Johnson, Land Surveyor, dated 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.

Pursuant to Sect. 18-407 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 August 11, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 138, August 3, 1999, (Tape 1), Scheduled case of:

9:30 A.M. J.R. STOCKYARDS INN, INC./GEORGE SMITH, A 1999-PR-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the minimum front and rear yard designations for the proposed Crate & Barrel store as shown on approved site plan #6399-SP-12-1. Located in the S.W. quadrant of the intersection of Chain Bridge Rd. and International Dr. on approx. 87,028 sq. ft. of land zoned C-7. Providence District. Tax Map 29-4 ((1)) 35-B1 (formerly 29-4 ((1)) 35B). (MOVED FROM 7/27/99).

Chairman DiGiulian noted a request for withdrawal of the appeal application.

Bruce Nassimbeni, Department of Public Works and Environmental Services, stated that by letter dated August 2, 1999, Counsel for the appellant requested withdrawal of the appeal.

Barnes Lawson, General Counsel for J.R. Stockyards Inn, stated that a resolution between the two parties had been reached which established a different design which lessened the impact and also addressed easement issues; therefore, requested the withdrawal of the appeal application.

Mr. Dively made a motion to withdraw Appeal Application A 1999-PR-017. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 138, August 3, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ANNA K. CHAUNG, A 1999-MA-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a truck rental establishment and a vehicle sale, rental and ancillary service establishment without special exception approval and has erected signs in violation of Zoning Ordinance provisions. Located at 6461 Edsall Rd., #305 on approx. 227,915 sq. ft. of land zoned C-6. Mason District. Tax Map 81-1 ((1)) 7A.

Chairman DiGiulian noted a request for withdrawal of the appeal application.

Mr. Hammack made a motion to withdraw Appeal Application A 1999-MA-018. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 138, August 3, 1999, (Tape 1), After Agenda Item:

Approval of July 27, 1999 Resolutions

Mr. Pammel made a motion to approve the July 27, 1999 Resolutions. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Mr. Ribble noted that Marilyn Anderson was retiring from the County after 22 years of service and stated that Ms. Anderson was an asset to the County and to the Board and would be missed.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Deborah Hedrick

Approved on: October 19, 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, August 10, 1999. The following Board Members were present: Chairman John DiGiulian; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Robert Dively and Nancy Gibb were 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.

Page 141, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RITA K. AND RAYMOND W. JAMROS, VC 99-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lots 1 and 2 having a lot width of 19.7 ft. Located at 10428 Miller Rd. on approx. 2.03 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 39. (MOVED FROM 7/27/99).

Susan Langdon, Chief, Special Permit and Variance Branch noted that the applicant submitted a revised affidavit to the County Attorney's Office and it had not been reviewed yet. Ms. Langdon said a deferral had been discussed with the applicant and suggested a date of September 28, 1999 at 9:00 a.m.

Michael McHugh, Agent, said they agreed with the deferral and noted there was an associated appeal in which he asked the BZA to make a motion to approve an Intent to Defer for the appeal until October 26, 1999.

Mr. Ribble moved to defer the subject application to September 28, 1999. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

Mr. Hammack moved to approve an Intent to Defer for Appeal A 1998-PR-013. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 141, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TONG S. AND MINE K. PARK, VC 99-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 8419 Idylwood Rd. on approx. 17,494 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 39.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mine Park, 8419 Idylwood Road, Vienna, 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 10.4 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 9.6 feet was requested.

Ms. Park presented the variance request as outlined in the statement of justification submitted with the application. She said the lot was small and narrow. Ms. Park asked for a waiver of the 8-day waiting period.

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

Mr. Hammack moved to approve VC 99-P-070 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TONG S. AND MINE K. PARK, VC 99-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line. Located at 8419 Idylwood Rd. on approx. 17,494 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 39. Mr. Hammack moved that the Board of Zoning

Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 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.
3. The property is more narrow than any other lot in 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 the two-story addition shown on the plat prepared by Thomas French, Architect, dated April 5, 1999, as revised through May 24, 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 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Ribble moved to waive the 8-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to waive the 8-day waiting period for all applications heard on August 10, 1999 unless otherwise noted. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 143, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. VINEYARD KOREAN CHURCH, SP 99-M-033 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 6804 Braddock Rd. on approx. 0.56 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 30A. (Concurrent with VC 99-M-074).

9:00 A.M. VINEYARD KOREAN CHURCH, VC 99-M-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. from front lot line. Located at 6804 Braddock Rd. on approx. 0.56 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 30A. (Concurrent with SP 99-M-033).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Charlie Choe, 6804 Braddock 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 special permit for a church and related facilities. The church was constructed in 1972, prior to the requirement for special permit approval. The applicant also requested a variance to permit the existing parking spaces to remain 0.0 from the front lot line. A minimum of ten (10) feet is required by the Ordinance.

Mr. Choe, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application.

Chairman DiGiulian called for speakers.

Esther Persigehl, 6800 Braddock Road, came forward to speak in support of the application. She stated that she had no problem with parking because the church needed as much parking as they could get. Ms. Persigehl said she was concerned about the requirement of trees.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 99-M-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

VINEYARD KOREAN CHURCH, SP 99-M-033 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 6804 Braddock Rd. on approx. 0.56 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 30A. (Concurrent with VC 99-M-074). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 1999; and

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

1. The applicant is the owner of the land.
2. The lot contains 0.56 acres.
3. The lot is zoned for a church and associated parking.
4. Since this was not originally filed under a special permit, the request now is to include them under this process as well as permitting the church and the related facilities associated with the church.

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, Vineyard Korean 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 DDC INC., dated January 25, as revised through June 22, 1999, 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 substantial 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. As no Non-Residential Use Permit has been issued for the current owners of the application site, the applicants shall obtain a Non-Residential Use Permit for the existing use within six (6) months of approval of this Special Permit by the BZA. The maximum number of seats in the main area of worship shall be limited to, and shall remain at a maximum of 112 seats following issuance of the Non-Residential Use Permit for the existing facility and for the proposed addition.

7. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 and shall be a minimum of 28 parking spaces. All parking for this use shall be on site, as shown on the Special Permit Plat. Prior to the issuance of a Non-Residential Use Permit, designation of any and all accessible parking spaces shall be completed to the satisfaction of DPWES.

8. Transitional screening and barriers shall be modified in favor of that shown on the Special Permit Plat. Species and location of plantings proposed along the southeast corner shall be to the satisfaction of the Urban Forester. Clearing and grading shall be accomplished in the least destructive manner possible in order to preserve existing vegetation, to the satisfaction of DPWES. Existing vegetation shall be maintained in good health and replaced with like-kind species when necessary. All proposed trees and all replacement trees shall be a minimum of six (6) foot in height at time of planting.

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 for the addition to the existing church. All plantings and existing trees shall be maintained in good health and replaced with like-kind plantings when necessary. All replacement trees shall measure a minimum of six (6) feet in height at time of planting, to the satisfaction of the Urban Forestry Branch of DPWES

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.

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 99-M-074 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VINEYARD KOREAN CHURCH, VC 99-M-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. from front lot line. Located at 6804 Braddock Rd. on approx. 0.56 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 30A. (Concurrent with SP 99-M-033). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

continued from Page 145

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 1999; and

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

1. The applicant is the owner of the land.
2. The lot contains 0.56 acres.
3. The lot is zoned for a church and associated parking.
4. Since this was not originally filed under a special permit, the request is to include them under this process as well as permitted the church and the related facilities associated with the church.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Special Permit is approved for the location of the parking spaces shown on the plat prepared by DDC INC., dated January 25, 1999, as revised through June 22, 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 147, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL W. CATLETT, VC 99-H-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from side lot line such that side yards total 33.0 ft. Located at 1811 CloverMeadow Dr. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((7)) 23A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel Catlett, 1811 CloverMeadow Drive, Vienna, 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 21 feet from the side lot line such that side yards total 33 feet. A minimum side yard of 12 feet with a total of 40 feet is required; therefore, a variance of 7 feet was requested.

Mr. Catlett presented the variance request as outlined in the statement of justification submitted with the application. He said he notified the adjacent property owners. Mr. Catlett said the lot was narrow with exceptional topographical conditions.

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

Mr. Ribble moved to approve VC 99-H-082 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DANIEL W. CATLETT, VC 99-H-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from side lot line such that side yards total 33.0 ft. Located at 1811 CloverMeadow Dr. on approx. 25,000 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 27-2 ((7)) 23A. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 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 variance is necessary because of the topographical conditions and the narrowness of the lot.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Greenehorne & O'Mara., Inc., certified for the subject addition by Rebecca L. G. Bostick, Architect,, received by the Department of Planning and Zoning on June 14, 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.

Pursuant to Sect. 18-407 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. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ST. ANDREW'S LUTHERAN CHURCH, SPA 79-S-351-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 for church and related facilities and nursery school to permit church, nursery school and private school of general education with an enrollment of 100 or more students daily. Located at 14640 Soucy Place on approx. 2.56 ac. of land zoned R-3 and WS. Sully District. Tax Map 54-1 ((6)) 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, and 9A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. McCauley Arnold, Agent, 11350 Random Hills 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 special permit amendment for an existing church and nursery school to add a private school of general education to be located in the existing three-story portion of the church complex. The nursery school would be located on the first and second floors while the private school of general education would be located on the third floor. The total maximum daily enrollment for the nursery school is 95 and the total maximum daily enrollment proposed for the school of general education is 99 for a total maximum daily enrollment of 194 children. The existing hours of operation for the nursery school are from 9:00 a.m. to 3:30 p.m., Monday through Friday. The proposed hours of operation for the school of general education would be from 8:00 a.m. to 2:45 p.m., Monday through Friday. A 4,000 square foot play area is located at the northeastern portion of the site. There were no development or structural changes proposed to the property or the church with this application. Staff recommended approval of the application subject to the proposed development conditions contained in the staff report.

Mr. Arnold, the applicant's agent, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He said there were no transportation issues and the screening requirement would be met. Mr. Arnold requested that the BZA approve the application.

Mr. Hammack asked if the applicant agreed with the conditions. Mr. Arnold replied yes.

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

Mr. Kelley moved to approve SPA 79-S-351-5 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST. ANDREW'S LUTHERAN CHURCH, SPA 79-S-351-05 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 79-S-351 for church and related facilities and nursery school to permit church, nursery school and private school of general education with an enrollment of 100 or more students daily. Located at 14640 Soucy Place on approx. 2.56 ac. of land zoned R-3 and WS. Sully District. Tax Map 54-1 ((6)) 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, and 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 August 10, 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). 3-303 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, 14640 Soucy Place (2.56 acres) and is not transferable to other land.

2. This Special Permit is granted only for the church, nursery school and private school of general education indicated on the special permit plat prepared by Robert Almirall, dated April, 1997, as revised by Paul R. Jeannin, Landscape Architect, dated May 13,1999, 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 (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 maximum number of seats in the church shall be 370.

6. The maximum total daily enrollment for the nursery school shall be 95 children. Upon issuance of the Non-Residential Use Permit for SPA 79-S-351-5, the maximum total daily enrollment for the private school of general education shall be 99 children.

7. The maximum hours of operation for the nursery school shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday. Upon issuance of the Non-Residential Use Permit for SPA 79-S-351-5, the maximum hours of operation for the private school of general education shall be limited to 8:00 a.m. to 2:45 p.m., Monday through Friday.

8. The outdoor recreational area of 4,000 square feet shall be provided as shown on the SP plat. This area shall be enclosed with a six (6) foot high solid board on board fence on the side of the playground facing Braddock Road. This fence shall meet current noise mitigation standards as determined by DPWES. The other sides of the playground shall be enclosed with either a board on board or a chain-link fence. The maximum number of children permitted in the outdoor recreational area at any one time shall be forty (40).

9. Transitional screening I shall be provided along the Braddock Road lot line.

   Transitional Screening I shall be provided along Cranoke Street lot line.

   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.

   The Transitional Screening requirement shall be modified along the Soucy Street lot line to allow a 10 foot wide yard; the one (1) row of evergreen trees shall be maintained and supplemented as needed to provide a solid row of trees to screen the parking lot from residential uses. Dead or dying plant material shall be replaced as needed.

10. Barrier H shall be provided along the eastern lot line. Existing vegetation may be used to satisfy this requirement, provided it is supplemented where necessary to meet the barrier requirement as determined by the Urban Forestry Branch.

The barrier requirement shall be waived along the northern, southern and western lot lines.

11. As approved in the parking reduction by the Department of Public Works and Environmental Services (DPWES), 96 parking spaces shall be provided. All parking for the uses shall be onsite as shown on the Special Permit Plat.

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

13. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Public Works and Environmental Services. If the SWM/BMP structure is waived, all vegetation along the southwestern lot line depicted on the special permit plat to be removed for installation of the pond shall be preserved.

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. Hammack seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote and Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 151, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 for church and related facilities to permit child care center and private school of general education with an enrollment of less than 100 students. Located at 5811 Hoffmans Ln. on approx. 1.09 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((1)) 112.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Arlene Pripeton, 10195 Main Street, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit to allow a child care center and a private school of general education to be located in the lower portion of the existing church building. The proposed total maximum daily enrollment for the child care center and private school of general education would be 99 children with 75 children in the child care center and 24 children in the private school of general education. The proposed hours of operation for the child care center are from 7:00 a.m. to 6:00 p.m., Monday through Friday. The proposed hours of operation for the private school of general education are from 8:30 a.m. to 3:30 p.m., Monday through Friday. There were no development or structural changes proposed to the property or the church with this application except that the play area and fencing were added following the approval of SP 90-M-036. At the present time, a child care center is being operated on-site by the applicant without benefit

of special permit approval. The applicant stated that there were approximately 50 children in the child care center and it had been in operation for four (4) years. In staff's evaluation, the proposed development plan as originally submitted lacked an adequate and appropriate play area and open space on site necessary for the provision of a school and/or child care facility. The Oakview Garden Apartments, located adjacent to the church gave permission for the applicant to use the play area on the Oakview Apartment complex. The applicant also submitted a schedule outlining their playground schedule and stated that several times per week the older children were taken to the nearby Bailey's Crossroads Recreation Center. Additionally, the applicant stated that they were in negotiations to purchase Lot 110, which is contiguous to the church property. While it is highly desirable for the play areas for child care centers and schools to be located on site, staff supported a limited child care center and school use, as long as the applicant had permission to use the Oakview Garden play areas, with a goal of providing open space and play area on site in the future. Staff included in the development conditions a term limit of five (5) years from the date of approval of the Non-Residential Use Permit to provide the time needed for the church to hopefully acquire Lot 110 and supported limiting the total maximum enrollment for the child care center and school to 75.

Ms. Pripeton, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the child care center had been approved by the health department to operate with up to 80 children for 4 years. Ms. Pripeton said there had been no problems in the neighborhood in relation to the child care center. She said the parking lot had been approved as a playground with the fencing and the church was allowed to use the playground area of the apartment complex next door. Ms. Pripeton said Lot 110 was not for sale, that staff would like for the church to purchase that property, but that the church owned 2½ acres directly across the street. She said the church had originally planned to ask if they could use that area for parking and playground but found that it was a part of the Bailey's Crossroads Revitalization Plan. Ms. Pripeton said since it was part of the revitalization plan, staff recommended that the church not include that land as part of the application because it would be held up until the revitalization plan was finished. Ms. Pripeton asked that the following conditions be deleted: Condition 5 relating to limiting the number children to 75; Condition 7 relating to the shared parking agreement or parking reduction; and Condition 15 relating to the term limitation of 5 years.

Mr. Hammack asked staff and the applicant if increasing the number of children would increase the parking requirement. Ms. Pripeton replied that the shared parking agreement was based on a full 99 students.

Susan Langdon, Chief, Special Permit and Variance Branch, said that staff supported the use on a limited basis. She said staff looked at the locational guidelines of the Comprehensive Plan that recommend that the applicant provide open space and play area on the application site. Ms. Langdon said normally staff didn't support those things being provided off-site. She stated that staff would only support the application with the condition that the church could share the play area with the apartment complex. Ms. Langdon said it would make a difference of several parking spaces required if the church would reduce the number from 99 to 75 children, but she believed they would still need a parking reduction.

Chairman DiGiulian called for speakers.

Lewis Baldwin, Pastor, came forward to speak in support of the application. He said the staff had been very cooperative but he was concerned about the problems that staff was addressing. Mr. Baldwin said the issues would remain the same whether there were 75 or 99 students. He stated there were only about 15-20 children on the playground area at any one time, but they had already addressed taking the children to alternative sites for the actual play time. Mr. Baldwin stated he didn't know why 75 students would be the number to change, because the church would never take 75 students out at one time or take 99 at one time.

Daniel Brock, 3530 Cortland Drive, Alanna Johnson, 3495 Paul Street, and Itzhak Tepper, 3494 Paul Street, came forward to speak in opposition of the application. They expressed concerns relating to transportation issues, establishing a child care center without a special permit, negative impact on the neighborhood, off-site parking relating to buses, buses blocking visibility, and lighting.

Mr. Ribble asked Ms. Johnson if she had ever made a formal complaint to Zoning Enforcement. She replied that she had not.

Ms. Pripeton stated in her rebuttal that none of the speakers ever approached the church with their concerns. She stated that the buses were not used for the child care center and the church was told by the Virginia

Department of Transportation to park the buses on the street.

Pastor Baldwin said the church was concerned about the neighborhood and they would have addressed any complaint immediately.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said things troubled him about the application. He said there was a lot of misinformation about where to park the buses. Mr. Hammack said he was concerned about not including the other site in the application. He stated this was an intense use for the site, but he would like to defer decision to give the applicant a chance to further address the issues relating to future development and site approval of the play area in the parking lot. Mr. Hammack added that he didn't want the church to be unduly restricted by not having 99 students.

Mr. Kelley said he agreed with Mr. Hammack.

Mr. Hammack moved to defer SPA 90-M-036 to November 16, 1999 at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 153, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ALMA C. BONNEAU, VC 99-P-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from rear lot line and deck 9.2 ft. from rear lot line. Located at 3226 Miller Heights Rd. on approx. 23,296 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((9)) 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. Charles Bonneau, 3226 Miller Heights Road, Oakton, 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 an addition 11.6 feet from the rear lot line and a deck 9.2 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 13.4 feet was requested for the addition and 3.8 feet for the deck.

Mr. Pammel congratulated Julie Schilling on her Outstanding Performance Award.

Mr. Bonneau presented the variance request as outlined in the statement of justification submitted with the application. He said there was limited space in the rear of his property and the rear of his home was only visible to one neighbor.

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

Mr. Pammel moved to approve VC 99-P-072 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALMA C. BONNEAU, VC 99-P-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.6 ft. from rear lot line and deck 9.2 ft. from rear lot line. Located at 3226 Miller Heights Rd. on approx. 23,296 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-1 ((9)) 23. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 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 is unusually shaped.
4. The location of the dwelling on the lot, which is in the very rear portion of the lot, provides little or no useable area for additions.

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

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

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

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

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

1. This variance is approved for the location of a screened porch addition and deck shown on the plat prepared by Kenneth W. White, dated April 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 screened porch and 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. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 155, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JEFFERY AND TERESA STILLMAN, VC 99-L-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. and fence greater than 4.0 ft. in height in front yard. Located at 6420 Hillview Ave. on approx. 15,634 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((2))(9) 1.

Chairman DiGiulian noted that the subject application had been administratively moved to September 21, 1999, at 9:00 a.m.

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Page 155, August 10, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ALYCE M. CHESSNOE, SPA 90-S-066-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-S-066 for home child care facility to permit continuation of use and change in development conditions. Located at 9701 Glenway Ct. on approx. 14,886 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 397.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alyce Chessnoe, 9701 Glenway Court, Burke, 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 a special permit for a home child care facility to eliminate the term limitation of five years, required by development condition number 7, and to increase the maximum number of children allowed at any one time from 9 to 10 children. There were no other changes proposed to the operation of the home child care facility or to the site.

Ms. Chessnoe presented the request as outlined in the statement of justification submitted with the application. She said she had been a child care provider for 22 years. Ms. Chessnoe said the impact on traffic was minimized because the times of arrival and departure were staggered. She stated the size of her driveway allowed for an unimpaired view of the street.

Mr. Hammack asked the applicant if she agreed with the development conditions. Ms. Chessnoe replied that she did.

Chairman DiGiulian called for speakers.

David Birch, 9214 Capricorn Court, Robert Nelson, 7012 Veering Lane, and Peggy Pence, 9702 Glenway Court came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 90-S-066-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALYCE M. CHESSNOE, SPA 90-S-066-02 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-S-066 for home child care facility to permit continuation of use and change in development conditions. Located at 9701 Glenway Ct. on approx. 14,886 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 397. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 10, 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). 3-303 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, 9701 Glenway Court, (14,886 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 Dewberry, Healon and Davis, revised by Alyce M. Chessnoe, revised through December 8, 1993, and approved with this application, as qualified by these development conditions.

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

4. The maximum number of children on site at any one time shall not exceed ten (10) children; the total maximum daily enrollment shall not exceed ten (10) children.

5. The garage shall be used for the required parking for the residence and shall not be converted to any other use. The driveway which can accommodate four (4) parking spaces shall be deemed sufficient for the Family Day Care Facility. No additional parking spaces are required for this use.

6. The site shall be available for inspections performed by the Zoning Enforcement Division to determine compliance with all special permit development conditions imposed in connection with this application. If it is determined that these condition have not been met by the applicant, the Zoning Administrator shall undertake the appropriate procedures to effect compliance or the special permit use shall be terminated.

7. The hours of operation shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday. There shall be staggered arrival and departure times for the preschool and school aged children so as to

prevent traffic congestion in the neighborhood.

8. The number of employees shall be limited to one (1), in addition to the applicant.

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, six (6) months after the date of approval* unless a new Non-Residential Use Permit has been obtained for the use. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 157, August 10, 1999, (Tape 1), Scheduled case of:

9:30 A.M. LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12.

Chairman DiGiulian stated he would not participate in the hearing because his office prepared the site plan.

William Shoup, Deputy Zoning Administrator, indicated that the appellant requested a deferral. He said staff did not support a deferral because the appellant's had operated the use in violation for nearly seven years. Mr. Shoup said the appellants attempted to obtain site plan approval but there were some significant problems that still needed to be worked out. He said the appellants' argument was that they needed more time to work on those issues but they didn't challenge the determination. Staff requested that the appeal go forward as scheduled.

George Knakmuhs, 7603 Clifton Road, said they had been working with the Department of Public Works and Environmental Services and Supervisor McConnell's Office to resolve the issues with the site plan but they needed more time.

Mr. Hammack asked how much of a deferral would he need. Mr. Knakmuhs said he would like a 90 day deferral.

There were no speakers present to speak to the deferral request.

Mr. Hammack noted that it was the first time the appellants requested a deferral and he moved to defer the appeal to November 16, 1999, at 9:30 a.m. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote and Mr. Dively and Ms. Gibb were absent from the meeting.

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9:30 A.M. HUNTER MILL EAST, LLC, A 1999-HM-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is not in substantial conformance with Conditions #2, 7, 16 and 24 of approved Special Permit SPA 91-C-070-2, and is therefore in violation of Par. 2 of Sect. 8-004 of the Zoning Ordinance. Located at 1627 Hunter Mill Rd. on approx. 2,015,890 sq. ft. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4, 5.

Daryl Varney, Zoning Administration Division, made staff's presentation and stated that on February 18, 1997, the BZA approved SPA 91-C-070-2, which was the most recent approval governing development of the site. He said the Special Permit Amendment (SPA) included expansion of the clubhouse, the addition of two gazebos, lighting of the driving range and parking lot, an increase in hours of operation, and the extension of berms on three sides of the property. Mr. Varney said Condition #2 of the SPA limited the special permit to the purpose, structures, and uses indicated on the approved special permit plat. He said zoning inspections revealed that a portable generator, a fuel tank, a portable parking lot spotlight, and a step van-type truck being used a golf club repair shop, none of which were depicted on the approved special permit plat but were located on the property. Therefore, the appellant was not in substantial conformance with Condition #2.

Condition #7 of the SPA requires that the parking lot lights not exceed 12 feet in height and be of a type and brand equivalent to or superior to those shown in the document entitled "Lighting Impact Study for the Family Golf Park Driving Range Facility." Mr. Varney said portable telescoping spotlights were located in the south parking lot and it was determined that the spotlights were not in substantial conformance with Condition #7.

Condition #16 of the SPA required that the architecture of the clubhouse including building materials, to be compatible with the character of the neighborhood residential architecture. A stepvan type truck was located in the north parking lot and was being used as a custom golf club production and repair shop. It was determined that the truck was not in substantial conformance with the neighborhood's residential architecture of wood and brick homes.

Condition #24 of the SPA requires the berm located on the eastern portion of the property, be constructed 600 feet south from the northern boundary of the property, on or before August 1, 1998. Mr. Varney said the berm had not been constructed; therefore, the appellant was not in substantial conformance with Condition #24.

Par. 2 of Sect. 8-004 of the Zoning Ordinance requires that a special permit use be conducted in substantial conformance with the conditions or restrictions imposed by the BZA. Mr. Varney said because it was determined that the appellant was not in substantial conformance with Conditions #2, 7, 16 and 24 of the approved special permit, the appellant was in violation of the Zoning Ordinance.

John Thoburn, 1630 Hunter Mill Road, stated that this was a continuation of a long harassment campaign by the speakers who were present, instituted against his family. He said the golf park was located at a freeway interchange, next to the toll booths and the lighting on the Dulles Toll Road. Mr. Thoburn stated that the property was well screened from adjoining residents. He stated that the issues were not important to the community at-large. Mr. Thoburn said in reading staff's response to his appeal, it talked about the fact that the issue of private property which was guaranteed in the Virginia constitutional right to acquire and possess property, could not really be considered by the BZA because they were strictly limited to the authority that had been delegated to them. He said the authority of the legislature and the authority of the County was subordinate to the Constitution. Mr. Thoburn said the authority the BZA had to impose conditions was delegated authority, and they were allowed to do that where it was necessary to implement the Comprehensive Plan on adjoining properties. He submitted that him having temporary lighting, a generator, or a club repair truck, were not important issues to the Comprehensive Plan and completely irrelevant. Mr. Thoburn said because they were irrelevant there was no authority to impose the conditions in the first place. He said there was nothing in the conditions that stated he could not use a generator to power his lights.

Mr. Thoburn noted that if zoning was going to cite him for anything else to please get it over with. He said he had 4 propane tanks that powered the heat for the heated tees in the winter time and since he was cited for having a portable fuel tank powering the generator, he asked zoning why he wasn't cited for the propane tanks. Mr. Thoburn said his last application was denied on a tie vote, but he intended to come back and start over with a new engineer. He stated that if the berm was built on the rear property line, the adjacent neighbor would receive some noise attenuation from the Toll Road.

Mr. Pammel asked Mr. Thoburn whether the County had a right and the authority to limit the height for the lighting standards. Mr. Thoburn replied that the lights had no off-site impact and there was no public interest at stake and when there was no public interest at stake, no authority existed.

Mr. Thoburn said some of the conditions imposed on his application had been some of the most frivolous that had ever been imposed. He referenced a condition contained in the previously denied SPA application about having a jukebox on his property. Mr. Thoburn said he was offended that the government would tell him that he could not have a jukebox.

Mr. Hammack asked Mr. Thoburn whether he had any legal authority to support his position. Mr. Thoburn referenced the Virginia Supreme Court in Alexandria v. Texas Company, in talking about the imposition of restrictions that were disparate to the restrictions on adjoining property owners. He quoted the court's equal protection clause of the 14th Amendment which "...prohibits the discrimination against an owner and the imposition of restrictions on the use of his property. A city may not deny to one owner the privilege of installing on his property the type of lighting which he desires and grant such a privilege to another property owner of like qualifications under like circumstances and conditions." Mr. Thoburn said he had legal standing to make that argument.

Chairman DiGiulian called for speakers.

Bruce and Jodie Bennett, 1459 Hunter View Farms, Ron Stanton, 10309 Browns Mill Road, and David Emory came forward to speak in opposition. They expressed concerns with the ongoing violations, the area being low density, intentional and repetitive violations, and that the SPA conditions were specific and the appellant had no inherent rights. Several opposition letters were submitted from area residents by the speakers.

William Shoup, Deputy Zoning Administrator, said he didn't believe the appellant could now challenge the authority for the imposition of the conditions. He stated that the appellant didn't like the process and had consistently violated the conditions. Mr. Shoup asked the BZA to uphold the determination of the Zoning Administrator.

Mr. Thoburn stated in his rebuttal that this was just a game to staff, but it wasn't a game to his family. He said he respected the process. Mr. Thoburn asked the BZA to defer the berm issue until such time as he could file another SPA.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said the appellant raised some interesting points with respect to why he was where he was at this particular point in time. He stated his recollection of the tie-vote which indicated that it was considerably more involved than just the berms and there were elements of that application that were clearly outside of the authority of the BZA to approve. Mr. Pammel said there were many aspects of this that bothered him, but the major issue was the fact that the appellant took the position that through property rights he had the right to use his property in a manner that he so chose as long as, in his opinion, it did not distract or impact adjoining properties. He said there could be differences of opinion with respect to the generator and to the clubhouse, but the BZA's original thought in approving it was what would be done on that property would be consistent with the character of the neighborhood and there would not be elements that would detract from the quality of the neighborhood. Mr. Pammel said the appellant had raised the issue of being located a freeway interchange and because of that the appellant was entitled to a more intensive use. Mr. Pammel said that Mr. Thoburn had submitted many amendments to the Plan, proposing changes to the intensity of use to the subject property and those had all been looked at and basically put aside by the legislative branch of the County after recommendations by the Planning Commission. Mr. Pammel said the BZA had imposed reasonable conditions on the use of the property associated with the fact that it was a transitional use. He said the appellant had not implemented all of those conditions and he moved to uphold the Zoning Administrator's determination.

Mr. Kelley seconded the motion. He said the BZA had bent over backwards for the appellant and he agreed with Mr. Pammel's motion.

Mr. Hammack said he supported the motion. The appellant compared uses that were permitted in residential

areas by-right or, he tried to compare uses that were not under special permit with things that were being required of him because he chose to take a property that was in an R-E zoning district and if he wanted to develop it as R-E he would have certain uses by-right. Mr. Hammack said typical conditions were imposed and the appellant presented no argument to why the Zoning Administrator was incorrect in its decision.

The motion carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

Mr. Pammel said the BZA had come to a point where they needed to address the violations; consequently, he moved for the appellant to show cause why his special permit shouldn't be revoked.

Mr. Hammack seconded the motion for purposes of discussion. He said he agreed with the motion to some extent, but some of the issues were minor and some were not. Mr. Hammack said in view of today's decision, he would prefer to give the appellant time to come into compliance or give the County a chance to follow up on the violations.

Chairman DiGiulian said he'd prefer to let Zoning Enforcement do their job.

Mr. Pammel withdrew his motion.

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Page 160, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
McDonald's Corporation, VC 96-M-102

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is October 2, 2000.

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Page 160, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Ellen Shelton McCloskey, VC 96-V-128

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is June 11, 2001.

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Page 160, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Pedro and Carmen Toscano, VC 95-H-040

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is December 19, 2000.

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Page 160, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Rhoda B. Nelson, VC 96-L-110

Page 161, August 10, 1999, (Tape 2), After Agenda Item, continued from Page 160

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is January 8, 2000.

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Page 161, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Anjumane Islahul Muslameen of Northern Virginia, SP 95-S-049

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is November 29, 1999.

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Page 161, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Mount Vernon Church of Christ, SPA 84-L-047

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is January 27, 2001.

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Page 161, August 10, 1999, (Tape 2), After Agenda Item:

Additional Time Request
Nils and Gladys Antezana, VC 96-D-040

Mr. Kelley moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The new expiration date is April 16, 2000.

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Page 161, August 10, 1999, (Tape 2), After Agenda Item:

Approval of August 3, 1999 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting.

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Page 161, August 10, 1999, (Tape 2), After Agenda Item:

Request for Intent to Defer
Sheehy Investments One Limited Partnership, A 1997-LE-028

Mr. Pammel moved to approve an Intent to Defer for the subject appeal. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb were absent from the meeting. The appeal was scheduled for November 2, 1999.

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Page 162, August 10, 1999, (Tape 2), After Agenda Item:

Request for Intent to Defer
John and Carol Layng and Company Greenhouses, A 1999-DR-025

Mr. Pammel moved to indefinitely defer the subject appeal. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively and Ms. Gibb 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 11:46 a.m.

Minutes by: Regina Thorn

Approved on: December 7, 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, September 7, 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 9:08 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 163, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FALLS REACH L.L.C., VCA 98-D-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a fence in excess of 7.0 ft. in height in rear yards. 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.

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, Attorney, Hazel & Thomas, PC, 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 variance to permit the construction of a fence in excess of 7.0 feet in height in rear yard areas. The maximum height proposed was 13.0 feet; therefore, a variance of 6.0 feet was requested.

Mr. Lawrence presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated that there were no changes to the previous approval in January, 1999, when the variance was initially approved. He stated that the approval included a fence on a berm; however, noted that an issue was raised as to whether or not there needed to be a specific approval for the height of the fence; therefore, the need for the variance amendment application. Mr. Lawrence stated that the only change to the plat was the inclusion of Table B, which showed the actual height of the fence. He stated that the height of the fence, by elevation, was approved in January.

Chairman DiGiulian called for speakers.

Robert Lumsden, 13437 Yorktowne Drive, Bowie, Maryland, representing family members in the estate of his mother, came to the podium to speak in support of the application. Mr. Lumsden stated that his family had been the property owners since 1942. He requested the approval of the application to complete the sale of his mother's estate.

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 expressed concern regarding: the noise abatement plan; the destruction of mature trees; standard #7 which was not met regarding substantial detriment to adjacent properties; the fact that the fence did not meet VDOT standards for noise mitigation; standard #8 which was not met regarding the character of the zoning district; removal of trees; and, the fact that the applicant did not meet the criteria for a variance application.
Richard Todd, 2214 and 2216 Great Falls Street, Great Falls, Virginia, came to the podium to speak in opposition of the application. Mr. Todd stated that he was concerned with the location of the fences and said that his front yard would be adjacent to a back yard of the development, in which the fence would cut off his front yard view of Great Falls Street.

Diane D'Arcy, 2016 Harborough Way, Falls Church, Virginia, representing the McLean Citizens Association (MCA), came to the podium to speak in opposition of the application. Ms. D'Arcy stated that the MCA opposed the 7 foot fence height variance. She stated that a 7 foot fence height was found to be the most reasonable and acceptable height within a residential neighborhood and opposed any height which exceeded the maximum allowed. She expressed her concern with determining how high the fence and berm would be and with the potential widening of I-66.

George Lilly, 2229 Westwood Place, Great Falls, Virginia, came to the podium to speak in opposition of the application. Mr. Lilly stated that he was opposed to the original variance and expressed his concern with the amendment to the variance application when the original variance was being challenged in the Circuit Court, with a trial date of January 5, 2000. He stated his opposition to the granting of the variance due to the degradation of the area.

Mr. Lawrence came to the podium to rebut the opposition. He addressed the concern of the fence in a rear yard and stated that it did not relate to Mr. Todd's property. He showed the Board the plat displaying the fence location. Mr. Lawrence noted that the landscaped berm and fence would not destroy the character and nature of the neighborhood as much as a VDOT noise wall would. Mr. Lawrence stated that all of the issues and criteria relating to the original variance still applied with the variance amendment since there was not a physical change to the application.

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

Mr. Ribble moved to approve VCA 98-D-094 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 31, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FALLS REACH L.L.C., VCA 98-D-094 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit a fence in excess of 7.0 ft. in height in rear yards. 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. 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 7, 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 satisfied the nine required standards for the granting of a variance application.
3. The property has an extraordinary situation or condition.

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

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

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

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

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

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

1. This variance is approved for the location of a fence measuring 13 feet at it maximum height, in the location shown on the plat prepared by BC Consultants, dated June 9, 1998, as revised through July 2, 1999, submitted with this application and is not transferable to other land. These development conditions do not supercede but are in addition to development conditions previously approved with VC 98-D-094.

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 4-2-1. Mr. Hammack and Mr. Pammel voted against the motion. 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 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 165, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. RUTH A. GASKINS, VC 99-P-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from front lot line and 14.5 ft. and 12.7 ft. from other front lot line, accessory structure in front yard of lot containing less than 36,000 sq. ft., and deck to remain 6.0 ft. from side lot line. Located at 2800 Annandale Rd. on approx. 5,062 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((1)) 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ruth A. Gaskins, 2800 Annandale Road, 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 13.6 feet from a front lot line and 14.5 feet and 12.7 feet from another front lot line; and, a deck to remain 6.0 feet from a side lot line; therefore, variances of 16.4 feet, 15.5 feet and 17.3 feet were requested for the proposed addition; and, 4.0 feet for the deck was requested. An accessory structure in a front yard of a lot containing less than 36,000 square feet was also requested.

Ms. Gaskins presented the variance request as outlined in the statement of justification submitted with the application. Ms. Gaskins stated that the proposal was for a two-level, two room addition to the existing home. She stated that the house was built in 1940 and did not meet the needs of a growing family. Ms. Gaskins stated that in 1970 the property was reduced considerably due to the conveyance of road improvements to the Commonwealth of Virginia, which left the property an unusual shape and size. Ms. Gaskins said that they did not know they were in violation until the variance was applied for and stated that the variance would be in harmony with the Ordinance and would not be contrary to the public interest.

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

Mr. Pammel moved to approve VC 99-P-079 for the reasons noted in the Resolution subject to the

Development Conditions contained in the staff report dated August 31, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RUTH A. GASKINS, VC 99-P-079 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from front lot line and 14.5 ft. and 12.7 ft. from other front lot line, accessory structure in front yard of lot containing less than 36,000 sq. ft., and deck to remain 6.0 ft. from side lot line. Located at 2800 Annandale Rd. on approx. 5,062 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-2 ((1)) 25. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 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 satisfied the nine required standards for the granting of a variance application.
3. The application was necessary due to the unusual shape and configuration of the lot and the location of the dwelling on the lot.
4. The taking of right-of-way for Annandale Road, by the Virginia Department of Transportation, caused 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 an addition and deck, and a frame shed, shown on the plat prepared by Cook and Miller, Ltd., dated June 1, 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.

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 September 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 167, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, SP 99-P-036 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit church and related facilities. Located at 2854 and 2864 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 17C, 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. John McBride, Attorney, Hazel & Thomas, PC, 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 for an existing church and related facilities to permit new building construction from the existing 6,100 square feet to a possible total of 34,700 square feet and an increase in the number of seats from 295 to 400. Ms. Wilson stated that parking spaces may increase from 172 to 207.

Mr. McBride presented the variance request as outlined in the statement of justification submitted with the application. He asked for the approval of the application and stated that the application met both the General and Group 3 use standards of the Zoning Ordinance. Mr. McBride made a suggested change to condition #13 regarding height of supplemental plantings. He stated that the applicant agreed with all other conditions. Mr. McBride had members of the church stand in recognition of their support of the application. Mr. McBride stated that the applicant had also agreed to construct road improvements which included extending a turn lane across the entire frontage of the property which connected to the Hunter Brook Subdivision to the north and to the new townhouse development to the south.

Chairman DiGiulian called for speakers.

Cheryl Janey, 10305 Mistic Meadow Way, representing Hunter Brook Homeowners Association, came to the podium to speak in opposition of the application. Ms. Janey stated that the association appreciated the consideration the applicant had given their community; however, asked the Board not to strike the words "size and" from the requirement for screening. She stated that the property currently had many mature, tall

trees, and wished to preserve the aesthetic of the community. Ms. Janey thanked the applicant for accommodating the request for a 6 foot high fence along the parking lot; however, stated that the fence stopped prior to Hunter Mill Road and exposed a drainage pool, which was believed to be a potential risk to the children and asked the applicant to extend the fence all along the parking lot.

Mr. McBride came to the podium to rebut the opposition and stated that there was a substantial tree preservation area between the community and the church facilities. He stated that the church facilities were moved to a side of the property which would help mitigate any potential adverse impacts. Mr. McBride stated that the mature trees would be preserved; however, the size referred to the replacement vegetation infill, which was usually an evergreen type tree, and he did not want designation of size to only be the option of the Urban Forester. He addressed the extension of the 6 foot wooden fence and stated that the applicant had no problem with the request; however, easements in the area would determine how far the fence could extend, and would be dealt with at site plan.

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

Mr. Dively moved to approve SP 99-P-036 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 31, 1999 and incorporated the applicant's requested change to Condition 13.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, SP 99-P-036 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit church and related facilities. Located at 2854 and 2864 Hunter Mill Rd. on approx. 5.31 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 17C, 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 September 7, 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 a well thought out plan which addressed many of the objections regarding tree preservation.
3. The fence issue would be addressed at the time of site plan.

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, Trustees of Unity of Fairfax Church of the Daily Word, 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 Patton Harris Rust & Associates, dated May 1999, as revised

through August 11, 1999, 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 (DPWES). 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. 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. The use of the temporary parco buildings is approved for a period of five (5) years beginning from the date of final approval of this special permit or until a Non-Rup is issued for the new sanctuary building approved in conjunction with SP 99-P-036, whichever occurs first. With appropriate approvals from DPWES, the temporary parco buildings may be placed on the site prior to final site plan approval for the proposed building construction and site modifications.

6. Upon issuance of the Non-Residential Use Permit for this Special Permit Amendment, church sanctuary seating shall be limited to a maximum of 400 seats.

7. The applicant shall construct an 8 foot wide sidewalk or trail along the full frontage of the property. The sidewalk/trail shall adjoin existing or proposed sidewalks to the north and south, to the satisfaction of DPWES.

8. The applicant shall construct an extended turn lane across the full frontage of the property, measuring a minimum 35 foot cross section from centerline to face of curb to create a second southbound vehicle travel lane, to the satisfaction of DPWES. With provision of these frontage improvement by the applicant, dedication measuring a minimum of 45 feet of right-of-way shall be permitted if deemed appropriate by DPWES. If frontage improvements are not provided, a minimum dedication measuring 56 feet from centerline of Hunter Mill Road shall be provided. Right-of-way shall be dedicated to the Board of Supervisors, in fee simple, within sixty (60) days upon demand by Fairfax County.

9. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

10. All existing and proposed lighting of the parking areas shall be in accordance with the following:

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

    The lights shall focus directly on the subject property.

    Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

11. Stormwater management BMPs satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES.

12. A tree preservation plan and final limits of clearing and grading shall be established in coordination with and subject to approval by the County Urban Forestry Branch of DPWES in order to preserve individual trees and stands of trees shown to be saved on the Special Permit Plat. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be implemented to the satisfaction of the Urban Forester. Activities may include, but are not limited to, increased tree protection measures, crown pruning, root pruning, mulching and fertilization. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures.

13. Transitional screening and barrier requirements shall be modified in favor of that shown on the Special Permit Amendment Plat. Supplementation of existing vegetation within all transitional screening areas to achieve effective and viable year-around screening shall be as directed by the Urban Forester. Species of plantings shall be as determined by the Urban Forester. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary.

14. All parking for the use shall be on site. There shall be a minimum of 172 parking spaces provided, as shown on the SP Plat. Should the applicant exercise the option to include demolition of the existing sanctuary building, a minimum of 207 parking spaces shall be provided, as shown on the plat. No additional areas shall be cleared or created to accommodate parking spaces beyond that depicted on the Special Permit Plat.

15. Prior to site plan approval, the applicant shall show proof that the 15 foot outlet road and ingress/egress easement which bisects the application property have been properly quitclaimed or relocated so as to not legally encumber conditions as proposed with this application, to the satisfaction of DPWES.

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. 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 15, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 170, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HYERY PARK, SP 99-M-039 Appl. under Sect(s). 3-203 and 8-914 of the Zoning Ordinance to permit a child care facility, nursery school and reduction to minimum yard requirements based on error in building location to permit building to remain 9.1 ft. and 25.9 ft. from street lines of a corner lot. Located at 6481 Little River Tnpk. on approx. 13,450 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9))(A) 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. Don Zdancewicz, Agent, 9115 Andromeda Drive, Burke, 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 child care facility and nursery school with a maximum daily enrollment of 40 children and 8 employees. Also requested was a reduction to minimum yard requirements based on an error in building location to permit an existing building to remain 9.1 feet and 25.9 feet from the street lines of a corner lot. The percent of error for these structures was 13% along Little River Turnpike and 68% along Cherokee Avenue. Ms. Wilson stated that the applicant also requested modification to the transitional screening requirements.

Mr. Zdancewicz, Agent, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Zdancewicz stated that the request was necessary to use an existing

building for a day care center and nursery school and asked for the Board's approval of the application. Mr. Zdancewicz expressed the applicant's concern with condition #12 regarding right-of-way delineation to the Board of Supervisors. He stated that the applicant did not own the property in fee-simple and would not be able to guarantee that the condition would be accomplished. The applicant was in the process of trying to acquire the property within the next two years and had a lease to use the property and asked the Board to either strike the wording or amend it to state that at the time the applicant took possession of the property, they would dedicate.

Chairman DiGiulian called for speakers.

Keli Zorbe, 6477 Little River Turnpike, stated his support of the applicant's proposal and said that the location was deteriorating and the application would make the area more presentable.

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

Mr. Hammack expressed his concern with the deletion of condition #12 regarding dedication of right-of-way along the frontage of Little River Turnpike, since the applicant was not yet the owner of the property. Ms. Wilson stated that the request was from the Department of Transportation. She stated that there would not be a problem to revise the condition to read that the dedication would occur when the applicant became the owner. Ms. Wilson stated that VDOT would address this issue further at the time of site plan.

Ms. Gibb moved to approve SP 99-M-039 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 31, 1999, with the incorporation of the applicant's request to delete Condition 12.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HYERY PARK, SP 99-M-039 Appl. under Sect(s) 3-203 and 8-914 of the Zoning Ordinance to permit a child care facility, nursery school and reduction to minimum yard requirements based on error in building location to permit building to remain 9.1 ft. and 25.9 ft. from street lines of a corner lot. Located at 6481 Little River Tnpk. on approx. 13,450 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9))(A) 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 7, 1999; and

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

1. The applicant is the owner of the land.
2. The proposed use is in accordance with the Comprehensive Plan.
3. The child care center is located on the periphery of the property and near a commercial area, which seemed to be an ideal place for a child care center.

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, Hyery Park, 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 Holland Engineering, dated through July 23, 1999, showing the latest revision date as August, 1999, 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 Environmental Management. 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. 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. No students shall be permitted to attend the child care center or the nursery school until issuance of the Non-Residential Use Permit. The total maximum daily enrollment shall be limited to forty (40) children.

6. The maximum hours of operation shall be 6:30 A.M. to 7:30 P.M., Monday through Friday. The first and last hour of operation shall be limited to staff only on site.

7. The maximum number of employees shall be eight (8).

8. There shall be eight (8) parking spaces provided as shown on the special permit plat. All parking shall be limited to on site.

9. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

10. The transitional screening and barrier requirements shall be modified as depicted on the special permit plat. The proposed evergreen trees shall be a minimum of six (6) feet in height at time of planting. All trees shall be maintained in good health and replaced with like-kind plantings when necessary.

11. No more than twenty-four (24) children shall be permitted to use the playground area at any one time.

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

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

Mr. Kelley seconded the motion which carried by a vote of 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 15, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 173, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS M. AND JENNIFER W. GITTINS, SP 99-B-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 1.2 ft. and 0.5 ft. from rear lot line and 0.8 ft. from side lot line. Located at 4513 Banff St. on approx. 9,428 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-1 ((20)) 75.

Ms. Gittins came to the podium and stated that the contractor of the play structure had not arrived and asked if the application could be moved to the end of the agenda.

Chairman DiGiulian moved the application to the end of the agenda.

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Page 173, September 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ANTHONY H. AND JANE HOWELL LOMBARDI, VC 99-D-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard. Located at 6443 Linway Terr. on approx. 13,183 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((37)) 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. Anthony Lombardi and Jane Howell Lombardi, 6443 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 6.0 foot high fence to remain in a front yard of a corner lot. A maximum fence height of 4.0 feet is allowed in a front yard; therefore, a variance of 2.0 feet was requested.

Ms. Lombardi presented the variance request as outlined in the statement of justification submitted with the application. Ms. Lombardi stated that the property had easements and a storm drain which left very little usable yard space, other than the area requested. Ms. Lombardi stated that the fence was required for the safety of their two small children and that they did not know the limitations at the time the property was purchased. She stated that a 4.0 foot high fence would face the pipestem and noted that their neighbor currently had a 6.0 foot high fence and that their request would only extend the existing fence for sound, safety and privacy.

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

Mr. Dively moved to approve VC 99-D-077 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 31, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY H. AND JANE HOWELL LOMBARDI, VC 99-D-077 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard. Located at 6443 Linway Terr. on approx. 13,183 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((37)) 2. 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 7, 1999; and

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

1. The applicants are the owners of the land.
2. The fence was necessary due to the house being located on a very busy street.
3. Safety concerns dictate that a 6 foot high fence was more than sensible.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 six foot high fence in the location shown on the plat prepared by Kenneth W. White, dated May 20, 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. Ribble seconded the motion which carried by a vote of 5-2. 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 September 15, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. O-LUCK, INC., T/A HAPPI BILLIARDS & CAFÉ, SP 99-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit billiard and pool hall. Located at 7127-C Little River Tnpk. and 7129 John Marr Dr. on approx. 0.60 ac. of land zoned C-6, HC, SC, and CR. Mason District. Tax Map 71-1 ((23)) C.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mi Kim, 5530 Chesterfield Drive, 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 billiard and pool hall with an existing eating establishment as an accessory use. Mr. Bernal stated that the applicant anticipated a maximum of 40 patrons at its most intense time; and, therefore, proposed a maximum of 10 dining tables with 40 seats and a maximum of 10 to 12 pool tables during the hours of operation. A total of 10 employees with a maximum of 5 employees working each shift would be proposed. There were no proposed physical changes on the site.

Ms. Kim presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Kim reviewed the hours of operation and discussed the eating establishment proposal. She stated that the applicant had no objection to the proposed development conditions and asked for the Board's approval.

Chairman DiGiulian called for speakers.

Mark Crawford, Hillbrook Tall Oaks Civic Association, came to the podium to speak in opposition of the application. He stated that the association was concerned with having another pool hall in the area and did not want Annandale to become an entertainment center.

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

Mr. Pammel moved to approve SP 99-M-037 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated August 31, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

O-LUCK, INC., T/A HAPPI BILLIARDS & CAFÉ, SP 99-M-037 Appl. under Sect(s) 4-603 of the Zoning Ordinance to permit billiard and pool hall. Located at 7127-C Little River Tnpk. and 7129 John Marr Dr. on approx. 0.60 ac. of land zoned C-6, HC, SC, and CR. Mason District. Tax Map 71-1 ((23)) C. 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 7, 1999; and

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

1. The applicant is the lessee of the land.
2. The applicant has presented testimony indicating compliance with the general standards for the granting of a special permit application.
3. The applicant has the support and recommendation of the staff with respect to the 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). 4-603 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, O-Luck, Inc. t/a Happi Billiards and Café 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. Other by-right, special exception and special permit uses may be permitted on the lot without special permit amendment, if such uses do not affect this special permit use.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by John A. Ferri A.I.A. and Associates., dated April 16, 1999 as revised through June 9, 1999, 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 (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 modification 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. The applicant shall comply with all applicable alcoholic beverage control laws of the Commonwealth of Virginia.

6. Hours of operation shall not exceed to 11:30 a.m. to 11:00 p.m., Sunday through Thursday and 11:30 a.m. to 1:30 a.m., Friday and Saturdays.

7. Seating in the eating establishment shall be limited to a maximum of 40 seats. Billiard/pool tables shall be limited to a maximum of 12.

8. Any and all signs and awnings associated with this use that are affixed to the building shall be architecturally compatible with the shopping center. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.

9. Parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance as determined by the Department of Public Works and Environmental Services (DPWES).

This approval, contingent on the above-noted conditions, shall not relieve 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 15, 1999. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. CHAN LY THICH, SP 99-M-035 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit place of worship and related facilities. Located at 4701 Backlick Rd. on approx. 1.83 ac. of land zoned R-2. Mason District. Tax Map 71-1 ((1)) 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. Chan Ly Thich, 4701 Backlick Road, Annandale, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the Buddhist Temple had operated as a place of worship without a special permit. The applicant now requested a special permit to permit a place of worship as a temple with 25 worshipers which would also serve as a residence for up to four religious persons. A total of 8 parking spaces would be provided for the place of worship. Transitional screening was proposed along the northern, eastern and western property boundaries with an additional landscape buffer adjacent to the southern property boundary. Ms. Schilling stated that the site had a history of zoning and building code violations; however, to date, all outstanding building code violations had been cleared. All zoning violations had been cleared with the exception of operating a place of worship without a special permit.

Mr. Pammel asked if the Planning Commission was made aware of application. Ms. Schilling stated that they were aware of the application and that the citizens had a meeting where the Planning Commission member was present.

Mr. Pammel questioned why the Planning Commission had not pulled the application to hold a hearing and make a recommendation to the Board of Zoning Appeals.

Mr. Thich introduced his representative, Mr. Nguyen, to speak on his behalf. Mr. Nguyen presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Nguyen stated that the proposed use would not jeopardize the integrity of the Comprehensive Plan since the intended use was similar to a residential use. He stated that the proposed structure and addition and landscape amenities would enhance the architectural landscape of the neighborhood. Mr. Nguyen stated that while many violations had been created due to a misunderstanding and lack of knowledge with regard to planning laws, rules and regulations, the applicant was requesting the special permit to correct the deficiencies and to bring harmony to the neighborhood.

Mr. Hammack asked how the Board could be guaranteed that a maximum of 25 worshipers would attend in view of the history of violations.

Mr. Nguyen replied that this would be a guarantee from the owner, and if it was violated, the owner would then be subject to fines or penalties.

Mr. Nguyen had 17 members of the temple stand in recognition of their support of the application.

Ms. Gibb questioned if any of the zoning violations were issued regarding the numbers of attendees. Ms. Schilling stated that there was no approved special permit for a place of worship, so the issue of the numbers of worshipers was not one that could be addressed.

Chairman DiGiulian called for speakers.

William Rowe, President, Kensington Square Homeowners Association, 4720 Exeter Street, Annandale, Virginia, came to the podium to speak in opposition of the application. Mr. Rowe's presentation included a 5 minute verbal presentation which coincided with a video presentation, which was coordinated with other homeowners. Mr. Rowe reviewed the history of the property and expressed the following concerns with the application: The community supported the strict residential use of the property; the issue was land use related, not religious; the property was purchased in October 1996 and by the Spring of 1997, Mr. Thich had bulldozed 20 feet of property, not owned by him; there was concern from surrounding neighbors regarding the aesthetics of the neighborhood; there were traffic and safety issues; unauthorized construction activities, worship activities and property alterations had occurred on site.

Roffie Shahigian, 7107 Cindy Lane, Annandale, Virginia, representing Crestwood Manor Civic Association, came to the podium to speak in opposition of the application. Mr. Shahigian continued Mr. Rowe's video

presentation and expressed the following concerns with the application: Mr. Shahigian reviewed the video display with the Board members showing the construction process; which included sheds which were not allowed and unauthorized alterations to the house; the amount of traffic on the site was excessive; and, there were portable restrooms on site.

David Russell, President, Sunset Village Homeowners Association, came to the podium to speak in opposition of the application. He stated that the citizens had requested Commissioner Hall to hold a public hearing on the application; however, she had responded that she did not wish to interfere with the Board of Zoning Appeals' authority. Mr. Russell submitted a petition from the homeowners objecting to the application.

The following citizens expressed their objection to the application: Joel Coldman, Annandale Acres (no address given); Mark Crawford, Hillbrook Tall Oaks Civic Association, 4604 Monteray Drive, Annandale, Virginia; Fred Tansey, 7109 Cindy Lane, Annandale, Virginia; Don Taylor, 4620 Backlick Road, Annandale, Virginia, submitted a petition from Annandale Acres opposing the facility; Mary and Kathleen Scuby, Kensington Square Association, (no address given).

The expressed the following concerns: No curb, gutter, or storm drainage would be created with the proposed alterations; the use created an adverse impact on the surrounding community; there were public safety issues regarding traffic; there are other locations within Annandale available for such a facility; it is a non-residential use of the property; there have been numerous Code violations; the applicant had not acted in good faith to date; future actions of the applicant were uncertain; there were cars and patrons coming to the site at all times of the day and night with 4 to 5 patrons in each car; there were vehicles parked on Cindy Lane causing major traffic concerns; and, there needed to be replacement of fencing due to unauthorized construction.

Mr. Nguyen came to the podium to rebut the opposition. Mr. Nguyen stated that the violations on the property were recognized based on the lack of knowledge. He stated that the use, based on the Code, would remain a residential use. Regarding traffic safety and congestion, Mr. Nguyen stated that the construction of an entrance would need to meet all criteria, and therefore, would not be of concern.

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

Mr. Pammel made a motion to defer decision and refer the application to the Planning Commission for a public hearing. He expressed his concern, stating that the Planning Commission had the responsibility to interpret the Plan, which in this case, was not done.

Chairman DiGiulian stated that the Planning Commission already had the opportunity to pull the application if they had desired to hold a public hearing and make a recommendation to the Board of Zoning Appeals and that testimony occurred stating that they were not inclined to do this. Chairman DiGiulian stated that enough testimony was heard to rule on the application.

Mr. Ribble moved to deny SP 99-M-035 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHAN LY THICH, SP 99-M-035 Appl. under Sect(s) 3-203 of the Zoning Ordinance to permit place of worship and related facilities. Located at 4701 Backlick Rd. on approx. 1.83 ac. of land zoned R-2. Mason District. Tax Map 71-1 ((1)) 121. 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 7, 1999; and

Page 179, September 7, 1999, (Tape 1), CHAN LY THICH, SP 99-M-035, continued from Page 178

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

1. The applicant is the owner of the land.
2. The applicant did not work out issues with the neighbors and the Planning Commission has chosen not to hear the application.
3. The opposition had stated their case very well with regard to existing traffic concerns and water runoff.

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). 3-203 of the Zoning Ordinance.

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

Mr. Kelley and 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 15, 1999.

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Page 179, September 7, 1999, (Tape 2), 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, 12/1/98, 3/9/99 AND 6/8/99).

Chairman DiGiulian noted that an intent to defer the appeal application to November 2, 1999, was granted on August 10, 1999.

Mr. Pammel made a motion to defer Appeal Application A 1997-LE-028 to November 2, 1999, at 9:30 a.m. 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 179, September 7, 1999, (Tape 2), Scheduled case of:

9:30 A.M. RAYMOND W. JAMROS AND RITA K. JAMROS, A 1998-PR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellants' property is not a buildable lot under Sect. 2-405 of the Zoning Ordinance, that there is no grandfathered right to two dwellings on the property and that the property could not be subdivided without a variance of the minimum lot width requirement. Located at 10428 Miller Rd. on approx. 2.03 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 39. (MOVED FROM 8/11/98, 2/2/99 AND 7/6/99).

Chairman DiGiulian noted that an intent to defer the appeal application to October 26, 1999, was granted on August 10, 1999.

Mr. Pammel made a motion to defer Appeal Application A 1998-PR-013 to October 26, 1999, at 9:30 a.m. 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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9:30 A.M. BELLE HAVEN TOWERS APARTMENTS, A 1999-MV-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant has erected three building-mounted signs in violation of Par. 2. of Sect. 12-202 of the Zoning Ordinance. Located at 6034 and 6040 Richmond Hwy. on approx. 14.92 ac. of land zoned R-30 and HC. Mt. Vernon District. Tax Map 83-3 ((1)) 90 and 90B.

John Bell, Zoning Administration Division, made staff's presentation as contained in the staff report. Mr. Bell stated that the issue of the appeal was the displaying of three building mounted signs on two apartment buildings in the Belle Haven Towers Apartment complex. He said that the three signs each exceeded the 12 square feet per building size limit which would be permitted for signs displayed on multi-family dwellings. The signs also exceeded the height limit of 30 feet. Mr. Bell stated that the appellant did not challenge the applicability of the Zoning Ordinance provisions as cited in the Notice of Violation; however, requested permission to continue to display the building mounted signs at issue, of which there were no provisions in the Zoning Ordinance which would permit the signs to remain.

Gant Redmon, Agent, representing the appellant, stated there were no disagreements with regard to the facts that staff had listed within the staff report; however, he requested that the signs be allowed to remain. Mr. Redmon submitted photographs showing larger signs within the area which were allowed to remain. He stated that if the signs were not permitted to remain, it would cause a commercial and economic disadvantage to the appellant. Mr. Redmon expressed his concern that other facilities were allowed to have their larger signs displayed and asked if the Zoning Administration staff was also looking into these facilities as well.

Chairman DiGiulian called for speakers.

Joan Levine, Resident Manager of Belle Haven Apartments, stated that the signs were not visible from adjacent communities, only from Route 1. She stated that the signs had existed for 17 years and asked the Board to allow the signs to remain.

Isabelle Cappello, 5904 Mt. Eagle Drive, Apartment 814, Alexandria, Virginia, came to the podium to speak in opposition of the appeal application. She stated that the facility could be advertised on the Internet, internally within the complex on bulletin boards or within the real estate section of local newspapers, as opposed to having large signs displayed on top of the apartment building. Ms. Cappello requested that the Board enforce the Zoning Administrator's determination.

Edith Sprouse, Montebello Condominiums (no address given), came to the podium to speak in opposition of the appeal application. She stated that the signs were a visual eyesore and asked the Board to enforce the Zoning Administrator's determination.

William Shoup, Deputy Zoning Administrator, stated that once the appeal was filed, indicating that there were other facilities with sign errors, inspectors were sent to the area to deal with other similar situations and signs. He stated that some Notices were issued and that compliance had been obtained in some instances. He said that one of the other apartment complexes identified by Mr. Redmon was also issued a Notice of Violation, of which they had recently filed an appeal.

Mr. Redmon stated that if the appeal was denied, he requested a constitutional application of the Zoning Ordinance and would request a deferral with regard to compliance.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination, stating that there were no arguments regarding the facts with the case. He stated that it would not be unreasonable to allow the appellant time to bring the violation into compliance. Mr. Hammack requested staff to bring other competing facilities into compliance based on the outcome of the appeal. Mr. Pammel and 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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9:00 A.M. THOMAS M. AND JENNIFER W. GITTINS, SP 99-B-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 1.2 ft. and 0.5 ft. from rear lot line

and 0.8 ft. from side lot line. Located at 4513 Banff St. on approx. 9,428 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-1 ((20)) 75.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jennifer Gittins, 4513 Banff Street, Annandale, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Wilson stated that the application was originally heard on August 3, 1999, with a deferral to September 7, 1999. She stated that the Board had recommended that the building contractor of the play structure be present to explain their knowledge of the zoning requirements to determine if the structure was built in good faith. Ms. Wilson stated that it was also recommended that the contract, depicting the structure, be presented to the Board for their review.

Ms. Gittins submitted a copy of the original contract when she had purchased the play equipment. She referred to a new contract from the builder which addressed the concerns of the Board regarding zoning compliance. She stated that she had contacted the permit branch of the County which did not mention zoning requirements, of which she said would be supported by the contracts submitted.

William Shade, 13959 Oleander Court, Woodbridge, Virginia, Contractor, came to the podium to address the Board's concern.

Mr. Hammack asked if he was the owner who installed the play structure. Mr. Shade replied that he was the project manager, not the owner.

Mr. Hammack asked if County Zoning was contacted to determine setback requirements. Mr. Shade stated that in this particular application, the homeowner was informed to make sure everything was approved through Fairfax County.

Mr. Shade stated that a building permit was not required for the structure. He submitted a copy of the contract which stated that the homeowner was responsible for Association and Zoning compliance, if required.

Mr. Shade stated that there were no setback requirements because the usually structure was portable and could be moved. However, in Mrs. Gittins' case, the unit could not be easily moved due to the structure being built around existing trees within the yard.

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

Mr. Hammack moved to deny SP 99-B-030 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS M. AND JENNIFER W. GITTINS, SP 99-B-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit accessory structures to remain 1.2 ft. and 0.5 ft. from rear lot line and 0.8 ft. from side lot line. Located at 4513 Banff St. on approx. 9,428 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 70-1 ((20)) 75. (Continued from 8/3/99). 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 September 7, 1999; and

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

1. The applicant is the owner of the land.
2. It could not be determined that the error in location and in construction was done in good faith and that the applicant has satisfied the Board that all of the requirements for a special permit were met.

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). 3-203 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. 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 15, 1999.

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Page 182, September 7, 1999, (Tape 2), After Agenda Item:

Request for Intent to Defer for Ralph C. Duke
A 1999-HM-026

Mr. Pammel made a motion to approve the intent to defer to November 9, 1999, at 9:30 a.m. 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 182, September 7, 1999, (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request for Edward and Helen McGrath
VC 99-D-111

Mr. Pammel made a motion to deny the out-of-turn hearing request stating that the application could not be moved up much farther on the agenda. 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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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Deborah Hedrick

Approved on: October 26, 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, September 14, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Nancy Gibb; Robert Kelley; James Pammel; and, John Ribble. Paul Hammack 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.

Page 183, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN P. BUSH, VC 99-V-084 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 10 ft. 7 inches from rear lot line. Located at 6206 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3))(8) 3.

The applicant was not present when the application was called. The application was moved to the end of the agenda.

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Page 183, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ELSIE C. DULL, VC 99-P-085 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from both side lot lines. Located at 2945 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 169.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fred Taylor, Agent, 2000 N. 14th 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 variance to permit the construction of a dwelling 9 feet from both side lot lines. A minimum side yard of 20 feet is required; therefore, a variance of 11 feet was requested for each side yard.

Mr. Taylor, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the property was 60 feet wide and there was a 20 foot side yard requirement on either side of it. Mr. Taylor said the net result was a building envelope that would allow a house 20 feet wide to be constructed on the property. He stated that some of the houses in the subdivision were constructed in the early 1940s and the sizes of the lots varied, but the practical problem was the fact that this was a building lot that was created before the Zoning Ordinance. Mr. Taylor said the builder who had the property under contract, contemplated building a house approximately 2500 square feet in size. He stated that the house to the left was approximately 4000 square feet in size and the house to the right was somewhat smaller. Mr. Taylor said that he felt it would make a logical transition. He said their request was to be allowed to construct the house with a resultant side setback of 9 feet on either side. Mr. Taylor said the configuration of the property was narrow and deep. He stated that there was flexibility in moving the house if it would help with landscaping, tree save, or anything else of that sort.

Mr. Pammel asked Mr. Taylor if he had approached the owner of Lot 70 to purchase their lot. Mr. Taylor stated that if the owner was willing to sell, they would not need to request a variance.

Ms. Gibb asked Mr. Taylor if he had seen the letters submitted by the neighbors. He replied that he had knowledge that they existed but had not seen them. Mr. Taylor said the builder had met with the neighbors.

Ms. Gibb stated that homeowners on both sides wrote letters and from the photographs submitted, the house would be larger and stylistically different.

Mr. Taylor stated that other houses with their additions were the same size as the proposed house and there were some that were larger. He said stylistically, it was a colonial house, but it would be a house that was a common site over the last 20 years.

Chairman DiGiulian called for speakers.

Beverly Brown, owner of the property to the right, came forward to speak in opposition. She stated that her main concerns were possible damage to tree roots of very large mature trees located on the property line and the house not fitting in with the character of the neighborhood. Ms. Brown submitted photographs reflecting the other houses in the neighborhood and the tree line. She said she was not opposed to the building of a house on the lot, but asked that it be located on the lot where it would not do damage to the trees. Ms. Brown also asked that the house be built in a manner more congruent with the other homes in the neighborhood.

Mr. Taylor stated in his rebuttal that the trees were of concern and maybe they could move the house back because they had the flexibility of the depth of the site. He said if it made sense to do that they could return before the Board with something more acceptable to the adjacent owner.

Chairman DiGiulian asked Mr. Taylor how long would it take. Mr. Taylor said approximately three weeks.

Mr. Pammel asked Mr. Taylor if the applicant could live with greater side yards such as 15 feet on either side. Mr. Taylor responded that the applicant could not. He said the particular house was the one the applicant felt would fit best and the one that could be turned in such a manner that it would least offend the side lines.

Chairman DiGiulian closed the public hearing.

Mr. Dively stated that he was of a mind to approve the variance but it was a good thing to see the applicant and the neighbors work together and accommodate each other.

Ms. Gibb said she had a little problem with the bulk of the house on this particular lot, but she was open to see what happened when it was moved back. Ms. Gibb stated that the house didn't seem consistent with the rest of the neighborhood.

Mr. Pammel said he would favor a lesser variance so that there was more side yards and if the applicant could come up with something that was more in keeping with that, he could support it.

Mr. Kelley and Chairman DiGiulian both said they agreed with Mr. Pammel's comments.

Mr. Dively moved to continue the public hearing for VC 99-P-085 to October 5, 1999. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 184, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KEITH W. PIERCE, VC 99-M-086 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line. Located at 3137 Dashiell Rd. on approx. 10,262 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 88.

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 Pierce, 3137 Dashiell Road, 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 accessory structure 6 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6 feet was requested.

Mr. Pierce presented the variance request as outlined in the statement of justification submitted with the application. He said there were two large trees over 50 years old on the lot and to build a garage by-right would cause removal of the trees. Mr. Pierce presented photographs of other garages in the neighborhood and said the proposed garage was consistent with the neighborhood.

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

Mr. Pammel moved to approve VC 99-M-086 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEITH W. PIERCE, VC 99-M-086 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side lot line. Located at 3137 Dashiell Rd. on approx. 10,262 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 88. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 size and configuration of the lot provides no other location for the detached 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 detached garage shown on the plat prepared by CAD-CON Consulting Inc., dated May 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 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.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 186, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS AND ALISON GILLARD, VC 99-V-087 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 1204 Wake Forest Dr. on approx. 13,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((6))(1)3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Langston, 1207 Tulane Drive, Alexandria, 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 an addition 10 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2 feet was requested.

Mr. Langston, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the major concern of the designer of the addition was that the addition be compatible with the neighborhood. Mr. Langston presented two letters to the Board supporting the application.

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

Mr. Ribble moved to approve VC 99-V-087 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS AND ALISON GILLARD, VC 99-V-087 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 1204 Wake Forest Dr. on approx. 13,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((6))(1)3. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 as outlined in the statement of justification.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 shown on the plat prepared by Kenneth W. White, Land Surveyor, as revised by Robert Andrew Langston, Architect, dated November 5, 1992, as revised (received July 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 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 moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 188, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DONALD C. AND SHIRLEY S. STRATTON, VC 99-L-054 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 23.7 ft. from street line of a corner lot. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5))(A) 1. (Reconsideration granted 7/13/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald Stratton, 5700 Norton Road, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. On July 6, 1999, the Board of Zoning Appeals approved Special Permit SP 99-L-028 to permit a reduction to the minimum yard requirements based on error in building location to permit a covered deck addition to remain 6.4 feet from the side lot line, and Variance VC 99-L-054 to permit the construction of an addition 23.7 feet from the street line of a corner lot. The approval of the variance was subject to development conditions which included a condition that the applicant remove the existing driveway and parking area on the lot when the proposed garage and new driveway was constructed.

On July 13, 1999, the Board of Zoning Appeals approved a request for reconsideration of VC 99-L-054 made by the applicants. In their request for reconsideration, the applicants stated that the additional driveway was still needed, and asked that the Board of Zoning Appeals delete the condition requiring the removal of the existing driveway and parking area.

Mr. Stratton stated that they had been trying to put a garage on their property for several years. He said he had received some erroneous information from someone about 4 or 5 years ago indicating that he would not be able to build a garage. Mr. Stratton said when he found out that they could build a garage in spite of the easement that runs through his backyard, they decided that requesting the variance was the only way to achieve it. Mr. Stratton said the current conditions would require them to remove a concrete walk, which was their principal entrance, and some large trees. Mr. Stratton stated that he had a State Engineer at the site for the driveway and was told that in order to meet their requirements he wouldn't have to remove any trees for his proposal. He stated that the "so-called" 2nd driveway was a gravel pad to park his trailer and it was the only place to park the trailer because of the traffic on Norton and Burgundy Road. Mr. Stratton said the gravel pad did not front on the road.

Mr. Pammel asked how many vehicles Mr. Stratton had. Mr. Stratton replied he had one car and one truck, but he still wanted to keep his driveway.

Mr. Pammel questioned the applicant about needing so many driveways and the need for a garage. Mr. Stratton said he needed a garage to shield his vehicles from the elements and the driveways for use for his guests, but he also needed them for access to the front of the house because it was extremely dangerous to park on the street in front of his house.

Mr. Ribble asked why there was a State Engineer on site. Mr. Stratton said he was told that before he built the new driveway, he should check with the State to make sure that he was able to get a permit to come out onto the state road, Burgundy Road.

Ms. Gibb questioned Mr. Stratton about the driveways. He responded that if they had to remove the driveway, it would change the entire configuration of the entrance to his home.

Mr. Dively asked Mr. Stratton if he had spoken with the neighbors. Mr. Stratton said he had spoken with the neighbors and they had no problem with the proposal.

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

Ms. Gibb moved to approve VC 99-L-054 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD C. AND SHIRLEY S. STRATTON, VC 99-L-054 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 23.7 ft. from street line of a corner lot. Located at 5700 Norton Rd. on approx. 16,919 sq. ft. of land zoned R-3. Lee District. Tax Map 82-2 ((5))(A) 1. (Reconsideration granted 7/13/99). 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 14, 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 Board had already approved the variance.
4. The applicants presented testimony indicating that the previously approved condition to remove the driveway would unfairly restrict the use of their 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 garage addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 24, 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 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 190, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EILEEN AND WILLIAM HAYDEN, VC 99-D-088 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16.

Chairman DiGiulian noted that the application had been administratively moved to October 5, 1999.

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Page 190, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN L. CONNOR, VC 99-V-080 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of garage 5.5 ft. from side lot line. Located at 8700 Bluedale St. on approx. 10,574 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6))(27) 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. Brian L. Connor, 8700 Bluedale 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 5.5 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.5 was requested.

Mr. Connor presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to replace the existing carport with a 2-car garage. Mr. Connor said the dwelling was located in the middle of the lot and the proposed location was the most logical place to build it. He stated that the Board had approved three 3 similar variances in the area. Mr. Connor stated that he had met with the neighbors and received unanimous approval. He asked for a waiver of the 8-day waiting period.

Ms. Gibb asked about the applicant's statement of justification because it wasn't included in the staff report. Mr. Connor replied that he had submitted it with his application.

Mr. Pammel asked if the proposed garage would be one story. Mr. Connor replied yes.

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

Mr. Kelley moved to approve VC 99-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

BRIAN L. CONNOR, VC 99-V-080 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of garage 5.5 ft. from side lot line. Located at 8700 Bluedale St. on approx. 10,574 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((6))(27) 10. 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 14, 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 an addition (garage) shown on the plat prepared by Donald J. Zdancewicz, dated June 21, 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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting. Mr. Kelley moved to waive the 8-day waiting period. Mr. Ribble 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 September 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 192, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. T. CHRISTOPHER AND ARIANNE MASSEY, VC 99-M-081 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing less than 36,000 sq. ft. and permit fence to exceed 4.0 ft. in height in front yards of a corner lot. Located at 6437 Woodville Dr. on approx. 21,839 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((8)) 87.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. T. Christopher and Arianne Massey, 6437 Woodville 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 variance to permit a swimming pool and deck in a front yard of a lot containing less than 36,000 square feet and to permit a fence exceeding 4 feet in height in front yards of a corner lot.

Mr. Massey presented the variance request as outlined in the statement of justification submitted with the application. He said the fence height would vary and have a maximum height of 7 feet, but the average height would be 5 feet. Mr. Massey said the fence and retaining wall were failing and needed to be replaced. He asked for a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve VC 99-M-081 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

T. CHRISTOPHER AND ARIANNE MASSEY, VC 99-M-081 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing less than 36,000 sq. ft. and permit fence to exceed 4.0 ft. in height in front yards of a corner lot. Located at 6437 Woodville Dr. on approx. 21,839 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((8)) 87. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 variance was requested because of the topographic situation involved on a corner lot.
4. If the variances requested were not granted the applicants would not have the use of a significant part of their 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 accessory structures (pool and deck) and a fence as shown on the plat prepared by Kenneth W. White, dated May 27, 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 approve a waiver of the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 194, September 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN P. BUSH, VC 99-V-084 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 10 ft. 7 inches from rear lot line. Located at 6206 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3))(8) 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. Bernard Bartzen, 100 Shockhoe Slip, Richmond, Virginia, replied that it was.

Mr. Dively asked whether the applicant was the brother of the Governor of Texas. Mr. Bartzen replied yes. Mr. Dively said he had been a member of the financing campaign committee for the Governor since the Presidential Exploratory Committee was formed and he was part of the grassroots organizational effort; therefore, he recused himself from the meeting.

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 accessory structure 10 feet 7 inches from the rear lot line. A minimum rear yard of 34 feet 3 inches is required; therefore, a variance of 23 feet 6 inches was requested.

Mr. Bartzen, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the request was for renovation of an existing structure which would encompass the same general size. Mr. Bartzen stated that the structure was currently within 2 feet of the property line and the renovation would move it back.

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

Mr. Ribble moved to approve VC 99-V-084 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARVIN P. BUSH, VC 99-V-084 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of accessory structure 10 ft. 7 inches from rear lot line. Located at 6206 Fort Hunt Rd. on approx. 28,600 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3))(8) 3. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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. This is an extraordinary situation of the subject property because it is a renovation of an existing structure which is the driveway entrance to the main 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 accessory structure shown on the plat prepared by Marcellus Wright Cox & Smith Architects, dated June 21, 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 accessory structure shall be architecturally compatible with the existing dwelling.

4. The accessory structure shall not be utilized as a guest house or dwelling unit.

Pursuant to Sect. 18-407 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. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 196, September 14, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration
Thomas and Jennifer Gittins, SP 99-B-030

Susan Langdon noted that the applicant was present to speak regarding the request for reconsideration because staff never received her written request.

Ms. Gittins came forward stating that she understood that the denial was centered around whether or not there was a good faith effort and the letter addressed that issue. She stated that she made three good faith efforts; she checked with the builder who said check with the County, and she also checked with her homeowners association. Ms. Gittins said the County told her she didn't need a building permit. She stated that she checked with three different sources which all gave her the go ahead, but prior to the zoning issue she had made many good faith efforts with her neighbor, Ms. VanOrden. Ms. Gittins stated that her neighbor never responded, even after they offered all kinds of solutions. Ms. Gittins stated that these were the reasons she requested a reconsideration.

Mr. Pammel stated that maybe the Board overlooked the fact that she did go out of her way to make good faith efforts to try and do what was right. He said he had no problem with granting a reconsideration and moved to approve the reconsideration.

Ms. Gibb said she didn't speak up last time, but her concerns about the application were related to safety and access to the neighbor's property.

Chairman DiGiulian said the neighbor didn't indicate there was a lot of effort in trying to contact her.

There was no second and the motion failed. The request for reconsideration was denied.

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Page 197, September 14, 1999, (Tape 1), After Agenda Item:

Approval of September 7, 1999 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 197, September 14, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
St. Paul's Episcopal Church and St. Paul's Episcopal Day School
SPA 98-M-036

Mr. Kelley moved to deny the request for an out of turn hearing. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 197, September 14, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Rosemary E. Irons, VC 99-Y-117 and SP 99-Y-055

Mr. Pammel moved to deny the request for Out of Turn Hearing. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 197, September 14, 1999, (Tape 1), After Agenda Item:

Additional Time Request
David Jablonski, VC 96-V-147

Mr. Pammel moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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Page 197, September 14, 1999, (Tape 1), After Agenda Item:

Approval of May 25, 1999 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:17 a.m.

Minutes by: Regina Thorn

Approved on: November 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, September 21, 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.

Page 199, September 21, 1999, (Tape 1), Scheduled Case of:

9:00 A.M. ALMA P. POWELL, SP 99-D-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 accessory structure to remain 2.0 ft. from side lot line and 4.5 ft. from rear lot line. Located at 1546 Davidson Rd. on approx. 9,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 35A. (Concurrent with VC 99-D-076). ADMINISTRATIVELY MOVED FROM 7/27/99 FOR NOTICES).

9:00 A.M. ALMA P. POWELL, VC 99-D-076 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from rear lot line, accessory structure in front yard of lot containing less than 36,000 sq. ft. and 6.0 ft. high fence in front yard. Located at 1546 Davidson Rd. on approx. 9,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 35A. (Concurrent with SP 99-D-034). (ADMINISTRATIVELY MOVED FROM 7/27/99 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. James H. Powell, 1546 Davidson 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 for an error in building location to permit an accessory structure to remain 2.0 feet from the side lot line and 4.5 feet from the rear lot line. The applicant also requested several variances and that the first variance request was to permit the construction of a two-story garage with a room addition to be located 16.5 feet from the rear lot line; the second variance was to permit a swimming pool to remain in the front yard of a lot containing less than 36,000 feet; and the third variance was to permit the construction of a 6.0 foot high fence in a portion of the front yard. The minimum rear yard requirement in an R-3 District was 25 feet; therefore, a variance of 8.5 feet was requested for the two-story room addition. A maximum fence height of 4.0 feet was permitted in the front yard; therefore, a variance of 2.0 feet for the fence height was requested.

Mr. Powell informed the Board that his surveyor, Carl Gardener, would make the presentation on his behalf. Mr. Gardener presented the special permit and variance requests as outlined in the statements of justification submitted with the application. He addressed the special permit request by stating that the shed in question was a replacement for the original shed that was constructed in the early 1960's. He said the shed only exceeded the maximum height for a side yard by 1 1/2 feet, it was a very attractive shed and it posed no problems in the neighborhood.

Mr. Powell spoke to the variance regarding the fence by stating that the fence was a privacy fence to protect the swimming pool and since it was located more than 20 feet away from the property line on Davidson Road it did not pose any problems with regard to site line distance. He informed the Board that the rear portion of the existing structure was only 15.4 feet away from the property line, which represented a nonconforming use that was constructed in the 1930's. Mr. Powell stated that the proposed garage would be located 1.1 feet further back from the existing structure and the applicant's reason for the proposed garage was to provide shelter for his three vehicles that were currently being stored on an adjacent property.

Mr. Dively asked what was the current square footage of the dwelling. Mr. Powell answered that it was approximately 1,000 square feet. Mr. Dively asked what the total square feet would be if the proposed construction was approved. Mr. Powell replied that it would double the amount of square footage.

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

Mr. Pammel stated that the lot was unusual, extremely shallow and that there was an existing nonconforming building on the lot.

Mr. Pammel moved to approve SP 99-D-034 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALMA P. POWELL, SP 99-D-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 accessory structure to remain 2.0 ft. from side lot line and 4.5 ft. from rear lot line. Located at 1546 Davidson Rd. on approx. 9,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 35A. (Concurrent with VC 99-D-076). (ADMINISTRATIVELY MOVED FROM 7/27/99 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 September 21, 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 storage structure shown on the plat

2. prepared by L. Carl Gardner, Jr., dated March 17, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 99-D-076 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALMA P. POWELL, VC 99-D-076 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from rear lot line, accessory structure in front yard of lot containing less than 36,000 sq. ft. and 6.0 ft. high fence in front yard. Located at 1546 Davidson Rd. on approx. 9,000 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-3 ((1)) 35A. (Concurrent with SP 99-D-034). (ADMINISTRATIVELY MOVED FROM 7/27/99 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 September 21, 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 proposed addition is further from the rear lot line that the existing structure.
4. The fence, although it was located in the front yard, did not create a situation where there was obstruction with respect to vehicular traffic.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 addition, an above ground pool and a fence as shown on the plat prepared by L. Carl Gardner, Jr., dated 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 dwelling.

Pursuant to Sect. 18-407 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 202, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DOUGLAS H. DORITY, VC 99-D-089 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1102 Clover Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((10)) 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. Douglas H. Dority, 1102 Clover 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 variance to permit the construction of a garage addition to be located 8.0 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 7.0 feet was requested.

Mr. Dority presented the variance request as outlined in the statement of justification submitted with the

application. He explained that his current carport was only big enough to accommodate one vehicle and his family owned three. Since his house was positioned in the center of the property, this was the only place he was able to construct a garage. Mr. Dority also stated that his neighbors were in support of the application.

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

Mr. Hammack moved to approve VC 99-D-089 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS H. DORITY, VC 99-D-089 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1102 Clover Dr. on approx. 15,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((10)) 29. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1999; and

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

1. The applicant is the owner of the land.
2. The proposed construction would enclose, in part, an existing carport and it is necessitated by the central placement of the residence on the property.
3. This is one of the narrower lots in the subdivision.
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 garage addition shown on the plat prepared by Frederick D. Neal, dated May 21, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 204, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. VIVIANNE M. CECELIC, TRUSTEE, VC 99-D-091 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 24.1 ft. from street line of a corner lot. Located at 7406 Lisle Ave. on approx. 8,987 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((8)) 40.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vivianne M. Cecelic, 7406 Lisle Avenue, Falls Church, 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 allow the construction of a carport with a second story addition 24.1 feet from the front lot line of a corner lot. A minimum front yard of 30 feet is required; therefore, a variance of 5.9 feet was requested.

Ms. Cecelic presented the variance request as outlined in the statement of justification submitted with the application. She stated that her request was clearly outlined in Appendix III of the Staff Report and that she had nothing further to add.

Mr. Dively asked why the proposed addition extended further out than the face of the house. Ms. Cecelic answered that she was putting a laundry room on the back of the addition.

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

Mr. Dively moved to approve VC 99-D-091 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VIVIANNE M. CECELIC, TRUSTEE, VC 99-D-091 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 24.1 ft. from street line of a corner lot. Located at 7406 Lisle Ave. on approx. 8,987 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((8)) 40. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1999; and

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

1. The applicant is the owner of the land.
2. Based on the testimony in the statement of justification, this lot is smaller and that is not typical in this neighborhood.
3. This is a minimal variance request.
4. The addition is not overly 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 a two story addition with carport on the ground level, shown on the plat prepared by Kenneth W. White, dated May 21, 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 September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 206, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JEFFERY AND TERESA STILLMAN, VC 99-L-075 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. and fence greater than 4.0 ft. in height in front yard. Located at 6420 Hillview Ave. on approx. 15,634 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((2))(9) 1. (ADMINISTRATIVELY MOVED FROM 8/10/99 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. Teresa L. Stillman, 5430 Hillview Avenue, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit an accessory structure to remain in the front yard of a lot containing less than 36,000 sq. feet and for a fence greater than 4.0 feet in height in a front yard. The Zoning Ordinance stipulates that no accessory structure except a statue, basketball standard or a flagpole, should be located in the front yard of any lot containing less than 36,000 square feet and that the maximum height for a fence is 4.0 feet. The existing fence was 6.0 feet; therefore, a variance of 2.0 feet was requested.

Ms. Gibb asked whether or not the issue with the carport had been resolved. Ms. Stillman answered that they had obtained a building permit for the carport and that that issue had been resolved.

Ms. Stillman presented the variance request as outlined in the statement of justification submitted with the application. She informed the Board that when she purchased the house in August of 1993, it was in a foreclosure state, it had been unoccupied for a period of time and was in a total state of disarray. She said that since that time she and her family had remodeled the home and upon replacing the dilapidated fence in the backyard they added two additional sections that went to the left of where the original fence was. It was because of these additional sections that she was in need of a variance. Ms. Stillman explained that the way the house was situated on the lot did not leave much room in the backyard, and the shed was constructed in the only practical location. She said that the shed did not present an eyesore to the neighborhood. She informed the Board that they had full neighborhood support.

Mr. Hammack asked for clarification regarding the location of their shed in proximity to a neighbor's. Ms. Stillman replied that the two sheds were almost right next to one another and she stated that the 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-L-075 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFERY AND TERESA STILLMAN, VC 99-L-075 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing less than 36,000 sq. ft. and fence greater than 4.0 ft. in height in front yard. Located at 6420 Hillview Ave. on approx. 15,634 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((2))(9) 1. (ADMINISTRATIVELY MOVED FROM 8/10/99 FOR NOTICES). 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 21, 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 applicants, in the letter of justification, site the shallowness, the shape, and the topographic problems of the lot.
4. There was a slab where the accessory structure was previously located.
5. The applicants did a nice job in fixing up the house and it is an asset to the neighborhood and to 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 location of an accessory storage structure and six (6) foot high fence shown on the plat prepared by Kenneth W. White, dated February 25, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 208, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SARATOGA RECREATION GROUP, INC., SPA 74-S-023 Appl. under Sect(s) 3-803 of the Zoning Ordinance to amend SP 74-S-023 for community swimming pool and tennis club to permit change in permittee and change in development conditions. Located at 8070 Edinburgh Dr. on approx. 3.52 ac. of land zoned R-8. Springfield District. Tax Map 98-2 ((8)) F. (ADMINISTRATIVELY MOVED FROM 8/3/99 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. Linda Burke, 8010 Sleepy View Lane, Springfield, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to their special permit to allow a change in permittee from Wills and Van Metre, Inc. to Saratoga Recreation Group, Inc. and to modify Development Condition #6 to allow family memberships outside the Saratoga subdivision to include families residing within a 5 mile radius of the pool and tennis club. In staff's evaluation there were no outstanding issues associated with the request and staff recommended approval of SPA 74-S-023.

Mr. Hammack asked, due to the increased area of the membership, whether adequate parking had been taken into consideration. Ms. Schilling replied when the Department of Transportation, (DOT), reviewed the application they concluded that the total memberships permitted would not increase the parking requirement.

Ms. Burke presented the special permit amendment as outlined in the statement of justification submitted with the application. She explained that there was an enormous amount of parking for the area, the parking lot was rarely half full and parking really was not an issue. She said that the special permit was needed to sustain the facility financially, because the surrounding neighborhood was mostly made up of elderly people who would not utilize the center; therefore, there was a great need to expand the membership to include several developments that had been constructed after the facility was built.

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

Ms. Gibb moved to approve SPA 74-S-023 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SARATOGA RECREATION GROUP, INC., SPA 74-S-023 Appl. under Sect(s) 3-803 of the Zoning Ordinance to amend SP 74-S-023 for community swimming pool and tennis club to permit change in permittee and change in development conditions. Located at 8070 Edinburgh Dr. on approx. 3.52 ac. of land zoned R-8. Springfield District. Tax Map 98-2 ((8)) F. (ADMINISTRATIVELY MOVED FROM 8/3/99 FOR NOTICES). 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 21, 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) 3-803 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, Saratoga Recreation Group, and is not transferable without further action of this Board, and is for the location indicated on the application, 8070 Edinburgh Drive (3.52 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 Curtis D. Miller, P.E., dated January, 1973, as revised through July 23, 1975, 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 family memberships shall not exceed 750, and shall be limited to residents within a 5 mile radius of the swim and tennis club.

6. The hours of operation shall be a maximum of 9:00 a.m. to 9:00 p.m., seven days a week. Any after hours party shall require the prior approval of the Zoning Administrator and such parties shall be limited to 6 per year.

7. There shall be a minimum of 115 parking spaces and a maximum of 119 parking spaces, located as shown on the special permit plat. All parking shall be on-site.

8. The pool facilities and tennis courts shall be fenced as shown on the special permit plat. The barrier requirement is waived.

9. Landscaping shown on the special permit plat shall be deemed to satisfy transitional screening requirements. Existing landscaping shall be maintained in good condition and all dead or dying plant materials shall be replaced.

10. All loudspeakers, noise and lights shall be directed to the pool area. No additional lighting shall be permitted without amendment of this special permit. The lights shall focus downward, and shields shall be installed, if necessary, to prevent existing lighting from projecting beyond the facility or off the property.

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, six (6) months after the date of approval* unless the use has been established by obtaining a new Non-Residential Use Permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 29, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 210, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH K. BLANK, VC 99-Y-092 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft. from street line of a corner lot. Located at 5700 Barrymore Rd. on approx. 13,516 sq. ft. of land zoned R-2 (Cluster), AN and WS. Sully District. Tax Map 53-2 ((2))(14)) 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. Joseph K. Blank, 5700 Barrymore Road 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 construct an addition, which would be a garage, 18.9 feet from the front lot line. A minimum 25 foot front yard was required; therefore, a variance of 6.1 feet was requested.

Mr. Blank presented the variance request as outlined in the statement of justification submitted with the application. He explained that he requested the variance for a double car garage to protect his vehicles from the weather. He said that the garage would be in character with the neighborhood and that he had full neighborhood support.

Mr. Kelley asked if the garage could be located in another place on the property. Mr. Blank answered that there was no other practical place on the property for the garage to be located.

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

Mr. Kelley moved to approve VC 99-D-092 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH K. BLANK, VC 99-Y-092 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 18.9 ft. from street line of a corner lot. Located at 5700 Barrymore Rd. on approx. 13,516 sq. ft. of land zoned R-2 (Cluster), AN and WS. Sully District. Tax Map 53-2 ((2))(14)) 18. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 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 applicant has two front yards.
4. This is the only practical location for the garage addition.
5. The applicant explained his situation very well in the statement of justification submitted with the application.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Bartlett Consultants, Ltd., certified by Joseph J. Chavez on July 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 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.

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 September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 212, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM AND JOAN JOLLEY, VC 99-D-094 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6459 Overbrook St. on approx. 10,500 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-3 ((4)) 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. Joe Ressa, 3432 N. Glebe Road, Arlington, 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 8.0 feet from the side lot line. A minimum 10.0 foot side yard is required; therefore, a variance of 2.0 feet was requested.

Mr. Ressa presented the variance request as outlined in the statement of justification submitted with the application. He explained that the applicants had lived in the house for 35 years and recently Mr. Jolley became unable to move up and down the stairs; therefore, the applicants were in need of an addition of a bedroom and bathroom in a more accessible location of the home. Mr. Ressa said that they had full neighborhood support.

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

Mr. Hammack moved to approve VC 99-D-094 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM AND JOAN JOLLEY, VC 99-D-094 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 6459 Overbrook St. on approx. 10,500 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-3 ((4)) 22. 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; 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 addition (bedroom/bathroom) shown on the plat prepared by Alexandria Surveys, Inc., dated June 2, 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.

Pursuant to Sect. 18-407 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 September 29, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 214, September 21, 1999, (Tape 1), Scheduled case of:

9:00 A.M. J. LAWRENCE HIRSCH, SP 99-V-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 dwelling to remain 28.3 ft. from front lot line. Located at 4106 Ferry Landing Rd. on approx. 22,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((2))(D) 92, 93, and 94.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Mitchell, 322 East Hume Avenue, Alexandria, Virginia, replied that it was.

Phyllis Wilson, 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 dwelling, specifically a portion of the attached garage to remain 28.3 feet from the front lot line. A minimum 35.0 foot front yard is required and the variance requested was 6.7 feet.

Mr. Mitchell, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He informed the Board that although there was a front yard set back, the garage was built on the side yard.

Ms. Gibb asked how the applicant discovered the error. Mr. Mitchell replied that their house was for sale and the error was discovered by a surveyor at the time a contract was put on the home. He explained that the error was made when the mason was laying out the footers for the garage.

Ms. Gibb asked if they currently had a contract to sell the house. Mr. Mitchell answered that the contract fell through because of the error in building location.

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

Mr. Pammel moved to approve SP 99-V-041 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

J. LAWRENCE HIRSCH, SP 99-V-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 dwelling to remain 28.3 ft. from front lot line. Located at 4106 Ferry Landing Rd. on approx. 22,500 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((2))(D) 92, 93, and 94. 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 21, 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 R.C. Fields, Jr. & Associates, dated April 14, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 215, September 21, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance.

Determination that appellant is maintaining two separate dwelling units on one lot and is allowing the parking of the tractor portion of a tractor-trailer truck on residential property, both in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3.

Chairman DiGiulian explained that on September 7, 1999, the Board issued an intent to defer to November 9, 1999.

Mr. Pammel moved to defer A 1999-HM-026 to November 9, 1999. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 216, September 21, 1999, (Tape 1), After Agenda Item:

Approval of February 23, 1999 and June 29, 1999 Minutes

Mr. Pammel moved to approve February 23, 1999 and June 29, 1999 Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 216, September 21, 1999, (Tape 1), After Agenda Item:

Additional Time request for Lawrence R. Pfeifle, VC 97-Y-009

Mr. Dively moved to approve the additional time request for VC 97-Y-009. Mr. Pammel seconded the motion which carried by a vote of 7-0. The new expiration date is May 9, 2000.

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Page 216, September 21, 1999, (Tape 1), After Agenda Item:

Memorandum from William Shoup regarding acceptance of Appeal Application for Riverside Park LTD Partnership DBA Riverside Park Apartments.

Ms. Gibb asked how the application was received. William E. Shoup, Deputy Zoning Administrator, answered that the application was delivered by courier on August 26, 1999. Mrs. Gibb asked if, upon filing an appeal, a separate statement needed to be provided. Mr. Shoup replied that the Ordinance required a separate signed statement setting forth the grounds for the appeal. Ms. Gibb asked if not including a separate statement was a common mistake. Mr. Shoup answered that it was not a common mistake and pointed out that there were spaces on the application provided for the appellants to satisfy the requirement set forth, the date of the decision and the grounds for the appeal. He explained that in the past he had accepted appeals with very little explanation of the grounds for the appeal noted on the application form itself and in this case, there was no explanation at all. Mr. Shoup pointed out that the appeal was not filed in a timely manner.

Mr. Hammack asked if July 26, 1999, was counted as one of the days. Mr. Shoup replied that July 27, 1999 was considered day one and because there were 31 days in July, they were required to file the appeal by Wednesday, August 25, 1999.

Ms. Gibb asked if it was a common mistake for people to file appeals late. Mr. Shoup answered that this mistake was made occasionally and said that it was clear in the Notice of Violation that they need to file the appeal within 30 days from the date of the decision.

Mr. Shoup noted that the appeal in question involved illegal signs on an apartment complex and that it was similar to a previous appeal heard before the Board. He said that Mr. Dove had contacted staff the previous week and asked about the disposition of that case. He said that Mr. Dove had indicated to that staff person that, as a result of the previous appeal, he might withdraw the application.

Page 217, September 21, 1999, (Tape 1), After Agenda Item, continued from Page 216

Mr. Kelley asked if Mr. Dove had indicated that he was going to be present at the current hearing. Mr. Shoup answered that staff tried to contact him by phone several times and left messages regarding the hearing. He added that Mr. Dove was also copied on the Memorandum.

Mr. Kelley moved not to accept Riverside Park LTD Partnership DBA Riverside Park Apartments. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 217, September 21, 1999, (Tape 1), After Agenda Item:

Approval of September 14, 1999 Resolutions

Mr. Pammel moved to approve the September 14, 1999, Resolutions. There was no second and the motion carried by a vote of 7-0.

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Page 217, September 21, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer Jacquie Shonk, A 1997-DR-035

William, E. Shoup, Deputy Zoning Administrator, stated that there was no objection to the deferral request and said that it did not involve a Notice of Violation, but it was an issue of lot width. He said the appellant had recently filed a variance to try to address the problem. Mr. Shoup recommended a date of January 25, 2000.

Mr. Dively moved to defer A 1997-DR-035 to January 25, 2000. 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 10:02 a.m.

Minutes by: Lori M. Mallam

Approved on: December 14, 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, September 28, 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 9:03 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals.

Page 219, September 28, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HELGA M. DAVIES, SP 99-V-029 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification on the limitations on the keeping of animals. Located at 6704 Mockingbird Woods Ct. on approx. 1,700 sq. ft. of land zoned PDH-4. Mt. Vernon District. Tax Map 99-4 ((6)) 154. (MOVED FROM 8/10/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Helga Davies, 6704 Mockingbird Woods Court, Lorton, 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 modification on the limitations on the keeping of animals to allow one pet miniature pot-bellied pig. Ms. Wilson stated that a home visit was conducted, noting that it revealed all interior and exterior spaces of the application property were pristine, neat and tidy and also that the rear yard was fenced with a 6 foot high fence and was not readily visible by adjacent homeowners.

Ms. Davies presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Davies stated that their pet pig was as cherished to the family as a dog or a cat. Ms. Davies explained the history of the purchase and raising of the pig. Ms. Davies submitted a handout referring to exhibits including import papers and veterinarian documents, as well as a certificate stating that the pig was not considered livestock. Ms. Davies submitted a petition signed by her neighbors expressing their support for the keeping of their pot-bellied pig.

Chairman DiGiulian called for speakers.

The following citizens came to the podium to speak in support of the application: Hanz Raffert, 4602 Old Mill Road, Alexandria, Virginia; Thomas Vanik, 6714 Mockingbird Woods Court, Lorton, Virginia; Kim Lewis, 6702 Mockingbird Woods Court, Lorton, Virginia:

The following were their reasons for support: The pig was an enjoyable and wonderfully smart, clean and odor free pet; the pig did not bark; the keeping of the pig did not set a precedent throughout the community; all neighbors were in agreement with the keeping of the pig; and, the pig was very quiet.

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

Mr. Pammel moved to approve SP 99-V-029 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 21, 1999.

Mr. Pammel noted that there was a letter submitted for the record from an attorney representing the homeowners association stating that the keeping of the pig was in violation of the Declaration of Covenants for the association. Mr. Pammel stated that this was a matter to be resolved by the applicant and the association, noting that the Board of Zoning Appeals had taken an action under the Zoning Ordinance only.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HELGA M. DAVIES, SP 99-V-029 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification on the limitations on the keeping of animals. Located at 6704 Mockingbird Woods Ct. on approx. 1,700 sq.

ft. of land zoned PDH-4. Mt. Vernon District. Tax Map 99-4 ((6)) 154. (MOVED FROM 8/10/99). 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 September 28, 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 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). 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, 6704 Mockingbird Woods Court, 1,700 square feet lot shown on the plat prepared by Alexandria Surveys, Inc., as revised and submitted by Helga M. Davies, dated April 26, 1999, 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 pot-bellied pig. If this specific animal dies or is sold or given away, the pig shall not be replaced.

4. The yard areas where the pig is walked or allowed to run free shall be cleaned of animal waste every day, and the wastes shall be disposed of in a method which prevents odors from reaching adjacent properties. Animal waste shall be disposed of in a method approved by the Fairfax County Health Department.

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

Ms. Gibb seconded the motion which carried by a vote of 5-0-1. Mr. Dively abstained from the vote. Mr. Ribble was not present for the vote. Mr. Pammel made a motion to waive the eight (8) day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. 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 28, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 220, September 28, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SHUREN MA, SP 99-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 9.9 ft. from side lot line. Located at 6044 Brook Dr. on approx. 11,204 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3)) 96. (ADMINISTRATIVELY MOVED FROM 7/27/99).

Chairman DiGiulian noted that the application had been administratively moved to October 26, 1999.

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9:00 A.M. RITA K. AND RAYMOND W. JAMROS, VC 99-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lots 1 and 2 having a lot width of 19.7 ft. Located at 10428 Miller Rd. on approx. 2.03 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 39. (DEFERRED FROM 8/10/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael McHugh, 2000 North 14th Street, Suite 210, 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 the subdivision of the application parcel into two lots with Lot 1 and 2 having a lot width of 19.7 feet, where 150 feet is required by the Zoning Ordinance; therefore, a variance of 130.3 feet each was requested for proposed Lots 1 and 2. Ms. Wilson stated that staff had concluded that the lot subdivision portion of the application, with the creation and development of two lots of substandard width was not in conformance with the applicable Zoning Ordinance standards; however, stated that approval of the application in part for a variance of lot width for one lot to include the entire frontage of the application site did meet all variance standards.

Mr. McHugh presented the variance request as outlined in the statement of justification submitted with the application. Mr. McHugh stated that the property was subdivided in either 1954 or 1958 and that there was an interpretation by the Zoning Administrator indicating there was no residential use of the property and the lot was illegally subdivided. Mr. McHugh stated that the applicants' parents had acquired the property in 1967 and it had been taxed as a residential lot since that time. Mr. McHugh stated that at the time the property was acquired and that Mr. Jamros had inherited the property in 1987, there were two existing dwelling units on the property. Mr. McHugh said that in December 1995, at the request of the County, Mr. Jamros obtained a demolition permit to remove the two houses; however, at the time the County had asked for the houses to be removed, they had not informed Mr. Jamros that they could not be reconstructed.

Jane Kelsey, Kelsey & Associates, 4041 Autumn Court, Fairfax, Virginia, Agent, came to the podium to address the history of the property. Ms. Kelsey stated that the applicant met all of the standards of the Zoning Ordinance and reviewed those standards. Ms. Kelsey also displayed pictures for the Board showing an existing driveway, houses and townhouses. Ms. Kelsey stated that the adjacent neighbors were in support of the application. Ms. Kelsey said that the subdivision was in character with the area.

Mr. McHugh spoke on the issue of surrounding uses.

Ms. Gibb asked how the subdivision occurred. Mr. McHugh stated that the subdivision was created in 1954, which predated the adoption of the current Zoning Ordinance. Mr. McHugh stated that at that time, a subdivision was not required; therefore, the applicant applied for a variance to avoid the need to hear an appeal application, in which the County believed the subdivision was illegally created.

Mr. Hammack asked if the two dwellings were permitted in 1940 and what impact it had on the creation of the lots. Ms. Kelsey stated that there was not a Zoning Ordinance or Subdivision Ordinance in 1940; therefore, the owner could have built even more than two houses.

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

Mr. Hammack moved to approve VC 99-P-057 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 21, 1999.

Mr. Pammel stated that in the staff report, the Zoning Administrator had stated that to use the parcel of land for one residence would require a variance. Mr. Pammel expressed his disagreement with the statement and said that if there was a parcel of land that was platted, the owner had the right to use it, without going through the County for a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RITA K. AND RAYMOND W. JAMROS, VC 99-P-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lots 1 and 2 having a lot width of 19.7 ft. Located at 10428 Miller Rd. on approx. 2.03 ac. of land zoned R-1. Providence District. Tax Map 47-2 ((1)) 39. (DEFERRED FROM 8/10/99). 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 September 28, 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 satisfied the nine required standards 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 subdivision of one (1) lot into two (2) lots, proposed Lot 1 and Lot 2 each having a lot width of 19.7 feet, as shown on the plat prepared by GJB Engineering, Inc., dated January 18, 1999, signed February 1, 1999. 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 Miller Road 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. The lots shall access Miller Road from the shared driveway, as depicted on the variance plat.

4. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Any existing trees designated by the Urban Forester, or her agent, to be preserved, 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.

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 October 6, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 223, September 28, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS L. AND JEFFREY L. MARCEY, VC 99-P-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7))(44) F1. (DEFERRED FROM 8/3/99).

Chairman DiGiulian noted that the application had been administratively moved to November 30, 1999.

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Page 223 September 28, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SCOTT D. AYERS, SP 99-V-040 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8401 Conover Pl. on approx. 15,301 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((10))1. (Moved from 9/14/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Scott Ayers, 8401 Conover 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 special permit to allow modifications to the limitations on the keeping of animals to allow five dogs on a lot of less than 20,000 square feet.

Mr. Ayers presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Ayers stated that they had all five dogs when they purchased the home in January 1997 and said that they purchased this particular lot due to the size of the yard, for the dogs. He said that all of the dogs were either strays or from the pound, however that they were not breeders or kennelers of dogs. Mr. Ayers said that they were not aware of the Ordinance restrictions regarding the square footage and number of dogs and, therefore, asked for the Board's approval of the special permit application.

Chairman DiGiulian called for speakers.

The following citizens came to the podium to speak in opposition of the application: Fred Mictchell, 8409 Falton Lane, Alexandria, Virginia, President, Collingwood on the Potomac Citizens Association; George Rita, 1118 Croton Drive, Alexandria, Virginia; Joseph Morrisee, 1109 Neal Drive, Alexandria, Virginia.

The following were their concerns: Concern regarding the dogs constantly barking; that other neighbors cannot enjoy their yards because of the dogs barking; the Ordinance only allows 4 dogs on a lot of this size; the house cannot accommodate 5 dogs; and, the dogs do not have adequate space in the back yard and are never walked off the property.

Mr. Ayers came to the podium to rebut the opposition. Mr. Ayers stated that they understood the concerns of their neighbors, however, that their dogs were not the only dogs in the neighborhood who barked and that they were not left outside all day. Mr. Ayers said that the dogs were not let out after 10:30 p.m. or before 7:00 a.m. He stated that the dogs were let out only a few at a time to attempt to control the noise they make from barking.

Mrs. Karen Ayers came to the podium and stated that the real estate agent knew of the dogs and had never indicated that there would be a problem with keeping all 5 dogs. Mrs. Ayers stated that arrangements had been made with their neighbors not to take all of the dogs out at one time in order to control the barking. Mrs. Ayers said that no one who was in opposition of the dogs had spoken to them directly, and, had they known there was concern, they would have addressed the issues sooner.

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

Mr. Dively moved to approve SP 99-V-040 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated September 21, 1999.

Ms. Gibb stated that the application was not a case of dogs being bred, but that they were all either abandoned or abused animals, of which the applicants took in to provide a good home.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT D. AYERS, SP 99-V-040 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8401 Conover Pl. on approx. 15,301 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4((10))1. (Moved from 9/14/99). 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 September 28, 1999; and

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

1. The applicant is the owner of the land.
2. The Zoning Ordinance currently allows up to four dogs on the property; therefore, one more dog is a marginal change.

3. One of the dogs is very old with bad health and the applicant has expressed the understanding of the development conditions that once they are down to four dogs, they must stay at four.

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, 8401 Conover Place, 15,301 square feet, shown on the plat prepared by Larry N. Scartz, dated January 7, 1999, revised by Scott Ayers, 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 five dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced except that four 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. 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 6, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 225 September 28, 1999, (Tape 1), Scheduled case of:

9:30 A.M. LYNN E. SHULSINGER, A 1999-MA-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7308 Beverly St. on approx. 0.82 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 62. (DEFERRED FROM 7/13/99 FOR NOTICES).

Chairman DiGiulian noted that the notices were not in order for the public hearing to go forward.

William Shoup, Zoning Administrator, stated that this was the second time that notifications were not in order, in which, both times the appellant had sent notices, however, they were not done in accordance with the Zoning Ordinance requirements. Mr. Shoup stated that if it was the intent of the Board to defer the application again, staff recommended November 9, 1999, at 9:30 a.m. Mr. Shoup suggested that staff would prepare notifications for this hearing to avoid any further delays in the process.

Ms. Shulsinger came to the podium and stated that the notices were only filed two days late due to the weather and asked that the application go forward.

Chairman DiGiulian stated that this could not be done due to the notifications not being in order.

Mr. Dively moved to defer the application to November 9, 1999, at 9:30 a.m. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 226, September 28, 1999, (Tape 1), After Agenda Item:

Approval of May 18, 1999, June 1, 1999, June 8, 1999, June 15, 1999,
June 22, 1999 and July 20, 1999 Minutes

Mr. Dively made a motion to approve the Minutes for May 18, 1999, June 1, 1999, June 8, 1999, June 15, 1999, June 22, 1999 and July 20, 1999. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 226, September 28, 1999, (Tape 1), After Agenda Item:

Additional Time Request for SP 94-D-058, Stump Dump, Inc.

Mr. Pammel made a motion to approve the additional time request for SP 94-D-058 to January 8, 2000. Mr. Dively seconded the motion which carried by a vote of 7-0.

Mr. Kelley asked if there was any assurance that it would be completed by the January 2000 date.

Ms. Langdon stated that the special permit would run out in February or March, at which time an amendment would need to be submitted to continue the application.

Ms. Jane Kelsey, Agent, stated that the applicant had filed a special permit amendment, however, the plat had not been accepted and the applicant was working with the engineer to correct the deficiencies. Ms. Kelsey requested the additional time so that the original special permit would not lapse, which would put the applicant in violation.

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Page 226, September 28, 1999, (Tape 1), After Agenda Item:

See letter from Jane Kelsey regarding Harold Dawson
A 95-M-048 and Heritage Citgo, A 95-B-045

Mr. Shoup stated that the applications were currently scheduled for January 4, 2000, and that both sites currently had pending special exception applications; however, there were some problems identified subsequent to acceptance of these applications which necessitated changes to the applications. Therefore, Mr. Shoup stated that staff had no objection to a deferral, recommending February 1, 2000. Mr. Dively made a motion to defer A 95-M-048 and A 95-B-045 to February 1, 2000. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 226, September 28, 1999, (Tape 1), After Agenda Item:

Approval of September 21, 1999 Resolutions

Mr. Pammel made a motion to approve the September 21, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 226, September 28, 1999, (Tape 1), After Agenda Item:

Intent to Defer for Crank and Charge Incorporated Appeal A 1999-PR-027

Page 227 September 28, 1999, (Tape 1), After Agenda Item, continued from Page 226

Mr. Shoup stated that the issue of the appeal was a determination related to a proposal to expand the nature of the business of an alternator repair shop to include work directly on vehicles. He stated that the application was not currently under a notice of violation; however, a site visit had recently identified additional issues related to the operation which he stated should be addressed before the appeal goes forward. Therefore, Mr. Shoup stated that staff would not object to a deferral and recommended December 14, 1999.

Mr. Pammel made a motion to defer the appeal application to December 14, 1999, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 227, September 28, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for Kamran and Sharri Jinnah, VC 99-Y-125

Mr. Pammel made a motion to accept the out-of-turn hearing request and suggested November 16, 1999. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:11 a.m.

Minutes by: Deborah Hedrick

Approved on: November 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, October 5, 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 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 229, October 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KATHERINE CULBERSON, VC 99-V-096 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of additions 5.9 ft. from side lot line and 15.0 ft. from rear lot line. Located at 1905 Belfield Rd. on approx. 7,200 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Brown, Agent, 104 North West Street, 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 second-story addition 5.9 feet from the east side lot line; the construction of a two-story addition 15.0 feet from the rear lot line and 5.9 feet from the east side lot line. A minimum side yard of 10 feet is required for the second-story addition; therefore, a variance of 4.1 feet was requested. A minimum side yard of 10 feet and a minimum rear yard of 25 feet is required for the two-story addition; therefore, variances of 4.1 feet and 10 feet were requested, respectively.

Mr. Ribble said the statement of justification included in the staff report was extensive and asked the Mr. Brown whether he had any additional comments to add.

Mr. Brown said after reading the staff report, it was confusing because it appeared there were two additions. He said there was one addition that was built on top of the existing residence which was existing at 5.9 feet from the side lot line and it projected beyond the existing residence on the rear portion of the site by 10 feet.

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

Mr. Ribble moved to approve VC 99-V-096 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHERINE CULBERSON, VC 99-V-096 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of additions 5.9 ft. from side lot line and 15.0 ft. from rear lot line. Located at 1905 Belfield Rd. on approx. 7,200 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14))(2) 9. 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 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 testimony indicating compliance with the required standards for a variance.
3. The lot is exceptionally narrow.
4. The application is approved with the incorporation of the statement of justification included in the staff report.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 and the two-story addition shown on the plat prepared by James L. Brown and Associates Architects P.C., dated June 15, 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 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.

Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Dively 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 October 13, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ELSIE C. DULL, VC 99-P-085 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from both side lot lines. Located at 2945 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 169. (Continued from 9/14/99)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fred Taylor, Agent, 2000 N. 14th Street, Arlington, Virginia, replied that it was.

Mr. Taylor said the builder met with the neighbor, who was previously in opposition, to address her issue with the trees. He stated that they had satisfied the issues that were raised at the previous public hearing. Mr. Taylor said the nature of the lot was that it was a long rectangular lot and they had moved the house back almost 50 feet. Mr. Taylor stated that the size of the house had been reduced by 2 feet so that the current side lines were 12 feet on one side and 8 feet on the other. He said the issue with the trees had been addressed by moving the house back 50 feet. Mr. Taylor said they were trying to contain the garage within the house.

Chairman DiGiulian called for speakers.

Beverly Brown, no address given, came forward to speak in support of the application. She stated that she was present at the previous public hearing and spoke in opposition. Ms. Brown said her concerns had been addressed and resolved by the applicant and she supported the application.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 99-P-085 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ELSIE C. DULL, VC 99-P-085 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from both side lot lines. Located at 2945 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 169. (Continued from 9/14/99) 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 October 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 testimony indicating compliance with the required standards for a variance.
3. The width of the lot was unusually narrow making it impossible to construct a house with the required lot lines.

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

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

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

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

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

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

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

1. This variance is approved for the location of the new dwelling shown on the plat prepared by Ross, France and Ratliff, Ltd., dated September 29, 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. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Dively 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 13, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 232 October 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MARY KENDALL ADLER, VC 99-V-099 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 26.1 ft. from front lot line. Located at 6310 Olmi Landrith Dr. on approx. 10,742 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(22) 501.

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 Kendall Adler, 6310 Olmi Landrith 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 variance to permit the construction of an addition 26.1 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 3.9 feet was requested.

Ms. Adler presented the variance request as outlined in the statement of justification submitted with the application. She submitted an architectural drawing to show compatibility with the existing dwelling. Ms. Adler requested a waiver of the 8-day waiting period.

Chairman DiGiulian called for speakers.

Gene Olmi, original developer of Belle Haven, came forward to speak in support of the application. He said he was present at no monetary gain and wanted to keep the subdivision nice looking.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve VC 99-V-099 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY KENDALL ADLER, VC 99-V-099 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 26.1 ft. from front lot line. Located at 6310 Olmi Landrith Dr. on approx. 10,742 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(22) 501. 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 5, 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 modest in a 30 foot setback
3. The request would improve curb appeal.
4. The statement of justification reflects the exceptional shape and condition of the property.

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

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

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

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

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

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

1. This variance is approved for the location of a front porch addition shown on the plat prepared by Kenneth W. White, dated May 26, 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 dwelling.

Pursuant to Sect. 18-407 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 8-day waiting period. 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 October 5, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 234, October 5, 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. (DEFERRED FROM 5/4/99 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. George Flood, 509 Roosevelt Boulevard, 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 to allow a trailer and site modifications. The trailer would consist of 960 square feet and have a height of 10.5 feet. The proposed use for the trailer was as classroom space for the youth group of the church. The maximum number of children in the trailer would be 35 and the proposed hours for the trailer would be from 6:00 p.m. to 10:00 p.m. on Fridays and Sundays from 11:00 a.m. to 1:00 p.m.

There were no structural or other changes proposed to the church. Staff recommended approval of the subject application with the implementation of the proposed development conditions.

Mr. Flood, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said after comments from a speaker at the previous public hearing, it was easy to see that the transitional screening needed to be replaced. Mr. Flood stated that the lighting had been shielded and would not emit onto the neighbor's property. He stated that the churches had set a target date of 3 years for expansion to replace the temporary trailers that were requested.

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

Ms. Gibb asked staff if all the missing transitional screening had been replaced. Mr. Bernal replied that an Inspector from Zoning Enforcement would investigate the property for compliance.

Ms. Gibb moved to approve SPA 90-L-050 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

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. (DEFERRED FROM 5/4/99 FOR DECISION ONLY). 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 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 testimony indicating compliance with the required standards for 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). 3-103 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, Virginia Presbyterian Church, Hie C. Kim and Won Kil Paik, and is not transferable without further action of this Board, and is for the location indicated on the application, 6021 Franconia Road (2.32 acres) lots 5, 5A, 6A, 7, 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 J. Huntley, Certified Land Surveyor, dated through September 10, 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 be 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 250.

6. There shall be 100 parking spaces, including two (2) accessible spaces. All parking shall be on-site, as shown on the special permit plat.

7. Transitional screening I shall be maintained along the eastern, southern, and western lot lines. A berm, a minimum of four (4) feet and a maximum of five (5) feet in height shall be maintained within twenty-five (25) feet of the eastern and southern boundaries of the site (within the transitional screening yard) as shown on the special permit plat. Transitional screening shall be modified along the site frontage on Franconia Road as shown on the SPA plat and subject to approval to the County Urban Forester. In order to soften the impact of a non-residential building and blend the development in with the surrounding residential area, landscaping shall consist of a combination of hedges, flowering and evergreen shrubs and ornamental tree plantings along the site frontage and building foundation landscape plantings to the satisfaction of the County Urban Forester. Landscaping and screening plant materials that die shall be replaced as soon as possible depending upon plant availability and weather permitting.

8. The barrier requirement along the northern and western lot lines shall be waived. A seven (7) foot high wooden board on board fence along the southern lot line and a five (5) foot high berm along the eastern lot line shall be maintained as shown on the special permit plat dated through September 10, 1998.

9. Storm water Management shall be provided as determined by Department of Public Works and Environmental Services (DPWES) at the time of site plan review and all findings and recommendations for control of Storm water management shall be implemented to the satisfaction and approval of Department of Public Works and Environmental Services (DPWES). Subject to the acquisition of appropriate easements and subject to the approval of the Department of Public Works and Environmental Services, the storm water run-off from the eastern portion of the site shall be conveyed by an underground system from the southern lot line to the existing storm sewer adjacent to and serving Kathmoor Drive. If the area reserved for a storm water management dry pond is not required for the construction of a dry pond by Department of Public Works and Environmental Services (DPWES), that area shown on the special permit plat shall remain in open space.

10. The existing trail along the site frontage on Franconia Road, if disturbed, shall be replaced with a trail and public access easement as determined by the Director, DPWES, at the time of site plan approval in accordance with the Countywide Trail Plan and Article 17.

11. Future Interparcel access to Parcel 4 to the immediate west, presently owned by Franconia United Methodist Church, shall be provided with an appropriate public access easement at such time as Franconia Road is improved and the median break opposite the existing entrance to Franconia Methodist Church is

12. The church steeple shall not exceed fifty (50) feet in height from the average ground elevation around the perimeter of the church.

13. Any existing or proposed parking lot lighting 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.

14. In the event that more than one worship service is held on Sunday, there shall be a minimum of one-half hour between the conclusion of the earlier service and the commencement of the later service.

15. The church shall take appropriate steps to ensure that the parking lot adequately provides for necessary parking and that church parking does not spill over into the surrounding neighborhood streets. If a problem is detected, then the church shall implement one, or a combination of the following steps:

    a. Car pooling;
    b. Announcements by the Church Pastor requesting car pooling after a problem is detected or for special events or services for which a large turn out is expected;
    c. Staggering of church services, or holding more than one Easter and Christmas service;
    d. Arranging for parking at an appropriate alternate facility and providing transportation from such facility to the church;
    e. Any other measure necessary to prevent parking from spilling over into the residential neighborhood.

    The overseeing of this parking program shall be the responsibility of the Church Pastor or Church Trustees who will coordinate with and work with the concerned and/or interested neighbors.

16. The maximum number of children in the classroom trailer shall be 35 at any one time.

17. The classroom trailer shall have a skirt added to the base and be landscaped along its northern and western sides with shrubs, foundation plantings and evergreen trees along its northern and western sides.

18. The maximum hours of operation for the classroom trailer shall be limited to 6:00 p.m. to 10:00 p.m. on Fridays and from 11:00 a.m. to 1:00 p.m. on Sundays.

19. The trailer shall be limited to a term of 4 years from the date of approval of the Non-Residential Use Permit for the trailer.

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 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 13, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 237, October 5, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EILEEN AND WILLIAM HAYDEN, VC 99-D-088 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16.

(Administratively moved from 9/14/99)

Chairman DiGiulian noted the application was administratively moved to October 26, 1999.

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Page 238, October 5, 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. (DEFERRED FROM 4/6/99).).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Peters, 4713 Eddystone 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 the keeping of seven (7) dogs on a residential lot containing 15,001 square feet in area. The requested seven (7) Pekinese dogs average only ten (10) pounds each, and were predominately house dogs. The dogs were strictly pets and were not bred or sold commercially. The dogs were generally permitted outside in the rear yard for only four brief sessions a day and at no time were the dogs left out during the night. According to the applicants' statement, the dogs were never walked in neighbor's yards or in the floodplain.

Mr. Hammack asked how the violation came about. Ms. Wilson stated that there was a complaint and a Notice of Violation issued.

Mr. Peters presented the special permit request as outlined in the statement of justification submitted with the application. He stated that they had owned Pekinese dogs since the 1960s. Mr. Peters said the dogs were beneficial to his wife's health. Mrs. Peters came forward stating that she was a terminally ill cancer patient and that she gained pleasure from the dogs. She said the seven dogs were indoor dogs. Mrs. Peters read a letter from her doctor which supported her keeping the dogs for health reasons. Mrs. Peters added that several neighbors had come by her home stating that they hoped she would receive her special permit.

Mr. Hammack noted two letters received in opposition. He said the letters expressed concerns about the dogs being let out prior to 7:00 a.m. and after 10:00 p.m.

Mr. Peters said the letters were false and the dogs were never let out before 7:00 a.m. nor after 10:00 p.m. He said they might be out at 10:15 p.m. but they weren't out any later than that nor were the dogs out prior to 7:00 a.m. because sometimes he and his wife had trouble getting up in the morning.

Mr. Dively asked what were the ages of the dogs. Mr. Peters replied between 3 and 5 years old.

Chairman DiGiulian called for speakers.

Jake Carter, no address given, came forward to speak in support of the application. He said he had known the Peters for 25 years and he had never found a disturbance from the dogs, that the applicants kept a tidy yard, and were good neighbors.

Don Fitzgerald came forward to speak in opposition. He stated that the Peters had a history with dogs. Mr. Fitzgerald stated that the dogs had been kept inside more often since the violation. He said the dogs barked at everything and everyone. Mr. Fitzgerald indicated that the dogs had been let out as early as 5:30 a.m. and other neighbors had complained about the noise from the dogs. He stated that the dogs tried to come over the fence at his children. Mr. Fitzgerald said he opposed the special permit.

Mr. Peters stated in his rebuttal that they had made a concerted effort to control the noise from the dogs. He said the dogs had never been out after 11:00 p.m. nor were the ever out at 5:30 a.m. Mr. Peters said other

dogs in the neighborhood made more noise than their dogs.

Mr. Dively asked if the dogs had been neutered or spayed. Mr. Peters replied that one was neutered and one was spayed. Mr. Peters said they had handled Pekinese dogs for 36 years and small dogs did not breed the same as larger dogs.

Mr. Hammack asked how long the applicants had the various dogs. Mrs. Peters replied that there was a progression of about 3-5 years in obtaining the current dogs, but they had always had dogs. Mrs. Peters said that upon her death the dogs would be re-homed.

Mr. Hammack asked if she had the re-homing contract at the hearing. She replied no, she did not bring it with her, but that 3 of the dogs were co-owned by other people.

Mr. Dively asked the applicants if they understood the development conditions. The applicants replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said this was a difficult and emotional case. He said the applicant was sincere in her love and care for the dogs and under the circumstances, the Board did not want to take action to reduce or interfere with that. Mr. Hammack said the Board had testimony that seven dogs were a little bit of a nuisance in the neighborhood and some conflicting testimony about the times the dogs were let out. He stated that if other people owned the animals, they should be required to exercise their rights in those dogs and take them over within a reasonable amount of time and help the applicant bring her pack into compliance.

Mr. Hammack moved to approve SP 98-B-067 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

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. (DEFERRED FROM 4/6/99). 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 October 5, 1999; and

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

1. The applicants are the owners of the land.
2. The applicant's presented testimony indicating compliance with the required standards for 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). 8-917 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, 4713 Eddystone Street, 15,001 square feet lot shown on the plat prepared by Robert R. Kim, as revised and submitted by Carolyn H. Peters, dated September, 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 applicants' existing seven (7) dogs. If any of these specific animals die or are sold or given away, the dogs shall not be replaced, except that four (4) dogs may be kept on the property in accordance with the Zoning Ordinance.

4. The three (3) dogs that are owned jointly by the applicant with other parties shall be re-homed within one year.

5. The yard areas where dogs are walked or allowed to run free shall be cleaned of animal waste every day, and the wastes shall be disposed of in a method which prevents odors from reaching adjacent properties. Animal waste disposal shall be in conformance with all County health regulations.

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

Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 13, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 240, October 5, 1999, (Tape 1), Scheduled case of:

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. (DEFERRED FROM 4/6/99).

William Peters withdrew the appeal.

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Page 240, October 5, 1999, (Tape 1), Scheduled case of:

9:30 A.M. JACQUIE SHONK, A 1997-DR-035 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant's property did not satisfy Zoning Ordinance requirements at the time of its creation and thus is not a buildable lot. Located at 1040 Bellview Rd. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((3)) 4. (DEFERRED FROM 5/4/99).

Chairman DiGiulian noted that the Board has issued an Intent to Defer to January 25, 2000, at 9:30 a.m. on September 21, 1999. William Shoup, Deputy Zoning Administrator indicated that the appellant had filed for a variance.

Mr. Dively moved to defer A 1997-DR-035 to January 25, 2000. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 241, October 5, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Karharias Inc., t/a The Shark Club Billiards & Café/ The Shark Club
SPA 95-Y-069

Mr. Pammel moved to approve the Additional Time request. Mr. Ribble seconded motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date is January 19, 2000.

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Page 241, October 5, 1999, (Tape 1), After Agenda Item:

Approval of September 28, 1999 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 241, October 5, 1999, (Tape 1), Scheduled case of:

Out of Turn Hearing Request
Mitchell E. Motafches, SP 99-Y-060

Mr. Pammel moved to approve the Out of Turn Hearing request. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The application was scheduled for November 16, 1999.

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Minutes by: Regina Thorn

Approved on: November 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 12, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Nancy Gibb; 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.

Page 243, October 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. OAK STREET DEVELOPMENT CORP., VC 99-P-090 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 4B having a lot width of 30.66 ft. Located at 7447 Idylwood Rd. on approx. 43,563 sq. ft. of land zoned R-2. Providence District. Tax Map 40-3 ((20)) 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. Bob Lawrence, 3110 Fairview Park Dr., 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 variance to permit the subdivision of one lot into two lots. Proposed lot 4B had a lot width of 30.66 feet. The Zoning Ordinance required a width of 100 feet; therefore, a variance of 69.34 feet was requested. The applicant submitted a revision to Development Condition #2 and staff was in agreement with the revision.

Mr. Lawrence, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He explained that the reason for the revision of Development Condition #2 was to clearly delineate the obligation of the applicant, with respect to the tree save area, by requiring that there be temporary fencing installed at the drip line of the trees prior to any construction, with the fence being a minimum of four (4) feet in height. Mr. Lawrence said that this was a fairly typical procedure to ensure that there would be no accidental destruction of trees that were supposed to be saved by the crewman. He stated that the proposed application would have no adverse effect on the established character of the area because all of the surrounding lots were equal or smaller in size from the property in question.

Chairman DiGiulian called for speakers.

Peter Vandervere, no address given, stated that the subject property backed up to his home and that he was concerned about the trees behind his home being removed upon construction. However, he said that he had addressed this issue with Mr. Lawrence and was told that the trees would not be removed; therefore he voiced his support of the application as long as the Development Conditions were abided by.

Mr. Lawrence, reiterated in his reply that the trees behind Mr. Vandervere's home were within a designated tree-save area and would not be disturbed due to construction.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 99-P-090 for the reasons stated in the Resolution, and incorporated the applicant's suggested change to Development Condition #2.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

OAK STREET DEVELOPMENT CORP., VC 99-P-090 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 4B having a lot width of 30.66 ft. Located at 7447 Idylwood Rd. on approx. 43,563 sq. ft. of land zoned R-2. Providence District. Tax Map 40-3 ((20)) 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 October 12, 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 almost 1 acre, it is zoned R-2 and relatively narrow for the square foot area of the lot.
3. The lot is surrounded by lots with lower square feet.
4. The variance will not change the character of the neighborhood in any way.
5. To not allow the development would, given the zoning, limit the proposed development 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 subdivision of one (1) lot into two (2) lots Lot 4A and Lot 4B, with Lot 4B having a lot width of 30.66 feet, as shown on the plat prepared by Huntley, Nyce & Associates, Ltd., dated April 6, 1999, as revised through June 21, 1999. All development shall be in conformance with this plat as qualified by these development conditions.

2. The application site shall meet all tree cover requirements, as determined by the Urban Forester. All trees shown within the tree save area shall be protected by temporary fencing around the perimeter of the tree save area, a minimum of four (4) feet in height placed at the

dripline of the trees to be preserved. The fencing shall be installed prior to any work being conducted on the site and shall be made clearly visible to all construction personnel.

3. The lots shall access Idylwood Road from the shared driveway, as depicted on the variance plat.

4. Right-of-way measuring forty-five (45) feet from the centerline of Idylwood Road 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.

Pursuant 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 6-0-1. Ms. Gibb abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 245, October 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. BENJAMIN J. AND NAOMI E. HAUPTMAN, VC 99-M-097 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of addition 16.1 ft. from rear lot line. Located at 3920 Bentwood Ct. on approx. 11,049 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 58-4 ((28)) 130.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Benjamin J. and Naomi E. Hauptman, 3920 Bentwood Court, Fairfax, 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 sunroom addition 16.1 feet from the rear lot line. The minimum rear yard requirement was 25 feet; therefore, a variance of 8.9 feet was requested.

Mr. Dively asked staff what was located behind the applicant's property. Mr. Bernal answered that it was home owners' open space.

Benjamin J. and Naomi E. Hauptman presented the variance request as outlined in the statement of justification submitted with the application. Mr. Hauptman stated that he reaffirmed what was stated in the application.

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

Mr. Pammel moved to approve VC 99-M-097 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BENJAMIN J. AND NAOMI E. HAUPTMAN, VC 99-M-097 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of addition 16.1 ft. from rear lot line. Located at 3920 Bentwood Ct. on

approx. 11,049 sq. ft. of land zoned R-2 (Cluster). Mason District. Tax Map 58-4 ((28)) 130. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 12, 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. The location of the dwelling to the rear of the lot leaves little room for an addition to the rear of the house.
4. The variance request is reasonable.
5. The immediate parcel to the rear is homeowners' 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 Kenneth W. White, dated June 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. 18-407 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 6-0-1. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 247, October 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. WALTER C. HERBERT JR. AND CHERYL A. HERBERT, VC 99-S-095 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of addition 16.6 ft. from rear lot line. Located at 8310 Ivy Green Rd. on approx. 11,538 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((13)) 115.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Reams, Reamco, Inc. d/b/a/ Patio Enclosures, 6826 Hill Park Drive, Lorton, 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 sunroom addition 16.6 feet from the rear lot line. The minimum rear yard requirement was 25 feet; therefore, a variance of 8.4 feet was requested.

Mr. Reams, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the application was fairly straight forward and due to the way the house was situated on the lot prevented the construction of the addition anywhere else.

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

Mr. Dively moved to approve VC 99-S-095 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER C. HERBERT JR. AND CHERYL A. HERBERT, VC 99-S-095 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of addition 16.6 ft. from rear lot line. Located at 8310 Ivy Green Rd. on approx. 11,538 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-3 ((13)) 115. 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 12, 1999; and

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

1. The applicants are the owners of the land.
2. There is a shallowness in the lot.
3. The sun room is going to be fronting homeowners' 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 Kenneth W. White, dated July 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. Pammel seconded the motion which carried by a vote of 7-0.

Page 249, October 12, 1999, (Tape 1), WALTER C. HERBERT JR. AND CHERYL A. HERBERT, VC 99-S-095, continued from Page 248

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 249, October 12, 1999, (Tape 1) Scheduled case of:

9:00 A.M. HAROLD E. AND SHIRLEY L. GLAZENER, VC 99-L-098 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from front lot line. Located at 6515 Walter Dr. on approx. 23,158 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((2)) 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. Harold and Shirley Glazener, 6515 Walter 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 variance to permit the construction of a garage with a second floor family room addition to be located 27.8 feet from the front lot line. A minimum front yard of 40 feet was required; therefore, a variance of 12.2 feet was requested.

Mr. Glazener presented the variance request as outlined in the statement of justification submitted with the application. He stated that the addition was needed to expand living space and the way the house was situated on the lot prevented the construction of the addition anywhere else.

Mr. Hammack asked if the proposed addition would sit closer to the street line than the residence on adjacent lot 16 and if it would, how much. Mr. Glazener answered that the addition would sit 15 feet closer to the street line.

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

Mr. Ribble moved to approve VC 99-L-098 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HAROLD E. AND SHIRLEY L. GLAZENER, VC 99-L-098 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 27.8 ft. from front lot line. Located at 6515 Walter Dr. on approx. 23,158 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((2)) 17. 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 12, 1999; and

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

1. The applicants are the owners of the land.
2. The placement of the house on the lot along with the topography makes it impossible to put the addition in any other location.

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

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

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

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

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

1. This variance is approved for the location of a garage and family room addition shown on the plat prepared by Kenneth W. White, dated June 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 existing dwelling.

Pursuant to Sect. 18-407 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

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 20, 1999. This date shall be deemed to be the final approval date of this

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9:00 A.M. J. HOWARD MILLER, SP 99-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 addition to remain 12.0 ft. from side lot line. Located at 6156 Beachway Dr. on approx. 16,798 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 918.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J. Howard Miller, 6156 Beachway Drive, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a modification of minimum yard requirements based on error in building location to allow an attached garage to remain 12 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, the amount of the error was 3 feet or 20 percent.

Mr. Miller presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the garage was not detrimental to the enjoyment and use of the other properties in the immediate vicinity. He said that the garage had been there for eleven (11) years, there had been no complaints and to have to comply with the 15 foot specification would cause a hardship and reduce the value of the property.

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

Ms. Gibb moved to approve SP 99-M-045 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

J. HOWARD MILLER, SP 99-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 addition to remain 12.0 ft. from side lot line. Located at 6156 Beachway Dr. on approx. 16,798 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 918. 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 12, 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 garage shown on the plat prepared by K.D. Thomas, dated June 2, 1988, as revised through July 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. 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 20, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 252 October 12, 1999, (Tape 1) Scheduled case of:

9:30 A.M. CRANK AND CHARGE, INC., A 1999-PR-027 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that proposed expansion of an existing motor vehicle parts repair business to include the use of a service bay for the installation, servicing and testing of the parts in the vehicles, constitutes a change in use from business service and supply service establishment to a vehicle light service establishment which requires special exception approval by the Board of Supervisors. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8. Providence District. Tax Map 50-3 ((15)) A5.

Chairman DiGiulian stated that on September 23, 1999, the Board approved a deferral to December 14, 1999, and that staff had requested another deferral to December 21, 1999.

Susan Langdon, Chief, Special Permit and Variance Branch requested the deferral to be changed from December 14, 1999 to December 21, 1999. She stated that the applicant had been contacted and was in agreement with that date.

Mr. Dively moved to defer A 1999-PR-027 to December 21, 1999, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 252 October 12, 1999, (Tape 1) After Agenda Item:

Approval of July 6, 1999 Minutes

Mr. Hammack moved to approve July 6, 1999 Minutes. Mr. Pammel seconded the motion which carried by a

Page 253 October 12, 1999, (Tape 1), After Agenda Item, continued from Page 252

vote of 7-0.

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Page 253 October 12, 1999, (Tape 1) After Agenda Item:

Approval of October 5, 1999 Resolutions

Mr. Pammel moved to approve October 5, 1999 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Mr. Hammack referred to After Agenda Information Item #1, Recently Filed Appeal Application M. Nadir and Gulghutai Atash, 15314 Lee Highway, Swart Farm, Lot 3, Tax Map Reference: 64-2((3))3.
He stated that Mr. Atash was appealing a determination which he did not request or understand and asked that at the next hearing Staff explain the appeal policy. Ms. Langdon stated that she would ask with William E. Shoup, Deputy Zoning Administrator, to address the situation at the next meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:33 a.m.

Minutes by: Lori M. Mallam

Approved on: December 14, 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 19, 1999. The following Board Members were present: Vice Chairman Paul Hammack; Robert Dively; Nancy Gibb; Robert Kelley; James Pammel and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:16 a.m. Vice Chairman Hammack discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 255, October 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOHN Y. SCHRADER, JR., VC 99-B-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 20.4 ft. from rear lot line. Located at 4782 Farndon Ct. on approx. 12,375 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 1595.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Schrader, 4782 Farndon Court, Fairfax, 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 sunroom 20.4 feet from the rear lot line. A minimum 25 foot rear yard was required; therefore, a variance of 4.6 feet was requested.

Mr. Schrader presented the variance request as outlined in the statement of justification submitted with the application. Mr. Schrader stated that the house was located on a cul-de-sac and was set back 10 feet further than the other homes. He stated that there was a pipeline easement through the rear yard; therefore, the request for the variance. Mr. Schrader stated that there were no objections from his neighbors for the sunroom addition, which would be architecturally compatible with the house.

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

Mr. Pammel moved to approve VC 99-B-100 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 12, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN Y. SCHRADER, JR., VC 99-B-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 20.4 ft. from rear lot line. Located at 4782 Farndon Ct. on approx. 12,375 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-2 ((5)) 1595. 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 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 has satisfied the nine required standards for the granting of a variance application.
3. The unusual shallowness of the lot, being less than 100 feet deep at the point where the addition is to be made, as well as the unusual configuration of the lot, make the variance necessary.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Dewberry and Davis, dated September 25, 1980, as revised through July 15, 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 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 October 27, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ROGER G. HERBERT, SP 99-M-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 16.5 ft. from side lot line. Located at 6415 Overhill Rd. on approx. 19,250 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 55.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Roger Herbert, 6415 Overhill Road, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report, prepared by Phyllis Wilson. The applicant requested a special permit to allow an addition to remain 16.5 feet from the side lot line. The addition consisted of an existing carport which was enclosed in 1972. A minimum 20 foot side yard was required; therefore, the amount of error was 3.5 feet or 18%.

Mr. Herbert presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Herbert stated that the purpose for the application was to bring the enclosed carport up to Code.

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

Mr. Ribble moved to approve SP 99-M-048 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 12, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROGER G. HERBERT, SP 99-M-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 16.5 ft. from side lot line. Located at 6415 Overhill Rd. on approx. 19,250 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((6)) 55. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 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 and for the addition (enclosed carport) shown on the plat prepared by Gilbert M. Glaubinger, architects, dated April 19, 1950, as revised through July 22, 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. 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 October 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 258 October 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS, SP 99-S-044 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit church and related facilities and private school of general education with a daily enrollment of 100 or more students. Located generally at the S.E. quadrant of the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that a letter was received from the Agent, Lynne Strobel, requesting a 2 week deferral to November 2, 1999. Ms. Langdon stated that staff was in agreement with the deferral request.

Lynne Strobel, Agent, stated that the applicant was continuing to work with the adjacent community and therefore, requested the deferral.

Mr. Dively made a motion to defer SP 99-S-044 to November 2, 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 258 October 19, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BURKE COMMUNITY CHURCH, TRUSTEES, SPA 77-S-269-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-S-269 for church and related facilities to permit building additions and site modifications. Located at 9900 Old Keene Mill Rd. on approx. 12.98 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 7A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Fox, McCandlish and Lillard, PC, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow the construction of building additions and site modifications to include a narthex, administration and education building, and worship hall with 1,800 seats. The additions include expansion of the parking lot to 524 spaces, which exceeded Zoning Ordinance requirements by 74 spaces. Ms. Schilling stated that staff noted that the proposed expansion would be an increase in seating capacity over three times that which existed currently, with an intensification which staff believed represented full utilization of the site so that any further expansion would not be in harmony with the Comprehensive Plan. Ms. Schilling noted that the applicant had submitted an amendment to development condition 7 which represented language that would allow the applicant to replace some of the 18 spaces which would be reduced in development condition 7, by restriping the parking lot. Staff had no objection to the applicant's conditions, as long as landscape buffers were maintained.

Mr. Fox presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Fox stated that the construction would take place over a 5 year period of time for the additions and construction. Mr. Fox stated that the applicant had worked with the adjacent citizens in the Yacht Haven community to address their concerns. Mr. Fox stated that there was a Korean Congregation which currently used the existing facility. He assured the Board that the use would be limited to a maximum of 100 persons for Sunday afternoon indoor services only.

Mr. Hammack asked if the applicant agreed with the removal of modular buildings at the conclusion of the construction and the interim left and right turn lanes.

Mr. Fox stated that the applicant was not opposed; however, questioned the justification of the left and right turn lanes and stated that the issue would be addressed at site plan review.

Vice Chairman Hammack called for speakers.

Pastor Paul Hansen came to the podium to speak in support of the application. Mr. Hansen stated that the church had always worked with the community and its neighbors to meet their needs and said that the plan the church proposed would meet their needs as well as allow the church to move forward and expand.

The following citizens came to the podium to speak in opposition of the application: Greg Spring, Vice President of the Edgewater II Homeowners Association, property adjacent to church property; Susie Goldhammer, 9900 Yacht Haven Drive, Fairfax, Virginia; Fred Fish, 9901 Yacht Haven Drive, Fairfax, Virginia.

The following were their concerns: Concerns about the development plan and its intensity; construction of the parking that would eliminate the buffer and a significant amount of trees; the proposed building parking lot in phases; height of church at maximum was 40 feet and now appeared that the roofline was 40 feet and the steeple would exceed 40 feet which would create a site line interference; outside organizations using the site; noise issues; limits on special events; flea markets and carnivals that should not be allowed on the church site; dog training once or twice a week; second entrance off Old Keene Mill Road property would add to noise in adjacent neighborhood; security issues; foot traffic and trespassing concerns with the second entrance.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the building was limited to a height of 60 feet; however, a steeple did not have a height limitation under the Zoning Ordinance.

Peter Juanpere, Intex Group, Architect, stated that the height of the building at its peak was limited to 60 feet and the height of the spire itself was limited to 100 feet.

Mr. Fox stated that the reason for not building the parking lot in phases was because it would not be economical due to construction costs, and that there was a stormwater management pond which had to be sized for the ultimate runoff. Mr. Fox stated that the church had always been sensitive to its neighbors. Mr. Fox stated that the second entrance would be blocked if there was not a large service in progress to

eliminate the concerns of the adjacent residences.

Ms. Gibb asked how uneconomical it would be to construct the parking in phases. Mr. Fox stated that the stormwater management pond had to be constructed to accommodate the full build out and stated that it would cost more over a five year period to construct the parking lot in phases. Mr. Fox stated that the church had already vacated the premises to prepare for the expansion.

Mr. Kelley stated that he was concerned with the parking issues, buffering, and secular activities, and stated that these issues needed to be addressed fully with the adjacent neighbors before he would vote in favor of the application.

Mr. Fox stated that all significant concerns had been addressed and said that the church property was being used by the adjacent residences. He stated that there had been no documented security concerns and that the secular activities were no more than occurred everyday at other church locations. Mr. Fox said that the Zoning Ordinance only gave the adjacent properties a 25 foot rear yard buffer and that a larger wooded buffer was provided by the church.

Mr. Pammel stated that the plan showed a buffer area at three times the requirement by the Zoning Ordinance and said that the applicant was extraordinarily generous with buffers and screening, and provided more than the standard. He commended the applicant in addressing those concerns.

Vice Chairman Hammack asked what other secular activities might be conducted in the parking lot which would create noise and traffic concerns.

Pastor Hansen stated that the dog obedience class met one evening a week and on Saturday mornings for two hours. He stated that periodically a donation would be made to the church, but not regular compensation. He said that the Boy Scouts and Cub Scouts had used the property for community activities, which were outside of the local church, and said that there were no other outside organization activities on the church property.

Vice Chairman Hammack closed the public hearing.

Mr. Dively moved to approve SPA 77-S-269-4 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated October 12, 1999, with the applicant's revised Development Condition 7.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BURKE COMMUNITY CHURCH, TRUSTEES, SPA 77-S-269-04 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-S-269 for church and related facilities to permit building additions and site modifications. Located at 9900 Old Keene Mill Rd. on approx. 12.98 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 7A. Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1999; and

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

1. The applicants are the owners of the land.
2. This is a good location for this use, at the intersection of two major roads. The community should be happy it is a church use and not something more intense and more commercial in nature because of

its location.

3. A church use is a residential use and nothing other than residential uses were taking place on the church property. It was typical that churches engage in community activities and services.
4. The buffer is more than ample and the screening is also very good.
5. The plan is very well thought out and the church should not be punished because it is doing extraordinarily well in growth and is able to share its resources with the community at-large.
6. The parking issue is well addressed.

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, 9900 Old Keene Mill Road (12.98 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 Walter L. Phillips Inc. (Charles F. Dunlap, L.S.), dated June 25, 1999, as revised through September 20, 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 number of seats in the main area of worship shall be 1,800 seats, and shall be located in the portion of the building identified as the "Proposed Worship Hall". Prior to issuance of a Non-Residential Use Permit for the worship hall, the 500 seats in the existing fellowship hall be removed.

6. Up to four modular trailers shall be permitted in the locations shown on the special permit plat, for a period of time not to exceed five (5) years from the final date of approval of the special permit, or upon issuance of a Non-Residential Use Permit for the Worship Hall, whichever occurs first.

7. The minimum number of parking spaces shall not be less than the number specified in accordance with Article 11 of the Zoning Ordinance, and the maximum shall not to exceed 506 parking spaces, provided, however, that the applicant may reconfigure parking to recover the 18 spaces lost (see Condition 8 below) if the same does not diminish established buffers, subject to site plan review. In such event, the maximum number of spaces shall be 524 parking spaces. Parking shall be provided within the locations shown on the special permit plat, except as specified by Development Condition 8, and except as may be reconfigured as noted above. All parking shall be on-site.

8. Existing vegetation along the northern property boundary, supplemented with understory evergreen trees and supplemental landscaping shall be provided as shown on the special permit plat, subject to the review and approval of the Urban Forestry Branch of DPWES. Existing vegetation along the eastern property boundary shall be deemed to satisfy transitional screening requirements, except that the row of 18 parking spaces located adjacent to the transitional screening yard between the entrance driveways to the church shall not be constructed, and that area shall be preserved with existing wooded vegetation, subject to the review and approval of the Urban Forestry Branch of

DPWES. The barrier requirements shall be waived except for the installation of the four foot high wood fence noted on the special permit plat in the northern portion of the site.

9. Foundation plantings shall be provided around the trailers to improve the visual appearance of the trailers.

10. Right-of-way up to fifty six (56) feet from the existing centerline of Old Keene Mill Road shall be provided in fee simple to the Board of Supervisors at the time of site plan approval or upon demand of VDOT, whichever occurs first. Ancillary easements, fifteen (15) feet in width, shall be provided along the new lot line to facilitate construction of improvements to Old Keene Mill Road. Interim left and right turn lanes shall be provided into the site, unless waived or modified at the time of site plan review, subject to the review and approval of VDOT.

11. Any existing or proposed lighting of sidewalk or parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet;
    - the lights shall be directed downward onto the site and shall have full cut-off fixtures;
    - shields shall be installed, if necessary, to prevent the light from projecting beyond the site.
    - prior to issuance of any Non-Residential Use Permit for the site, the applicant shall demonstrate that provisions of Article 14 of the Zoning Ordinance are met for uses in residential areas.

12. Irrespective of the notes shown on the approved special permit plat, the maximum gross floor area permitted on the site shall not exceed 84,823 square feet.

13. If a trail is required along the property boundary adjacent to Old Keene Mill Road, the trail shall be constructed with the least disturbance feasible within the transitional screening area shown on the plat adjacent to the road, as determined by 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. 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 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 October 27, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 262, October 19, 1999, (Tape 1), After Agenda Item:

Approval of July 13, 1999, July 27, 1999 and August 3, 1999 Minutes

Mr. Pammel made a motion to approve the Minutes for July 13, 1999, July 27, 1999 and August 3, 1999.

Page 263, October 19, 1999, (Tape 1), After Agenda Item, continued from Page 262

Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 263, October 19, 1999, (Tape 1), After Agenda Item:

Approval of October 12, 1999 Resolutions

Mr. Pammel made a motion to approve the October 12, 1999 Resolutions. Mr. Dively seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 263, October 19, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request for SP 99-Y-063 and VC 99-Y-163
Peter and Sarah Roussos

Mr. Dively moved to deny the request for an out-of-turn hearing. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 263, October 19, 1999, (Tape 1), After Agenda Item:

Request for Intent to Defer, A 1997-LE-028, Sheehy Investments One, L.P.

Mr. Shoup stated that the applicant was working on site plan approval and said that DPWES had stated that they were prepared to approve the minor site plan once the issue of an agreement with Metro was resolved; therefore, staff would support a deferral.

Mr. Pammel made a motion to accept the intent to defer appeal application A 1997-LE-028 to January 25, 2000, 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. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

Minutes by: Deborah Hedrick

Approved on: December 14, 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, October 26, 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 9:02 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 265, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SHERRI L. ANDERSON-COX, VC 99-H-102 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit 8.0 ft. high fence to remain in rear yard. Located at 2338 Horseferry Ct. on approx. 1,400 sq. ft. of land zoned R-20. Hunter Mill District. Tax Map 26-1 ((5))(E) 116.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sherri Anderson-Cox. 2338 Horseferry Court, Reston, 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 8.0 foot high fence to remain in the rear yard. The maximum height for a fence in the rear yard is 7.0 feet; therefore, a variance of 1 foot was requested.

Ms. Anderson-Cox presented the variance request as outlined in the statement of justification submitted with the application. She said the reason for the fence was for privacy. Ms. Anderson-Cox said she had received approval from the homeowners' association and her immediate neighbor.

Ms. Gibb asked staff how the violation was discovered. Mr. Bernal replied there was a complaint.

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

Mr. Hammack moved to approve VC 99-H-102 for the reasons noted in the Resolution.

Ms. Anderson-Cox commended staff for their assistance with her application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SHERRI L. ANDERSON-COX, VC 99-H-102 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit 8.0 ft. high fence to remain in rear yard. Located at 2338 Horseferry Ct. on approx. 1,400 sq. ft. of land zoned R-20. Hunter Mill District. Tax Map 26-1 ((5))(E) 116. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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 photographs submitted reflect a severe topographical situation.
4. An 8 foot fence still does not give the applicant complete privacy.

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

1. That the subject property was acquired in good faith.

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

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

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

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

1. This variance is approved for the location of a fence shown on the plat prepared by William E. Ramsey, dated June 30,1999, as revised through August 13, 1999 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 266, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES A. BARRON, SP 99-L-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 structures to remain 1.6 ft. from rear lot line and 1.1 ft. from side lot line. Located at 6821 Lois Dr. on approx. 12,714 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 221.

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 Barron, 6821 Lois 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 special permit to allow the reduction to minimum yard requirements based on error in building location to permit accessory structures, a shed and gazebo, to remain 1.6 feet from the rear lot line and 1.1 feet from the side line, respectively. A minimum rear yard of 18.5 feet is required; therefore, the amount of error for the shed was 16.9 feet or 91%. A minimum side yard of 12 feet is required; therefore, the amount of error for the gazebo was 10.9 feet of 91%.

Mr. Barron presented the special permit request as outlined in the statement of justification submitted with the application. He said when he wanted to build the shed, he called the County and was informed that he could build on the property line up to 150 feet. Mr. Barron said the gazebo was there when he purchased the property.

Mr. Hammack asked was the size of the shed 144 square feet as indicated in the statement of justification. Mr. Barron replied yes. Mr. Hammack whether anyone informed the applicant that he needed a building permit. Mr. Barron said he thought a building permit was only necessary if the shed was over 150 feet.

Chairman DiGiulian asked whether the shed was hooked on the back of another existing building. Mr. Barron replied they were two separate structures.

Mr. Barron indicated he had approval from his neighbors.

Mr. Hammack asked whether the floodplain came onto the applicant's property. Mr. Barron replied yes, by 10 feet in the rear corner of his property.

Mr. Hammack inquired about electrical hookups. Mr. Barron replied yes that there were electrical hookups were approved through a previous electrical permit.

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

Mr. Pammel moved to approve SP 99-L-052 for the reasons noted in the Resolution.

Mr. Hammack said the applicant was misled by the County, but this was a large structure that backed up to a floodline. Mr. Hammack said he didn't think the applicant had told the County all the information needed and he would not support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES A. BARRON, SP 99-L-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 structures to remain 1.6 ft. from rear lot line and 1.1 ft. from side lot line. Located at 6821 Lois Dr. on approx. 12,714 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 221. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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 accessory structures (shed and gazebo) as shown on the plat prepared by Larry N. Scartz, dated March 11, 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.

Ms. Gibb 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 November 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 268, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WILLMONT J. & BONG YEO BROWNING, SP 99-M-053 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit modification of minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line. Located at 6609 Pine Rd. on approx. 22,050 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 6. (Concurrent with VC 99-M-107).

9:00 A.M. WILLMONT J. AND BONG YEO BROWNING, VC 99-M-107 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence. Located at 6609 Pine Rd. on approx. 22,050 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 6. (Concurrent with SP 99-M-053).

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 Baskin, 301 Park 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 special permit to allow modification of minimum yard requirements based on error in building location to permit an accessory structure to remain 2.5 feet from the side lot line. A minimum side yard of 15 feet is required; therefore, the amount of error was 12.5 feet. The applicant also requested a variance to permit the construction of a 7 foot high fence. The maximum height for a fence is 4 feet; therefore, a variance of 3 feet was requested.

Mr. Baskin, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He said the accessory structure was built by the applicant for storage and a workshop, and that the applicant didn't know it was built in the wrong place. He said the structure was not visible from the street and the nearest neighbor had a garage 3 feet off the property line. Mr. Baskin submitted photographs of the adjacent neighbor's garage. He said the variance request was based on the condition of the neighboring property. Mr. Baskin said the neighboring property reduced the value of the applicant's property. He noted that the neighbor's property had been the subject of numerous violations. Mr. Baskin presented a petition signed by 9 neighbors supporting the request for the fence. He stated that the requests were not detrimental to the neighborhood.

Mr. Dively asked staff whether there was a citation against the adjacent property. Mr. Bernal replied that staff was processing a chronology in order to take the matter to court and that Ed Tobin, Zoning Enforcement Branch, was present to answer any questions regarding that matter.

Mr. Tobin indicated that he was in the process of submitting the case in regard to the garage to the County Attorney's office. He said it appeared from the files that there were numerous violations for outside storage, and in reviewing files he found that some of the outside storage was removed from the property and about a year or two later, an outside storage issue would resurface. Mr. Tobin said he was currently working on the issue of the addition to the existing garage and he was preparing a letter regarding accumulating outside storage on the property.

Mr. Pammel said it appeared from the photographs that there were inoperable vehicles on the property and asked if that was correct.

Mr. Tobin replied that was correct.

Mr. Dively asked Mr. Baskin how long the property had been in this condition. Mr. Baskin replied that the applicants had lived there over 15 years and it had been off and on for that long.

Mr. Baskin said the fence would leave about 10-12 feet between the property line and the actual curb line of the street so there would not be a visibility issue.

Mr. Hammack asked if this was a retaliatory violation. Mr. Baskin said it was his belief that it was issued by the applicant's neighbors. Mr. Hammack asked if there was electricity in the shed/workshop. Mr. Baskin said it had electricity by an extension cord.

Chairman DiGiulian called for speakers.

Mr. and Mrs. Shankey and their son Edward Shankey came forward to speak in opposition. They expressed concerns relating to the fence height. Mr. Shankey said the fence was put on their side of the property line. Mrs. Shankey said the fence was too close to their garage, which was grandfathered. They stated that the applicant had been mailed a copy of their plat and a letter noting to remove the fence from their property within 30 days.

Chairman DiGiulian asked how far the Shankeys' garage was from the common property line. Mr. Edward Shankey replied that the survey showed it was supposed to be 4½ feet.

Mr. Ribble asked the Shankeys if they had a survey reflecting that the fence was on their property. Mr. Edward Shankey replied no.

Mr. Dively asked for clarification of the distance of the fence from the garage. Mr. Tobin said the original house location plat submitted with the variance application in 1947, indicated that the garage was to be built

4.15 feet from the side lot line; that however, did not necessarily mean that that's where the garage was built. Mr. Tobin said the applicant had a plat that reflected that the fence was well within his property line.

Mr. Hammack asked Mr. Baskin if the 4 foot fence was constructed by the applicant. Mr. Baskin said that fence was not the applicant's fence.

Mr. Baskin stated in his rebuttal that the applicants had a survey indicating that the existing fence of the applicants was on the property line. He said the Shankeys presented no evidence to make the claim that the fence was on their property.

Mr. Browning submitted a copy of the plat that was sent to him by the Shankeys. Mr. Baskin said that the plat reflected the fence on the applicant's property.

Mr. Hammack asked staff when was an electrical permit required for the extension of electricity for a shed. Susan Langdon, Chief, Special Permit and Variance Branch, replied that if electricity was extended and installed then a permit was required, but if the applicant is running electricity through an extension cord, that was a gray area and she didn't know if a permit was required.

Chairman DiGiulian closed the public hearing

Mr. Dively moved to approve SP 99-M-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

J. WILLMONT & BONG YEO BROWNING, SP 99-M-053 Appl. under Sect(s) 8-914 of the Zoning Ordinance to permit modification of minimum yard requirements based on error in building location to permit accessory structure to remain 2.5 ft. from side lot line. Located at 6609 Pine Rd. on approx. 22,050 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 6. (Concurrent with VC 99-M-107). 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 26, 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 (shed/workshop) shown on the plat prepared by John A. Kephart, dated June 1, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1999. 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 99-M-107 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. WILLMONT AND BONG YEO BROWNING, VC 99-M-107 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence. Located at 6609 Pine Rd. on approx. 22,050 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 6. (Concurrent with SP 99-M-053). 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 26, 1999; and

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

1. The applicants are the owners of the land.
2. The Board normally frowns on fences in a front yard, but the applicant has justified their condition and it is a unique situation.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 as shown on the plat prepared by John A. Kephart, dated June 1, 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 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 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 272, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EDWARD AND HELENE MCGRATH, VC 99-D-111 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of carport 1.2 ft. from side lot line. Located at 1715 Westmoreland St. on approx. 10,560 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((27)) 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. Joe Ressa, Agent, 3233 Glebe Road, 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 carport 1.2 feet from the side lot line. A minimum side yard of 12 feet is required with an extension of 5 feet; therefore, a variance of 5.8 feet was requested.

Mr. Ressa, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicants had lived on the property since 1958 and had difficulty getting around, and in and out of their car. Therefore, they wanted to construct a carport over the existing driveway. Mr. Ressa said there was no opposition and the addition would enhance the property and the community.

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

Mr. Ribble moved to approve VC 99-D-111 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD AND HELENE MCGRATH, VC 99-D-111 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of carport 1.2 ft. from side lot line. Located at 1715 Westmoreland St. on approx. 10,560 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((27)) 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 26, 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
3. The property possessed an exceptional situation.
4. The property was a narrow lot.
5. The proposed location was the only location for the carport.

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

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

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

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

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

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

1. This variance is approved for the location of an addition (carport) shown on the plat prepared by Kenneth W. White, dated July 2, 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 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.

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 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 274, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. EILEEN AND WILLIAM HAYDEN, VC 99-D-088 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16. (ADMINISTRATIVELY MOVED FROM 9/14/99 AND 10/5/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Hayden, 9225 Weant Drive, Great Falls, 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 an addition 6.3 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 13.7 feet was requested.

Mr. Hayden presented the variance request as outlined in the statement of justification submitted with the application. He said the variance would not necessitate removal of trees and the existing trees would screen the addition from the adjacent properties.

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

Ms. Gibb moved to approve VC 99-D-088 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EILEEN AND WILLIAM HAYDEN, VC 99-D-088 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from side lot line. Located at 9225 Weant Dr. on approx. 24,266 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 16. (ADMINISTRATIVELY MOVED FROM 9/14/99 AND 10/5/99 for notices). 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 26, 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.
3. The garage could not be located in any other area on the lot.
4. There is a septic field in the back of the property and an oil tank on the opposite side of the house.
5. There is adequate screening and the addition does not require the removal of mature trees.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 one story garage addition shown on the plat prepared by Matthew Arnold AIA, dated through August 19, 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 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. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 276, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. SHUREN MA, SP 99-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 9.9 ft. from side lot line. Located at 6044 Brook Dr. on approx. 11,204 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3))96. (ADMINISTRATIVELY MOVED FROM 7/27/99 and 9/28/99 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. Shuren Ma, 6044 Brook 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 the reduction to minimum yard requirements based on error in building location to permit an addition to remain 9.9 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, the amount of error is 2.1 feet or 17%.

Mr. Ma presented the special permit request as outlined in the statement of justification submitted with the application. He said the carport was there when he purchased the property in 1990 and he didn't know he needed special permit approval.

Chairman DiGiulian called for speakers.

Armando Guerra, 6046 Brook Drive, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 99-M-032 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHUREN MA, SP 99-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 9.9 ft. from side lot line. Located at 6044 Brook Dr. on approx. 11,204 sq. ft. of land zoned R-3. Mason District. Tax Map 51-4 ((3))96. (ADMINISTRATIVELY MOVED FROM 7/27/99 and 9/28/99 for notices). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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 garage shown on the plat prepared by Carlton

Price, dated June 18, 1989 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 5-0-1. Mr. Hammack 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 November 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 278, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE APOSTLES (EPISCOPAL), SP 99-Y-046 Appl. under Sect(s) 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 11814 Braddock Rd. on approx. 9.85 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 34A and 34B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, Et. Al., 2200 Clarendon Boulevard, 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 to allow the demolition of the existing structures on the site and construction of a church, to include a sanctuary, fellowship hall, administration and chapel building with a total of 36,900 square feet of gross floor area. The proposed height of the structures is 60 feet for the buildings and 120 feet for the steeple. Parking on the site would be provided in lots surrounding the church with 271 parking spaces. Approximately 50% of the site would be retained in undisturbed open space, including the area within the floodplain and an environmental quality corridor.

In staff's evaluation, all land use, transportation and environmental issues were addressed with adoption of the development conditions. Staff recommended that the height of the steeple be contained within the height restrictions for the zoning district, which is 60 feet. Staff believed that the height restrictions served to keep the structure within the character of the R-C District, which fostered low density residential development. Staff recommended approval of SP 99-Y-046 with adoption of the proposed development conditions. Ms. Schilling stated that staff received the applicant's proposed changes to the development conditions that morning. She said staff was not in concurrence with the applicant's proposed Condition #6 relating to the height of the steeple being restricted to 100 feet, measured from the ground to the top of the roof. Ms. Schilling stated that staff was in concurrence with the remaining two proposed condition changes; Condition #24 relating to the construction of the church being conceptually shown in the architectural elevation, and a new development condition #25 which the applicant submitted in response to citizen concerns regarding additional landscaping within the rear parking lot adjacent to the floodplain.

Ms. Strobel, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the proposal was to serve the existing congregation and not to solicit additional members. Ms. Strobel said all four structures would be connected by a walkway to be considered one building. She stated that there would be no traffic traveling through residential neighborhoods. Ms. Strobel said the applicant carefully designed the building in keeping with the character of the surrounding residential area. She stated that the applicant wanted to make modifications to staff's proposed conditions. Ms. Strobel discussed and distributed the suggested condition changes to the Board. Ms. Strobel noted the letters submitted in support of the application and asked the people present at the public hearing to stand to indicate their support.

Mr. Pammel asked what was the date of the existing log cabin on the property. Ms. Strobel replied that the log cabin was built in 1910.

Mr. Pammel suggested that the applicant obtain a recommendation from the County Archeologist on whether the log cabin is historical.

Chairman DiGiulian called for speakers.

Raymond Milograno, 8316 Garfield Court, came forward to speak in support of the application. He stated that the applicant had met with the surrounding neighborhood and homeowners association and had added additional screening.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 99-Y-046 with the condition changes as noted in the Resolution.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE CHURCH OF THE APOSTLES (EPISCOPAL), SP 99-Y-046 Appl. under Sect(s) 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 11814 Braddock Rd. on approx. 9.85 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) 34A and 34B. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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). 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, 11814 Braddock Road (9.85 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 Christopher Consultants (William R. Zink, P.E.) dated July 9, 1999, as revised through October 12, 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 seats within the main area of worship shall not exceed 800.

6) The building height of all structures on the site, excluding the steeple, shall not exceed 60 feet. The steeple and spire shall not exceed 105 feet.

7) The barrier requirement shall be waived.

8) Landscaping shall be provided around the foundations of the building to soften the appearance of the church from Braddock Road, subject to the review and approval of the Urban Forestry Branch of DPWES.

9) Transitional screening shall be as shown on the special permit plat along the northern, eastern and western property boundaries and shall consist of natural vegetation, supplemented with evergreen plant materials along the western property boundary, to provide an effective screen for the benefit of adjacent residents during the winter months, subject to the review and approval of the Urban Forestry Branch of DPWES. Transitional Screening Type 1 shall be provided along the southern property boundary as shown on the special permit plat, subject to the review and approval of the Urban Forestry Branch of DPWES.

10) At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by the Urban Forestry Branch. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the eighth edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.

11) Prior to site plan approval, a Phase I Environmental Site Investigation of the property shall be submitted to DPWES for review and approval in coordination with the Fire and Rescue Department, the Health Department, and other appropriate agencies as determined by DPWES (hereinafter referred to as the "reviewing agencies"). This investigation shall be generally consistent with the procedures described within the American Society for Testing and Materials document entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" as determined by DPWES in coordination with the reviewing agencies. If warranted by the results of the Phase I investigation, as determined by DPWES, a Phase II monitoring program shall be conducted in order to determine if soil, surface water, or ground water contaminants are present on the property and/or have migrated from the property. If a Phase II program is warranted, monitoring parameters shall be subject to the approval of DPWES in coordination with the reviewing agencies. If contaminants are detected in concentrations requiring remedial action, a remediation program shall be performed in accordance with all applicable Federal, State and County requirements. Sufficient documentation of completion of the remediation program (with the possible exception of long term follow up monitoring efforts) or an appropriate corrective action plan consistent with the proposed development, as determined by DPWES, shall be provided to DPWES prior to site plan approval.

12) Any outdoor lighting of the site shall be in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed 12 feet,
- The lights shall be focused downward directly on the subject property,
- Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,

- The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.

- Up-lighting of buildings or signs shall not be permitted on the site.

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

14) All signage on the property shall be in accordance with Article 12 of the Zoning Ordinance.

15) Prior to approval of a site plan, the applicant shall provide ingress/egress easements for the shared entrance to the benefit of the adjacent property to the east, if those easements have not been provided previously, subject to the review and approval of DPWES. At the time of site plan review, if a right turn lane has not been constructed into the site at the eastern entrance by the adjacent church, the applicant shall provide additional dedication of right-of-way in fee simple to the Board of Supervisors, as shown on the special permit plat in order to provide a right turn lane onto the site from the shared entrance along Braddock Road. The right turn lane shall be constructed prior to issuance of a Non-Rup for the church.

16) No less than 50% of the application property shall be preserved as undisturbed open space as approved by DPWES and as shown on the special permit plat.

17) If feasible, as determined by DPWES, stormwater runoff shall be conveyed to BMP facilities, and if feasible, an additional BMP facility shall be provided to collect runoff from the parking area to the south of the proposed structures. This facility may be provided as a bioretention facility within a landscaped strip within the parking area.

18) The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between the DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Further, prior to the issuance of the first Non-RUP, areas disturbed with the clearing and grading for Phase I shall be stabilized with a ground cover to consist of grasses and/or a naturalized wildflower/meadow mix which shall be maintained until such time as subsequent phased construction is initiated.

19) A geo-technical engineering study shall be submitted to DPWES for review and approval in accordance with Chapter 107 of the Fairfax County Code as determined necessary by DPWES and shall be implemented as determined by DPWES. If DPWES determines that a potential health risk exists due to naturally occurring asbestos, all construction personnel shall be alerted to the potential health risk and appropriate construction techniques, as determined by DPWES, shall be implemented.

20) In order to achieve sediment trapping efficiencies above what would be expected from compliance with minimum erosion and sedimentation control requirements, the applicant shall optimize the effectiveness of the erosion and sedimentation control system, as determined by the Special Projects Branch of DPWES, through the provision of super silt fences and/or other innovative measures determined to be appropriate by the Special Projects Branch of DPWES.

22) Prior to issuance of the first Non-Rup, the applicant shall provide documentation to DPWES that demonstrates that the groundwater well has been abandoned in accordance with Health Department requirements and that the outhouse has been removed/abandoned through procedures approved by the Health Department.

23) In order to reduce the maximum interior noise level to a level of approximately 45 dBA Ldn, for all buildings located between the 65-70 dBA Ldn highway noise impact contours, the following measures shall be employed:

- Exterior walls shall have a laboratory sound transmission class 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 façade they should have the same laboratory STC as walls.
- Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

24) Construction of the church shall be as conceptually shown in the architectural elevation contained in Attachment A.

25) At a minimum, evergreens shall be provided along the rear of the northernmost parking lot and the north side of the travel aisle located on the west side of the property to screen adjacent parcels to the north from headlight glare and a direct view of vehicles, subject to the review of the Urban Forestry Branch of DPW&ES. Said landscaping shall be reviewed with the owners of the two adjacent parcels to the north at time of site plan submission. If development is phased, said landscaping shall be provided as a part of Phase I.

26) Before demolition of the existing log cabin on site, circa 1910, the applicant shall obtain the recommendation of the County Historic Preservation Planner with respect to preservation and/or relocation.

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

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 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 282, October 26, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE L. MARSHALL, SPA 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 an addition to remain 6.3 ft. from a 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 applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Marshall, 3608 Lacy Boulevard, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the reduction to minimum yard requirements based on error in building location to permit an addition to remain 6.3 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, the amount of error is 5.7 feet or 48%. On September 15, 1998, the BZA approved

Special Permit SP 98-M-032. However, the resulting sunroom was constructed with a height of 18.5 feet rather than the height of 11.5 feet shown on the approved special permit plat. Since the increase in height results in a greater portion of the sunroom that encroaches into the side yard than was previously approved, the subject amendment to the special permit was filed.

Mr. Marshall presented the request as outlined in the statement of justification submitted with the application.

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

Mr. Pammel moved to approve SPA 98-M-032 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 L. MARSHALL, SPA 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 an addition to remain 6.3 ft. from a 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 October 26, 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 and height of a sunroom shown on the plat prepared by Thomas F. Conlon, Land Surveyor, dated March 16, 1998, as revised through July 19, 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. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 284, October 26, 1999, (Tape 1), After Agenda Item:

Approval of September 7, 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 284, October 26, 1999, (Tape 1), After Agenda Item:

Approval of October 19, 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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Minutes by: Regina Thorn

Approved on: December 21, 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 2, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; Nancy Gibb; 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.

Page 285, November 2, 1999, (Tape 1) Scheduled case of:

9:00 A.M. EDWIN B. AND ANNA M. LAWLESS, VC 99-Y-103 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 2.9 ft. from rear lot line. Located at 3726 Millpond Ct. on approx. 4,925 sq. ft. of land zoned PDH-3. Sully District. Tax Map 45-2 ((12)) 282.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Chris Garner, Creative Energy Coorporation of Virginia, 3927 Old Lee Highway, Suite 102-B, Fairfax, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to construct a deck, measuring 3.5 feet in height to be located 2.9 feet from the rear lot line. In the PDH-3 District, a deck may extend 20 feet, but no closer than 5 feet to the rear lot line; therefore a variance of 2.1 feet was requested.

Mr. Garner, representation for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the lot was very shallow and the house was situated towards the rear of the lot. He informed the Board that Mrs. Lawless was wheelchair bound and they were requesting the deck addition to give her access to the outdoors. Mr. Garner said that neighborhood was in full support of the application.

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

Mr. Hammack moved to approve VC 99-Y-103 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWIN B. AND ANNA M. LAWLESS, VC 99-Y-103 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 2.9 ft. from rear lot line. Located at 3726 Millpond Ct. on approx. 4,925 sq. ft. of land zoned PDH-3. Sully District. Tax Map 45-2 ((12)) 282. 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 2, 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 exceptional shallowness of the lot and the placement of the house to the rear of the property caused 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 deck shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated July 1, 1999, as revised July 29, 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 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 November 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 286, November 2, 1999, (Tape 1) Scheduled case of:

9:00 A.M. ROSEMARIE S. LAQUE, VC 99-V-104 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of carport 1.3 ft. from side lot line. Located at 8604 Cushman Pl. on approx. 10,558 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5))(19) 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. Thomas Galliot, 1807 Strattford Drive, Alexandria, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to construct a carport addition to be located 1.3 feet from the side lot line. A minimum side yard of 7 feet was required; therefore, a variance of 5.7 feet was requested.

Mr. Galliot, representation for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the reason for the carport was to protect the applicant and her vehicle from the weather. He said that the applicant's family occupied the homes on either side of her and they were in support of the application.

Mr. Dively stated that he had no problem with the carport other than the fact that it was located very close to the side lot line and he suggested that it be moved in 2.0 feet. Mr. Galliot replied that it could be moved.

Mr. Pammel stated that since there was only going to be one car parked in the carport he would be in favor of a 3.3 foot set back on the side lot line.

Chairman DiGiulian called for speakers.

Mike Chauncy, Rice Associates, 4001 Westfax Drive, Chantilly, Virginia, stated that he prepared the plat for the applicant and in his opinion there was definitely a need for the variance.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve-in-part VC 99-V-104 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROSEMARIE S. LAQUE, VC 99-V-104 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of carport 1.3 ft., **(THE BOARD APPROVED THE CARPORT 3.3 ft. FROM THE SIDE LOT LINE)**. Located at 8604 Cushman Pl. on approx. 10,558 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5))(19) 4. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 before the Board indicating compliance with the prescribed criteria for the granting of a variance.
3. The lot was 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-IN-PART (THE BOARD APPROVED THE CARPORT 3.3 FEET FROM THE SIDE LOT LINE)** with the following limitations:

1. This variance is approved for the location of an addition (carport) shown on the plat prepared by Rice Associates, dated May 10, 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 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 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 288, November 2, 1999, (Tape 1) Scheduled case of:

9:00 A.M. RODGER THOMAS MELCHIORI AND LISA BERG MELCHIORI, VC 99-Y-108 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from rear lot line. Located at 13577 Melville Ln. on approx. 11,250 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 700.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rodger Melchiori, 13577 Mellville Lane, Chantilly, 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 a screened addition to be located 13.6 feet from the rear lot line. A minimum rear yard of 25 feet was required; therefore, a variance of 11.4 feet was requested.

Mr. Melchiori presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was located on a pipestem and had a shallow backyard; therefore, a variance was needed for the addition. He said the neighborhood was in support of the application.

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

Mr. Dively moved to approve VC 99-Y-108 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RODGER THOMAS MELCHIORI AND LISA BERG MELCHIORI, VC 99-Y-108 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from rear lot line. Located at 13577 Melville Ln. on approx. 11,250 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 700. 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 2, 1999; and

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

1. The applicants are the owners of the land.
2. This is a reasonable variance request.
3. The applicant has cited the fact that the house is located on a pipestem and there is a shallow backyard.

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 July 14, 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 November 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 290, November 2, 1999, (Tape 1) Scheduled case of:

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-109 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3048 Cedar Ln. on approx. 10,112 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 152.

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-110 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3046 Cedar Ln. on approx. 10,406 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 151.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Shahman Foradi, 10680 Main Street, Fairfax, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. Ms. Schilling spoke to VC 99-P-109 by stating that the applicants requested variances to permit the construction of a dwelling 5.0 from one side lot line and 15 feet from the other side lot line. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, variances of 15 feet and 5 feet were requested.

Ms. Schilling, spoke to VC 99-P-110 by stating that the applicants requested variances to permit the

construction of a dwelling 5.0 from one side lot line and 15 feet from the other side lot line. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, variances of 15 feet and 5 feet were requested

Mr. Foradi, representation for the applicants, presented the variance requests as outlined in the statements of justification submitted with the applications. Mr. Foradi stated that the subdivision was created in the 1940's and at that time the lots were created to be buildable lots. He said the applicants acquired the lots to construct single family homes on them; however, they did not construct the homes at the time of purchase. He informed the Board that the applicants wanted to construct one 30 foot wide home on each lot and that the homes would be similar to several homes located close to the subject properties. Mr. Foradi explained that the reason for the variance requests being 5 feet and 15 feet from the side lot lines was to leave more side yard for the existing homes on the adjoining properties.

Chairman DiGiulian called for speakers.

The following citizens came to the podium to speak in opposition of the application:

David Wine, 3042 Cedar Lane, Fairfax, Virginia; Will Sabin, 8718 Arlington Boulevard, Fairfax, Virginia; and Leslie Cheeney 8714 Beechwood Drive, Fairfax, Virginia.

The following were their concerns: the lots were not designed for single family homes and the majority of the homes in the subdivision were constructed on two or more lots to support R-1 Zoning; the application would not be in character with the neighborhood; adding two additional driveways would intensify the existing heavy traffic on Cedar Lane; and, they suggested that the applicant combine the two lots and construct only one home.

There was discussion between the Board and staff regarding how many homes in the neighborhood were constructed on single lots as opposed to consolidated lots. It was determined that research needed to be done to answer the question.

Mr. Foradi, in his rebuttal, stated that the subdivision was created with the intent of each lot being a buildable lot and the covenants dictated that homes could be constructed 5 feet from the side lot lines. He reiterated that the lots were purchased with the intent of building one home on each lot; therefore, it would be a hardship for the applicant to have to consolidate the lots and build only one home. He said the existing homes in the subdivision had already been built before the R-1 restriction was implemented. Mr. Foradi gave an example of two other homes in the subdivision that were constructed on single lots.

Ms. Gibb asked when the applicants purchased the property. Mr. Foradi answered that the lots were purchased some time during the 1960's or 1970's.

Mr. Dively asked when R-1 Zoning was implemented. Mr. Pammel stated that R-1 Zoning was implemented in 1951.

There was discussion between the Board and staff regarding whether there were any lots in the subdivison with one owner of one lot and if there had been any similar variances granted in the neighborhood. The outcome of the discussion was that more information was needed regarding similar lots and when they were built.

Mr. Foradi, in closing, stated that the applicants would be willing to adapt to any combination of side yards that the Board preferred that would permit the construction of a 30 foot wide home.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer the application until November 16, 1999 at 9:00 a.m. to allow the applicant and staff time to obtain information about the surrounding community to include; how many lots had one home on one lot; and, when these homes were built. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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9:00 A.M. LEARY SCHOOL, INC., VC 99-M-105 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of dwelling 11.0 ft. from side lot lines. Located at 6438 Holyoke Dr. on approx. 9,059 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((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, Ed Shultz, Leary School, 6349 Lincolnia Road, Alexandria, 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 dwelling to be located 11.0 feet from both the northern and southern side lot lines. A minimum side yard of 15 feet was required; therefore, a variance of 4.0 feet along both the northern and southern lot lines was requested.

Mr. Schultz presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he had recently constructed and sold a home on a lot adjacent to the subject property. He stated that the lot in question was very narrow and shallow in depth; therefore, a variance was needed to construct the home so it would be in character with the neighborhood. Mr. Schultz said that the neighbors were in support of the application.

Mr. Pammel asked if the majority of the homes on the street were constructed on single lots. Mr. Schultz replied that they were.

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

Ms. Gibb moved to approve VC 99-M-105 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY SCHOOL, INC., VC 99-M-105 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of dwelling 11.0 ft. from side lot lines. Located at 6438 Holyoke Dr. on approx. 9,059 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((3)) 15. 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 2, 1999; and

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

1. The applicants are the owners of the land.
2. The subject property is exceptionally narrow.
3. The applicant is building as narrow a house as possible.
4. The applicant has centered the home on the lot.
5. The home is consistent with the other homes in the neighborhood that have had variances granted in the past.
6. This is the only place and the only way the house can be built on this single 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 dwelling shown on the plat prepared by Kenneth W. White, dated June 28, 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 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 10, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 293 November 2, 1999, (Tape 1) Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS, SP 99-S-044 Appl. Under Sect(s). 3-103 of the Zoning Ordinance to permit church and related facilities and private school of general education with a daily enrollment of 100 or more students. Located generally at the S.E. quadrant of the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (DEFERRED FROM 10/19/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia 22201, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow the construction of a church and related facilities and a private school for 250 students. There were two proposed areas of access to the site, the first was a mid-point off Pohick Road and the second was off Groveland Drive. The complex would be built in two phases with the first being the construction of the church with 940 seats and the second phase would be the school and a gymnasium. The total gross square footage of the improvements on the lot was 41,200 square feet. The onsite parking area would contain 255 parking spaces. The hours of operation for the proposed school were 9:00 a.m. to 8:00 p.m., Monday through Friday.

Mr. Kelley asked staff where overflow parking would be located on site. Mr. Bernal replied that it was proposed that parking would be moved to the northwestern portion of the site, to the edge of the existing parking lot. Mr. Kelley asked how many extra vehicles the overflow parking lot would accommodate. Mr. Bernal answered that 20 additonal parking spaces would be available.

Ms. Strobel presented the special permit request as outlined in the statement of justification submitted with the application. She informed the Board that the 10 acres of property was purchased by the church in 1994, with the original intent being to construct a church with 277 parking spaces. She said the church services were currently being held in a fire hall until a church could be constructed. She llustrated the areas that this particular congregation was coming from and said that there was a need for a church in this location to serve the people in the surrounding communities which continue to grow.

Ms. Strobel stated that as a result of the church being under intense pressure to provide private schools, they proposed the construction of a church with 940 seats and a school with a maximum enrollment of 250 students offering instruction from Kindergarten to 8th grade. She acknowledged that although this plan was different than the original intent, it was well thought out and was within the requirements of the Zoning Ordinance and the Comprehensive Plan. She pointed out that the rectory, which was originally proposed, had been removed upon the request of staff and the adjacent community, to allow for additional open space and the preservation of existing vegetation on the property. She informed the Board that the typical Saturday evening and Sunday morning masses were the most heavily attended and she stressed that these services would occur during off peak traffic hours.

Ms. Strobel said the children attending the school would be from the surrounding community and it was anticipated that there would be a carpooling system in place. She stated that the permitted Floor Area Ratio (FAR) for non-residential uses in the R-1 District was .15 and the applicants proposal resulted in a .10, which was well within the permitted development.

She reported that the applicant had perserved buffers, open space and all of the set backs that the Ordinance required.

Ms. Strobel informed the Board that although there was no opportunity for direct access to the Fairfax County Parkway, Pohick Road was designed and funded for improvements which were scheduled to begin prior to the applicant's construction. She pointed out that there was a Develoment Condition which restricted the issuance of an occupancy permit to the school until the road improvements were completed. She explained that the applicant had met with members of the surrounding community and had tried to address the concerns with modifications to the plat, including the deletion of the rectory, additional landscaping and the accomodation of the Pohick Road improvement plan. She pointed out that the applicant had previously requested a two week deferral in order to allow a continued opportunity to work with the citizens.

Ms. Strobel stated that the applicant had proposed Development Conditions that were not requested by staff, but offered by the appliant to address as many concerns as possible. She explained that the proposed Development Conditions consisted of the construction of a 6 foot high fence along the southern side of property adjacent to the Afton Glen subdivision as an effort to make sure people did not cut through residential property; the employment of a police officer to direct traffic in and out of the site; the posting of no parking signs in the community in consultation with the residents; if possible, a berm to be provided in

addition to the landscaping along Groveland Drive; no bells before 9:00 a.m. or after 6:00 p.m.; and, coordination with the Virginia Department of Transporation (VDOT) to ensure timely completion of improvements to Pohick Road. She said the applicant proposed two minor modifications to the Development Conditions in the staff report. She spoke to Condition #2 by suggesting that the plat refer to the Engineering Firm and not the individual whose seal appears on plat. She spoke to Condition #12 by stating the applicant's concerns about relocating the parking as proposed by staff. She said that the final grade elevations of the property and the final size of the storm water management pond had not yet been established and that the applicant would like to insert the words "as based on an engineering evaluation by the applicant at time of site plan" that the parking might be relocated.

Ms. Strobel, in closing, illustrated the number of people in the audience who were in support of the application by having them stand.

Mr. Kelley asked if the site could hold 275 parking spaces instead. Ms. Strobel replied that though the number of parking spaced proposed was 255, additional parking was always preferred.

Mr. Kelley asked how overcrowded the other two area churches were and what his assurance was that this church would not become overcrowded as well. Ms. Strobel stated that although she could not accurately state the percent the churches were overcrowded, she knew there was a significant need. She said that the property in question could become overcrowded in several years and that the Diocese was constantly in search of more sites to develop.

Chairman DiGiulian called for speakers.

Thomas A. Dietz, 8610 Groveland Drive, Springfield, Virginia, stated that he lived in the Afton Glen community and he strongly supported the approval of the application. He requested that there be a right turn only permitted onto Groveland Drive from the church parking lot, that parking be reserved for residents only on Blue Jasmine, Groveland Drive and Green Garland and for the construction of a 6.0 foot privacy fence along the eastern boundary line between the church and homes along Green Garland.

Paul May, Office of Construction Management for the Catholic Diocese of Arlington, (no address given), stated that there were currently 35 schools and 5 high schools operating within the Diocese and the current enrollment was approximately 17,000 students with 3,500 students on the waiting list and of that group approximately half were not Catholic. He said that there was an overwhelming need for both public and parochial classroom space.

Jane Huzil, 8716 Redman Street, Springfield, Virginia, stated that she lived approximately 1 block from the property in question. She said that she purposefully moved near this site so her children could go to a catholic school.

The following citizens came to the podium to speak in opposition of the application:

Elvira Dombkowski, 7726 Green Garland Drive, Springfield, Virginia; Carol Ward, President Afton Glen Homeowners Association, 7681 Green Garland Drive, Springfield, Virginia; Fred Taylor, 2000 N. 14th Street, Arlington, Virginia; Jon Pratt, Chairman of the Springfield District Counsel (no address given); Doug Rickman, 7800 Cherry Orchard Court, Springfield, Virginia; Sue Brantlinger, 7811 Blue Jasmine Court, Springfield, Virginia; Jimmy Harper, 7010 Blue Jasmine Court, Springfield, Virginia; Cindy Lauria, Blue Jasmine Court, Springfield, Virginia; Jennifer Koss, 7705 Green Garland Drive, Springfield, Virginia; Larry Davis, 7812 Blue Jasmine Court, Springfield, Virginia; Jack Ward, 7681 Green Garland Drive, Springfield, Virginia.

The following were their concerns: the main entrance and exit of the subject property would be off Groveland Road which was a suburban street not an arterial road; there was no connection from the site to Hooes Road; the staff report reflected that there would be 2,300 or more round trips per day into the school and church; there would be stacking of cars and school buses in the subdivision; members of the congregation would park along all of the subdivision streets; the concern for the safety of their children while playing at the end of the cul de sac and while waiting at the bus stop; the addition of the church and school would change the character of the neighborhood; the extended length of time to construct the two phases;

and, the community was upset that the original plan to construct a small church had been modified to build a large church and school.

Ms. Strobel, in her rebuttal, reiterated that Pohick Road was funded, designed and scheduled to begin construction in the year 2000. She stressed that the Diocese was well within the permitted FAR for the District. She noted that the property, due to its close proximity to the Fairfax County Parkway, was not suited for a residential development. Ms. Strobel reported that there were a number of people in the Afton Glen community who supported the application.

Mr. Hammack asked staff why VDOT would not approve a median break for a left turn lane off Pohick Road. Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that there were certain distance requirements between median breaks and that situation did not meet the criteria for a median break at the front of the church, but it did meet the criteria at Groveland Drive. However, she said staff could set up a meeting with VDOT to reassess their options.

Gary Kirkbride, Dewberry and Davis, spoke on behalf of the applicant by stating that he had studied the VDOT plans and had discussed with VDOT, the possibility of a median break for a left turn lane off Pohick Road. He explained that VDOT standards required a greater distance for stacking at median breaks than this entrance would allow.

Mr. Kelley asked staff how big the overflow parking lot could be made without violating the Parking Lot Beautification Act. Ms. Langdon stated that the Ordinance required a minimum of 5 percent parking lot landscaping and that was based on the entire size of the parking lot. She said that Mr. Kirkbride would be able to provide more information.

There was discussion between the Board and Mr. Kirkbride regarding whether the site would be able to accommodate 295 parking spaces. The result was Mr. Kirkbride's opinion that 295 parking spaces would add approximately another 20 percent of parking to the site and he felt that the most that could be added without the reconfiguration of the whole site was 5 percent.

Ms. Strobel stated that the applicant was open to exploring as many possibilities to solve the overflow parking issues as the Board wished.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve the application with addition of the applicant's proposed modifications to Development Conditions #2 and #12, the modification of Development Condition #12 to increase the amount of parking spaces from 255 to 285 and to include the applicant's proposed Development Conditions to be numbered 22 through 29.

Mr. Kelley stated that he felt that parking in the area was critical and that the applicant should find space on the site for this additional parking. He recommended approval to the Board.

Mr. Dively seconded the motion and said that the case was very difficult and that the members of Afton Glen spoke eloquently regarding their issues. However, he felt that Fairfax County was so populated that there were no decisions that would make everyone happy. He stated his opinion that this was a good use of the property.

Mr. Pammel explained to the audience the criteria for evaluating special permit requests, provided a description of FAR and reiterated that the property had a lesser intensity of the use than the Ordinance allowed. He said that he lived two blocks from a Catholic parish and it had no impact on the community.

Mr. Hammack suggested that the Board defer the application to allow the applicant to work on ingress and egress issues. He stated his opinion that FAR was not necessarily a factor of the intensity of the use and the intensity of the traffic that would be generated by the school and the 2,300 vehicles per day. He said that he felt the intensity of use was greater than what ought to be constructed on the site given the amount of traffic it generated. However, if the applicant could find a better way to ingress and egress the site, it would alleviate the impact on the community.

Page 297, November 2, 1999, (Tape 1), THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS, SP 99-S-044, continued from Page 296

Mr. Ribble stated his opinion that approving the application would devastate the community and the ingress and egress was an important part of the application. He suggested that the applicant meet again with the community to continue to address their issues.

Mr. Hammack made a substitue motion to defer the application to allow the applicant to work on ingress and egress issues with VDOT.

Mr. Ribble seconded the substitue motion.

The Board members discussed when an adequate deferral date would be since the applicant would have to meet again with VDOT. Ms. Strobel suggested that Mr. Kirkbride address the issue of a second meeting with VDOT.

Mr. Kirkbride stated that a deferral period of 30 days was adequate. He stated that the applicant and VDOT had discussed ingress and egress issues at length and that it was his opinion that the only solution to the problem had already been found and presented.

Mr. Hammack shared his hope that after VDOT understood the Board's opinion they might look at the application differently. He stated that he would like to know more about why VDOT would not approve a median break off Pohick Road.

Mr. Dively shared his opinion that the substitute motion was a bad idea and he did not think failing to make a decision at that time was the proper thing to do. He said that VDOT had already stated what was and was not acceptable and it was not realistic that they would get a different answer from VDOT that what had already been given.

Mr. Kelley stated that although he was sympathetic to Mr. Hammack's idea, it was not the Board's function to force an agreement between the County and VDOT.

Ms. Gibb stated that she was in agreement with Mr. Hammack and she would like to hear from VDOT once they had been informed of the Board's concerns.

Ms. Strobel asked for staff's opinion regarding the motion. Ms. Langdon stated that staff had not met directly with VDOT and that it was her experience in the past if the Board's concerns were conveyed to VDOT they then would look at the concerns and work out conditions with staff. Ms. Langdon stated that it was reasonable to go back and meet directly with VDOT, however staff could not guarantee any changes.

The Board asked Ms. Strobel for an adequate deferral date. Ms. Strobel answered that 30 days would be a sufficient amount of time to work with VDOT.

Mr. Hammack made a substitute motion to defer SP 99-S-044 to December 14, 1999, to be called at the end of the agenda. Mr. Ribble seconded the motion which carried by a vote of 5-2. Mr. Kelley and Mr. Dively voted against the motion.

Page 297, November 2, 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 estabish 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 AND 9/7/99; MOVED FROM 6/2/98, 9/29/98, 12/1/98, 3/9/99 AND 6/8/99).

Chairman DiGiulian stated that the Board issued an intent to defer to January 25, 2000. William E. Shoup, Deputy Zoning Administrator, stated that he had no comment and that he was in agreement with the intent to defer and that the appeal may get resolved.

Page 298, November 2, 1999, (Tape 1), SHEEHY INVESTMENTS ONE LIMITED PARTNERSHIP, A 1997-LE-028, continued from Page 297

Mr. Hammack moved to defer A 1997-LE-028, Sheehy Investments One Limited Partnership to January 25, 2000 at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 298, November 2, 1999, (Tape 1) After Agenda Item:

Additional Time Request
Wendell L. and Mary L. Irby
VC 97-P-004

Mr. Hammack moved to approve the Additional Time Request for Wendell L. and Mary L. Irby, VC 97-P-004. Mr. Dively seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote. The new expiration date is October 9, 2000.

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Page 298, November 2, 1999, (Tape 1) After Agenda Item:

Request for Intent to Defer
Renaissance Apartments, L.P.
A 1998-PR-033

Mr. Hammack approved the Intent to Defer for Renaissance Apartments, L.P, A 1998-PR-033 to January 18, 2000 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 298, November 2, 1999, (Tape 1) After Agenda Item:

Out-of-Turn Hearing Request
Thomas George Stasik
VC 99-P-168

Mr. Pammel moved to deny the Out-of-Turn Hearing Request for Thomas George Stasik, VC 99-P-168. Mr. Dively seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble were not present for the vote.

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Page 298, November 2, 1999, (Tape 1) After Agenda Item:

Approval of October 26, 1999 Resolutions

Mr. Pammel moved to approve October 26, 1999 Resolutions. Mr. Dively seconded the motion which carried by a vote of 5-0. Ms. Gibb and Mr. Ribble 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 11:26 p.m.

Minutes by: Lori M. Mallam

Approved on: March 7, 2000

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 9, 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. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 301, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, ROCIO O.TANTOCO, GEORGINA P. TANTOCO AND CHRISTOPHER P. JAMES, VC 99-P-101 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed lot 17B having a lot width of 11.9 ft. Located at 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17.

Chairman DiGiulian noted a request for a 30 day deferral was received from the applicant.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that a letter was received from the Agent, Lynne Strobel, requesting a deferral to December 7, 1999, at 9:00 a.m.

Chairman DiGiulian called for speakers on the issue of deferral.

Lynne Strobel, Agent, stated that the applicant was requesting the deferral to resolve community concerns, which had not yet been addressed.

Dr. Andy Hay, 10410 Marbury Road, Oakton, Virginia; Govind Idnani, 10409 Hunter Ridge Drive, Oakton, Virginia; Bernie Leibler, 10407 Hunter Ridge Drive, Oakton, Virginia, came to the podium to speak in opposition of the issue of deferral. The speakers expressed concern regarding having to take off work to attend the public hearing and that they should have been made aware of the deferral request prior to the public hearing.

Mr. Kelley asked Ms. Strobel when had the meetings and negotiations started with the citizens and when she was retained.

Ms. Strobel stated that when she was retained by the applicant, she understood that the property owners would work with the community. She stated that as recently as the prior week, she had been made aware of issues raised by community members. Ms. Strobel stated that she made a commitment to the applicant that she would schedule a meeting with the community and was hopeful to reach a resolution of the issues. Ms. Strobel apologized to the citizens who had taken time off work and stated that if there was a meeting to reach resolution, their attendance may not be necessary at the next scheduled public hearing.

Mr. Dively made a motion to defer VC 99-P-101 to December 7, 1999, at 9:00 a.m. Mr. Hammack seconded the motion and informed the community members that written testimony could be submitted to the Clerk to the Board of Zoning Appeals and would be considered by Board members if appearing at the next public hearing was an inconvenience. The motion carried by a vote of 5-0-1. Mr. Pammel abstained from the vote. Mr. Ribble was not present for the vote.

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Page 301, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CATHERINE H. BEAUCHAMP, VC 99-D-112 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of carport 2.3 ft. from side lot line. Located at 6629 Kirby Ct. on approx. 19,044 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((7)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Catherine Beauchamp, 6629 Kirby Court, Falls Church, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The

applicant requested approval of a variance to allow the construction of a carport 2.3 feet from the side lot line. A minimum 10.0 foot side yard is required; therefore, a variance of 7.7 feet was requested.

Ms. Beauchamp presented the variance request as outlined in the statement of justification submitted with the application. Ms. Beauchamp stated that the requested location was on the most practical and level side of the house and asked for the Board's approval.

Mr. Dively asked if the carport would extend any further into the side yard than it currently was. Ms. Beauchamp stated that it would not.

Chairman DiGiulian called for speakers.

Carlton Croyle, 6625 Kirby Court, Falls Church, Virginia, stated that the carport would be 2 to 3 feet on the side of his property line and said that he had no objection to its construction.

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

Mr. Hammack moved to approve VC 99-D-112 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CATHERINE H. BEAUCHAMP, VC 99-D-112 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of carport 2.3 ft. from side lot line. Located at 6629 Kirby Ct. on approx. 19,044 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((7)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The variance is necessary because the lots suffer topographical constraints that preclude the construction of the carport in 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 a carport shown on the plat prepared by James William Ritter, Architect, dated June 29, 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 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.

Ms. Gibb 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 November 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 303, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOHN W. DEAN, VC 99-H-113 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 2.5 ft. from rear lot line. Located at 2262 Cedar Cove Ct. on approx. 3,374 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-4 ((17))(1A) 47.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Dean, 2262 Cedar Cove Court, Reston, 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 allow the construction of a deck 2.5 feet from the rear lot line. A minimum 5.0 foot rear yard is required; therefore, a variance of 2.5 feet was requested.

Mr. Dean presented the variance request as outlined in the statement of justification submitted with the application. Mr. Dean stated that the purpose of the deck was for a hot tub and was the only location because of the narrowness of the townhome. He stated that the deck was approved by the Design Review Board of Reston and because the deck was facing the rear of the lot, toward common area, it was also approved by the homeowners association.

Mr. Pammel asked if the rear yard coverage restrictions were also exceeded. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the upper level of the deck did not count toward the 30% restriction for rear yard coverage.

Mr. Dean stated that the supports would be placed 4 feet back and the overhang would be 2.5 feet into the side yard only.

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

Mr. Pammel moved to approve VC 99-H-113 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN W. DEAN, VC 99-H-113 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of deck 2.5 ft. from rear lot line. Located at 2262 Cedar Cove Ct. on approx. 3,374 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-4 ((17))(1A) 47. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 9, 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 applicant has shown that there were no other alternatives for the location of a hot tub.

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

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

the same vicinity.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 extension shown on the plat prepared by Kenneth W. White, dated June 22, 1999 as revised through August 23, 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. 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 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 305, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. LAURIE H. BATTLE, VC 99-Y-115 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 9.18 ft. from rear lot line. Located at 3009 Jeannie Anna Ct. on approx. 12,524 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 956.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Laurie "Chip" Battle, 3009 Jeannie Anna Court, 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 a one story addition 9.18 feet from the rear lot line. A minimum 25.0 foot rear yard is required; therefore, a variance of 15.82 feet was requested.

Mr. Battle presented the variance request as outlined in the statement of justification submitted with the application. Mr. Battle stated that the addition was for a home office with a porch and would not extend any further than the current family room. He stated that he had retained an architect so that the addition would be architecturally compatible with the rest of the house. Mr. Battle stated that the addition would only affect one property owner and therefore, he proposed landscaping plans to that property owner to improve the view and had received the neighbors' approval as well as verbal approval from the homeowners association.

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

Mr. Dively moved to approve VC 99-Y-115 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LAURIE H. BATTLE, VC 99-Y-115 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 9.18 ft. from rear lot line. Located at 3009 Jeannie Anna Ct. on approx. 12,524 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((4)) 956. 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 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 has presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The lot was oddly configured primarily because it is a pipestem; although, even without the pipestem, it would have an unusual configuration with the consideration of the easements as pointed out in the statement of justification submitted with the application.
4. The request was reasonable because there was a 25 foot minimum allowed, the construction would still be almost 10 feet away from the side 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 the addition shown on the plat prepared by David Hangen, Architect, dated April 1, 1998, as revised through July 26, 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. 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 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 307, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD C. AND DEIRDRE J. TURNAGE, VC 99-H-116 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of accessory structure 10.0 ft. from side lot line. Located at 1625 Hicks Dr. on approx. 37,790 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-2 ((3)) 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. Howard Turnage, 1625 Hicks Drive, Vienna, 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 a detached garage 10.0 feet from the side lot line. A minimum 20.0 foot side yard is required; therefore, a variance of 10.0 feet was requested.

Mr. Turnage presented the variance request as outlined in the statement of justification submitted with the application. Mr. Turnage displayed an overhead showing the proposed location of the detached garage. He stated that the purpose for the proposed location of the 24 x 24 foot two car detached garage was to avoid the removal of trees in any other location and would permit access to the rear yard. He stated that there were no objections from adjacent property owners and that the removal of existing trees would cause more of an adverse impact on those adjacent owners than the requested 10 foot variance.

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

Mr. Ribble moved to approve VC 99-H-116 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD C. AND DEIRDRE J. TURNAGE, VC 99-H-116 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit the construction of accessory structure 10.0 ft. from side lot line. Located at 1625 Hicks Dr. on approx. 37,790 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-2 ((3)) 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 November 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 have presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The placement of the house on the lot and the unusual shape of the lot cause the need for the variance.
4. The proposed location of the structure is a reasonable location, in light of the unusual circumstances.

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

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

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

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

deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of the accessory structure (detached garage) shown on the plat prepared by H. C. Turnage, Professional Engineer, received by the Department of Planning and Zoning on August 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 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 309, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MARK AND KATHLEEN BEUTLER, VC 99-D-118 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 11.9 ft. from side lot line. Located at 6336 North Nottingham St. on approx. 21,148 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13))(9) H5.

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 Beutler, 6336 North Nottingham Street, McLean, 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, which would be the enclosure of an existing carport, 11.9 feet from the side lot line. A minimum 15.0 foot side yard is required; therefore, a variance of 3.1 feet was requested.

Mr. Beutler presented the variance request as outlined in the statement of justification submitted with the application. Mr. Beutler stated that the application was to enclose an existing carport and that it would have the same size and shape as the existing carport. He stated that the lot was narrow and that there were no alternate locations due to a storm drainage easement on one side of the property and a large existing deck and pool on the other side of the property. Mr. Beutler stated that it was common in the neighborhood to have two car garages and that there was no objection from the adjacent neighbors to enclose the carport.

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

Ms. Gibb moved to approve VC 99-D-118 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 2, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK AND KATHLEEN BEUTLER, VC 99-D-118 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of addition 11.9 ft. from side lot line. Located at 6336 North Nottingham St. on approx. 21,148 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13))(9) H5. 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 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 have presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The lot is exceptionally narrow and has an irregular shape.
4. Due to the steep grade and the location of easements, this was the only location where a garage could be located.
5. The request was simply to enclose a carport; therefore, the structure already exists and would not be any larger.
6. The request for a 3.1 foot variance was a modest request.

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

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

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

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

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

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

1. This variance is approved for the location of the addition (garage created by enclosure of existing carport) shown on the plat prepared by Alexandria Surveys, Inc., dated August 25, 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 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 November 17, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 311, November 9, 1999, (Tape 1), Scheduled case of:

9:00 A.M. GLORIA FUENTES, SP 99-P-050 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit a child care center. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A.

Chairman DiGiulian noted that the application had been administratively moved to January 11, 2000 at 9:00 a.m.

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Page 311, November 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. RALPH C. DUKE, A 1999-HM-026 Appl. under Sect(s) 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot and is allowing the parking of the tractor portion of a tractor-trailer truck on residential property, both in violation of Zoning Ordinance provisions. Located at 9935-A Corsica St. on approx. 37,885 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 38-3 ((1)) 3. (Deferred from 9/21/99).

Dolores Kinney, Zoning Administration Division, made staff's presentation as outlined in the staff report. Ms. Kinney stated that it was staff's determination that the tractor portion of a tractor-trailer truck parked on the referenced property was a commercial vehicle and constituted a violation of the Zoning Ordinance and that the existing second dwelling unit was also in violation.

Ms. Kinney stated that in addressing the parking of commercial vehicles in residential districts, the tractor truck parked on the appellant's property was a commercial vehicle. Under the Zoning Ordinance, the parking of certain types of commercial vehicles on residential property to include solid waste collection vehicles, dump trucks, construction equipment, cement-mixers, wreckers with a gross weight of 12,000 pounds or more, or similar vehicles, and specifically, tractors and/or trailers of a tractor-trailer truck, was prohibited.

In addressing the issue of the second dwelling unit, Ms. Kinney stated that the Zoning Ordinance provided that there shall not be more than one dwelling unit on any one lot, with some exceptions, none of which were applicable in this case. Ms. Kinney stated that a dwelling unit was defined as one or more rooms in a residential building which were arranged, designed, used or intended for use as a complete, independent living facility which included permanent provisions for living, sleeping, eating, cooking and sanitation. The design and use of the detached structure on the appellant's property met the criteria of a dwelling unit as defined in Zoning Ordinance, and, therefore, the appellant was in violation.

Ms. Kinney stated that according to aerial photos, the detached accessory structure appeared on the property between 1968 and 1970, the approximate time that a building permit was approved for a shed at the same location, and consistent with the appellant's contention that the second dwelling had existed for 31 years. Even during that period, there were no Zoning Ordinance provisions that would allow more than one dwelling unit on the subject lot. It was staff's position that the appellant did not and could not have lawfully converted the shed to a dwelling unit. Ms. Kinney concluded by stating that while it had existed for a long time, that factor did not constitute a proper basis to negate the violation.

Mr. Pammel asked if the parking of a school bus could be done under a residential area. William Shoup, Deputy Zoning Administrator, stated that a school bus, by definition, was not a commercial vehicle, and therefore, would not be precluded from being parked on a residential property.

Ralph Duke, 9935 Corsica Street, Vienna, Virginia, stated that he had purchased the property in March, 1999. He stated that the property was in disarray and that he had spent time and money restoring the property. With this, he stated that the tractor-trailer truck was removed from the property. Mr. Duke stated that when he purchased the property, there was a title search performed, and that he was told that the property was clear; therefore, the property was purchased in good faith. He stated that property tax had been paid on the second dwelling for over 20 years as a residential property. He stated that the County also had put sewage on the property in 1968; therefore, the removal of the second dwelling would cause undue economical circumstances since it had existed for over 31 years. Mr. Duke appealed to the Board for fairness because the property was kept up to standard and asked that the property be allowed to remain as a permanent dwelling.

Mr. Kelley asked what the ownership of the property was since 1968. Mr. Duke stated that the property was originally owned by his father-in-law, and that after his death, the property was turned over to family members. Mr. Duke stated that Pamela Duke was his wife who also resided at the property.

Mr. Pammel asked who currently lived in the second dwelling. Mr. Duke stated that two gentlemen, both family members, lived in the dwelling.

Ms. Gibb asked if family members were permitted to reside in the accessory dwelling. Mr. Shoup stated that it did not matter if a family member resided on the property, the structure was a second dwelling unit, which was not permitted. He stated that there were provisions for the Board to allow accessory dwelling units on certain lots; however, for the unit to be a separate free standing structure, the appellant would have to have at least two acres of land.

Mr. Hammack asked if the two units were to be attached with a walkway, would the structure then be allowed. Mr. Shoup stated that the structure was approximately 100 feet from the main structure, and would have to be attached with a substantial roof or wall construction.

Ms. Gibb asked if there were separate sewer lines to each home. Mr. Duke stated that there were two separate sewer lines and were brought in by the County in 1968.

Mr. Hammack asked when the kitchen appliances were added, since the construction was originally presented to the County as a shed. Mr. Duke stated that since 1970, there had always been someone living in the second dwelling; however, he could not address when exactly the kitchen appliances were added.

Mr. Pammel asked, since the property had over 30,000 square feet of land, if a subdivision would be permitted to create two separate lots. Mr. Shoup stated that based on the zoning, the property was zoned R-1 and could not be subdivided to meet the R-1 District regulations and could not be done with a variance subdivision due to density limitations.

The Board discussed the issue of rezoning the property from R-1 to R-2, through a possible Board of Supervisor's Own Motion, to bring the property into conformance.

Ms. Kinney and Mr. Shoup responded, stating that at least one acre would be required to meet density limitations, unless the property was rezoned to R-3.

Mr. Duke stated that the property used to be one acre; however, his father-in-law had given some of the property as an easement, for the construction of a sidewalk.

Chairman DiGiulian asked if density credit could be given for the sidewalk. Mr. Shoup replied only if advanced density credit was granted at that time.

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

Mr. Kelley made a motion to uphold the Zoning Administrator with regard to the tractor-trailer truck. He stated that with regard to the second dwelling, he would not make a motion which would require Mr. Duke moving from the house which had existed for 30 years. Mr. Kelley made a motion to overrule the Zoning Administrator with regard to the second dwelling unit, on the grounds of equity. Mr. Ribble seconded the motion.

Mr. Dively stated that the Board was not endowed with equity powers and stated that the law was clear and that the application seemed inequitable. Mr. Dively stated that if the application had to be ruled on, he would vote to uphold the Zoning Administrator because the law was applied properly.

Mr. Hammack made a substitute motion to uphold the Zoning Administrator with regard to the tractor-trailer truck and defer decision on the second dwelling unit issue for a long period of time to allow Mr. Duke to explore other remedies, including talking to Board of Supervisor members to try to bring the property into compliance. He stated that the permit was for a shed, and stated that the Board did not have the authority to legalize the construction which was not applied for or approved. Mr. Hammack stated that the application deserved more time and recommended a six month or more deferral.

Mr. Kelley accepted the amendment; however, stated that the County bore responsibility for the application because they had been collecting taxes and hooked up sewer to the second dwelling.

Mr. Hammack stated that the original construction should have been a shed and not a house. He stated that the County had complicated matters by condoning it with sewer and taxes; however, that if the Board of Supervisors was aware of the situation, it may be able to be addressed to bring the property into compliance legally.

Mr. Dively stated that the issue deserved a legislative solution and seconded Mr. Hammack's motion.

Mr. Pammel asked if the Board of Supervisor's could correct the problem with a Board's own motion application to rezone the property to R-2. Mr. Shoup stated that the property would have to be rezoned to R-3 and that the Board could not ignore density issues because it would have to comply with the Zoning Ordinance.

Mr. Hammack recommended a one year deferral. Mr. Dively seconded the motion which carried by a vote of 7-0. The issue will come before the Board in November, 2000.

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Page 313 November 9, 1999, (Tape 1), Scheduled case of:

9:30 A.M. LYNN E. SHULSINGER, A 1999-MA-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is maintaining two separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7308 Beverly St. on approx. 0.82 ac. of land zoned R-1. Mason District. Tax Map 71-3 ((11)) 62. (DEFERRED FROM 7/13/99 ABD 9/28/99 FOR NOTICES).

Margaret Stehman, Zoning Administration Division, made staff's presentation as outlined in the staff report.

Ms. Stehman stated that the Zoning Ordinance, with few exceptions, stated that there shall be not be more than one dwelling unit on any one lot. The subject property included the principal dwelling as well as an apartment located above the attached garage. The attached garage, the apartment and an office area were constructed in 1988 by the appellant. While building plan and building permit approval were obtained by the appellant for this addition, the only way an apartment with a kitchen would have been permitted was under the administrative practice of granting approvals for second kitchens, which were allowed under specific circumstances and was reviewed on a case-by-case basis. Such administrative approvals were granted with the understanding that the second kitchen, and areas located in conjunction with the second kitchen, were to be used solely by family members residing on the property. In no instance may an area with a second kitchen function as a separate dwelling unit and be rented out to tenants or used by persons who are not members of the family other than visitors or short term house guests. Ms. Stehman stated that had the space continued to be used by family members as a part of the principal dwelling, there would be no problem. However, following the death of her husband, the appellant began using the space as a dwelling unit initially to house a nanny and, subsequently, as a rental unit for a family friend, who was the current occupant. It was this change in use from use by family to rental of the apartment as an independent living facility to a non-family member, and not the configuration of the space itself that established the second dwelling unit. Therefore, as a result of using the space as a rental dwelling unit, two dwelling units were located on the property and the appellant was in violation of the Zoning Ordinance.

Lynn Shulsinger, 7308 Beverly Street, Annandale, Virginia, stated that the situation warranted an appeal because the dwelling was not in question. Ms. Shulsinger stated that a permit was initially applied for to construct a detached garage, with an apartment, which was not approved because of the request to be detached. She stated that subsequently it was approved when the garage was connected. Ms. Shulsinger stated that in 1988, her husband passed away in an automobile accident. She stated that the question was then what the use of the structure would be, noting that the report stated that the only permissible use of the apartment was for blood, family relations, the disabled or the elderly, or a nanny; however, she was requesting an exception. Ms. Shulsinger stated that she had asked a long time acquaintance, and employee, if he would reside in the apartment to help her maintain the house and the household systems. She stated that there was no lease, only one set of keys, no separate entrances, and that the laundry, utilities and systems were all in her name with no lease involved; they shared meals together and functioned as one household. She stated that she had lived in the community for 13 years and that he had lived there for six years, that he was a member of the community and was a part of the family and therefore should be considered as such and asked the Board to find in her favor of the appeal application.

Ms. Gibb asked if a nanny would be permitted. Ms. Stehman stated that would not be permitted to occupy the separate dwelling unit. Ms. Stehman stated that the dwelling unit could be occupied with a special permit for an accessory dwelling unit which would allow an elderly or disabled person to occupy the unit. The other means, which was as a servant's quarters, however, would require a lot of two acres or more.

Ms. Gibb asked who had complained about the separate dwelling. Ms. Shulsinger stated that a mentally unbalanced neighbor had complained, and had complained on several other occasions about other properties.

Mr. Hammack asked Ms. Shulsinger if she was charging rent. Ms. Shulsinger stated that there was no lease, and no rent; however, that the person living there contributed to the household expenses, but there was not a landlord/tenant relationship.

Mr. Kelley asked if the appellant's children lived over the garage, would that be a permitted use. Ms. Stehman stated that under the circumstances that everyone could come and go as they pleased as one family operation, the use would be permitted. Ms. Shulsinger stated that this currently existed.

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

Mr. Hammack made a motion to uphold the Zoning Administrator's determination, stating that there were no arguments about the facts of the case. Mr. Dively seconded the motion stating that the Board of Supervisors would need to change the Zoning Ordinance to accommodate such an application.

Mr. Pammel stated that he would not support the motion based on the fact that plans and plats submitted called for an apartment above the garage and that language was clear, and was subsequently approved by the County.

Page 315, November 9, 1999, (Tape 1), LYNN E. SHULSINGER, A 1999-MA-015, continued from Page 314

The motion failed with a vote of 2-5. Chairman DiGiulian, Ms. Gibb, Mr. Kelley, Mr. Pammel and Mr. Ribble voted against the motion.

Mr. Pammel made a motion to reverse the Zoning Administrator's determination. Ms. Gibb seconded the motion. Mr. Kelley stated that the County should not be in this kind of business and that it should not be encouraged. The motion carried by a vote of 5-2. Mr. Dively and Mr. Hammack voted against the motion.

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Page 315, November 9, 1999, (Tape 1), After Agenda Item:

Approval of September 28, 1999 Minutes

Mr. Hammack made a motion to approve the September 28, 1999 Minutes. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 315, November 9, 1999, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel for At Law # 183868
Falls Reach Variance Amendment, VCA 98-D-094

Mr. Hammack made a motion to approve the retention of legal counsel. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 315, November 9, 1999, (Tape 1), After Agenda Item:

Approval of November 2, 1999 Resolutions

Mr. Hammack moved to approve the November 2, 1999 Resolutions. Mr. Pammel seconded them motion which carried by a vote of 7-0.

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Ms. Langdon stated that Lynne Strobel, the Agent representing the Tantoco variance, VC 99-P-101, had asked for a request to defer the variance application, in discussion with concerned neighbors, after the public hearing, to January 4, 2000, at 9:00 a.m. Ms. Gibb made the motion to defer the application to January 4, 2000, at 9:00 a.m. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Mr. Dively read a letter to the Board noting that he had been recently appointed by the Virginia Attorney General to serve as an Assistant Attorney General for Northern Virginia. Mr. Dively stated that with the new responsibilities and the possible appearance of conflict, was inappropriate to continue as a member of the Board of Zoning Appeals; therefore, he submitted his resignation from the Board to become effective December 31, 1999.

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Mr. Hammack asked staff for more information as an after agenda item in the future on the McCoy case where the petition was denied by the Supreme Court.

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As there was no other business to come before the Board, the meeting was adjourned at 10:27 a.m.

Minutes by: Deborah Hedrick

Approved on: February 1, 2000

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

Page 317, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. MITCHELL E. MOTAFCHES, SP 99-Y-060 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit an addition 32.8 ft. from front lot line. Located at 6240 Hidden Canyon Rd. on approx. 12,540 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 35.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mitchell Motafches, 6240 Hidden Canyon Road, Centreville, 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 an addition 32.8 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a modification of 7.2 feet was requested.

Mr. Motafches presented the request as outlined in the statement of justification submitted with the application. He stated that there were similar structures in the neighborhood.

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

Mr. Hammack moved to approve SP 99-Y-060 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MITCHELL E. MOTAFCHES, SP 99-Y-060 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit an addition 32.8 ft. from front lot line. Located at 6240 Hidden Canyon Rd. on approx. 12,540 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((5)) 35. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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). 8-913 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 location of a front porch addition shown on the plat prepared by Rice Associates, P.C., dated May 16, 1995, revised by Mitchell E. Motafches, dated September 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. 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 variance. The request must specify the amount of additional time requested, the basis for the amount of

Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Ms. Gibb abstained from the vote and 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 December 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 318, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ROSEMARY E. IRONS, SP 99-Y-055 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6800 Mt. Olive Ct. on approx. 21,494 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 64-4 ((2)) 1. (Concurrent with VC 99-Y-117).

9:00 A.M. ROSEMARY E. IRONS, VC 99-Y-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.0 ft. high fence to remain in front yard. Located at 6800 Mt. Olive Ct. on approx. 21,494 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 64-4 ((2)) 1. (Concurrent with SP 99-Y-055).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rosemary Irons, 6800 Mount Olive 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 special permit to allow a home child care facility and a variance to permit a 7 foot high fence to remain in the front yard. The maximum height for a fence in a front yard is 4 feet; therefore, a variance of 3 feet was requested.

Ms. Irons presented the requests as outlined in the statement of justification submitted with the applications. She said the parents of the children would use her driveway for parking. Ms. Irons stated that she needed a 7 foot fence to protect the children and that she was unaware of the 4 foot limitation. She added that the fence would also supply privacy and keep animals out of the yard.

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

Mr. Pammel moved to approve SP 99-Y-055 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROSEMARY E. IRONS, SP 99-Y-055 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6800 Mt. Olive Ct. on approx. 21,494 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 64-4 ((2)) 1. (Concurrent with VC 99-Y-117). Mr. Pammel moved that the Board of Zoning

Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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). 3-303 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, 6800 Mount Olive Court, (21,494 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 Rosemary E. Irons, dated July 19, 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. The maximum number of children on site at any one time shall not exceed ten (10) children; the total maximum daily enrollment shall not exceed ten (10) children.

5. The garage shall be used for the required parking for the residence and shall not be converted to any other use. The driveway which can accommodate four (4) parking spaces shall be deemed sufficient for the Family Day Care Facility. No additional parking spaces are required for this use.

6. The site shall be available for inspections performed by the Zoning Enforcement Division to determine compliance with all special permit development conditions imposed in connection with this application. If it is determined that these condition have not been met by the applicant, the Zoning Administrator shall undertake the appropriate procedures to effect compliance or the special permit use shall be terminated.

7. The hours of operation shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday. There shall be staggered arrival and departure times for the preschool and school aged children so as to prevent traffic congestion in the neighborhood.

8. The number of employees shall be limited to two (2), in addition to the applicant.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless a Non-Residential Use Permit has been obtained for the

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

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 December 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve VC 99-Y-117 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROSEMARY E. IRONS, VC 99-Y-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.0 ft. high fence to remain in front yard. Located at 6800 Mt. Olive Ct. on approx. 21,494 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 64-4 ((2)) 1. (Concurrent with SP 99-Y-055). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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. This is an unusual lot with frontage on three sides.
4. The request is reasonable.
5. The fence allows privacy and is needed to enclose the play area for the children.

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

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

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 of varying height, measuring 7.O feet at its maximum height in the front yard in the location shown on the plat prepared by Rosemary E. Irons, dated July 19, 1999, 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 6-0-1. Mr. Dively abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 321, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA REGIONAL PARK AUTHORITY, VC 99-H-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a 10 ft. high fence. Located at 9746 and 9750 Meadowlark Gardens Ct. on approx. 95.92 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 8, 8A, 8C, 8D, and 9.

Chairman DiGiulian noted the request for deferral. Mr. Pammel moved to defer VC 99-H-106 to January 18, 2000. Mr. Hammack seconded the motion which carried by a vote 7-0.

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Page 321, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHILDREN'S NATIONAL MEDICAL CENTER, SP 99-D-062 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a temporary use (showcase house). Located at 6827 Sorrel St. on approx. 2.39 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 36A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dallas Bolen, 6827 Sorrel Street, 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 temporary use, a showcase house, for a period of time which would exceed the 21 day limitation permitted as an administrative temporary special permit use. A temporary special use permit was approved and issued for the site and the showcase house was currently open to the pubic. Approval of this special permit would allow the showcase house to remain open until December 5, 1999, with restricted days and hours as noted in the staff report.

Ms. Bolen presented the request as outlined in the statement of justification submitted with the application.

Mr. Ribble asked why the application could not be administratively approved. Ms. Wilson replied that the temporary permit was only for 21 days.

Mr. Dively moved to approve SP 99-D-062 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHILDREN'S NATIONAL MEDICAL CENTER, SP 99-D-062 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a temporary use (showcase house). Located at 6827 Sorrel St. on approx. 2.39 ac. of land zoned R-1. Dranesville District. Tax Map 21-4 ((6)) 36A. 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 16, 1999; and

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

1. The applicant is the owner of the land.
2. The use is extremely temporary and is very reasonable.
3. The use has already been granted administratively and the request is only beyond that permitted by the administrative temporary 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). 3-103 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, 6827 Sorrel Street, 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 Group Design Associates dated July 29, 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. This special permit is valid November 16, 1999 through December 5, 1999, only. The hours of

operation in which the showcase house is open to the public are limited to 10:00 a.m. to 4:00 p.m. on Wednesdays, Thursdays and Fridays; 10:00 a.m. to 6:00 p.m. on Saturdays; 1:00 p.m. to 6:00 p.m. on Sundays.

6. All visitor parking shall be at the McLean Presbyterian Church at 1020 Balls Hill Road. A shuttle shall be provided to transport visitors to and from the designer's showcase house.

7. All noise, including music, shall not exceed a 55 dBA reading the property line.

8. The event shall not include bingo games and/or raffles.

9. The sponsoring organization shall furnish the Health Director with information as to sanitary arrangements and facilities to be used by the public and employees.

10. Any signs, banners, or advertising shall have prior approval from the Zoning Enforcement Branch.

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

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 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 323, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. KAMRAN AND SHARRI JINNAH, VC 99-Y-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 4.0 ft. from side lot line. Located at 12203 Westwood Hills Dr. on approx. 21,867 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sharri Jinnah, 12203 Westwood Hills 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 a deck 4 feet from the side lot line. A minimum side yard of 12 feet with a total minimum of 40 feet required for the R-1 Cluster District; therefore, a variance of 8 feet was requested.

Ms. Jinnah presented the variance request as outlined in the statement of justification submitted with the application. She said the house was purchased 2 years ago with a deck, but the deck was deteriorating. Ms. Jinnah stated that there was never a permit for the old deck, hence the need for the variance. She said the requested deck would be in the same location as the previous deck and it would not affect the neighbors.

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

Mr. Ribble moved to approve VC 99-Y-125 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KAMRAN AND SHARRI JINNAH, VC 99-Y-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 4.0 ft. from side lot line. Located at 12203 Westwood Hills Dr. on approx. 21,867 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((9)) 16A. 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 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 required standards for a variance.
3. The citing of the house on a very narrow lot caused the need for a variance.
4. The proposed deck will be built in an area where a deck previously existed.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Larry N. Scartz, dated October 14, 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

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 December 1, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 325, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 for church and related facilities to permit child care center and private school of general education with an enrollment of less than 100 students. Located at 5811 Hoffmans Ln. on approx. 1.09 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((1)) 112. (Continued from 8/10/99).

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

Juan Bernal, Staff Coordinator, made staff's presentation. The subject application was deferred for decision by the Board of Zoning Appeals at its August 10, 1999, public hearing to allow the applicant time to address concerns that were brought to the attention of the BZA and applicant by the surrounding neighbors. The concerns included: the play area, parking, lighting, trash, and noise. The applicant requested approval of a special permit amendment to permit the addition of a child care center and a private school of general education. The child care center proposed a maximum daily enrollment of 75 children while the school of general education was proposed with a maximum daily enrollment of 24 students. The hours of operation for the proposed child care center would be from 7:00 a.m. to 6:00 p.m., Monday through Friday while the school of general education was proposed to operate between 8:30 a.m. and 3:30 p.m., Monday through Friday. Staff noted that the church had been operating the child care center for the past four years without the benefit of a special permit.

The church had been using a portion of their parking lot as the play area. The Comprehensive Plan's locational guidelines for child care facilities encouraged such facilities where they could provide sufficient open space and adequate access to sunlight and suitable play areas. A parking area was not considered an adequate play area. The applicant has permission from an adjacent neighbor, Oakview Garden Apartments, to use their playgrounds, which was located off-site. The applicant also stated that they took the older children to the Bailey's Crossroads Recreation Center. The applicant further stated that they owned a vacant 2 acre parcel of land at the end of Hoffman's Lane, just a few hundred feet from the church, and were planning to begin construction of a school building with a playground in the next few years.

Staff supported a limited child care center and school use, as long as the applicant had permission to use the Oakview Garden play areas, with a goal of providing open space and play areas on site in the future. The applicant stated that approximately 50 children were in the child care center and five to ten children in the school were anticipated over the next several years. Therefore, staff continued to support a total maximum daily enrollment of 75 children, which would accommodate the anticipated enrollment.

Staff included in the development conditions, a term limit of five (5) years to provide the time needed for the church to hopefully begin construction on their nearby lot. Staff believed the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions only with approval of the proposed conditions and recommended approval.

Ms. Gibb and Mr. Hammack asked for clarification of the location for the 2 acre parcel and the Oakview Garden Apartments.

Ms. Pripeton, the applicant's agent, introduced Claudia Butts, the in-house attorney of the church, stating that Ms. Butts would address the four issues identified after she gave her presentation. Ms. Pripeton said the applicant checked with Zoning Adminstration and found there were no complaints filed on any of the issues since the church had been in this particular location. She said some the issues brought up had nothing to do with the child care facility. Ms. Pripeton stated that all of the compliants in regard to the parking had been complaints in regard to Sunday Mornings. She said there would be virtually no parking associated with the child care facility. Ms. Pripeton said the term limitation of five years offered the church no room for growth and would make it economically not feasible to carry on. She said the facility was not making money, but it could not operate at a substantial loss for the church to carry. Therefore, the applicant requested approval of 99 students. Ms. Pripeton stated, if it was the Board's desire, they could limit the number to 75 the first year. She said the play area was on the back of the church in the parking lot area and it was only used for reading bible stories and riding big wheels. Immediately adjacent, as noted on the plat, was the apartment complex. She said they were also allowed to use the recreation center. Ms. Pripeton said hopefully after the revitalization study they would be able to use the 2 ½ acres, but currently it was in the revitalization plan. She said Supervisor Gross' office asked that the applicant not do an application until after revitalization.

Claudia Butts, 5913 Mayflower Court, Alexandria, came forward to address the remaining issues. She stated that she was in-house counsel for the church and also one of the daycare teachers and a parent of a daycare student. Ms. Butts noted the submitted supplemental statement dated November 11, 1999, addressing the BZA's concerns. She addressed the following issues: Parking of the church busses, trash, lighting, and noise. Ms. Butts stated that the applicant had resolved the parking issue by paying to have busses parked in storage off site. She said the only time busses would be parked on the property would be during Sunday morning services. Ms. Butts stated that trash was regularly picked up by a private trash company and there was no debris on the property. She said the lights would come on at dusk and be turned off at 9 pm. Ms. Butts stated that the complainant about the noise did not know a child care existed on the site and the noise was not significant and could only be heard in the morning. She noted that the applicant had met with Sunset Manor Civic Association and they had no issues with noise.

Mr. Hammack asked what the position of the person was who signed the contract allowing the church to use the adjacent playground. Ms. Butts replied that it was the resident manager.

Mr. Hammack questioned whether the resident manager had the authority to approve using the playground for 75 –99 students. He asked whether the resident manager was aware of the liability. Ms. Butts replied that the church had insurance. Mr. Hammack said he was not satisfied with the nature of authority. Ms. Butts said the agreement had been in place for 4 years.

Mr. Hammack stated that he felt it appropriate for the owner to sign the agreement. Ms. Pripeton stated that the applicant wouldn't mind having that stipulation noted in the development conditions.

Mr. Hammack asked for staff's position. Ms. Langdon replied that staff had reservations, which was one of the reason for limiting the number of students. She said staff took into consideration that the child care center had existed for 4 years.

Chairman DiGiulian called for speakers.

Pastor Louis Baldwin came forward to speak in support of the application. He asked the people in the audience to stand to show their support. Pastor Baldwin stated that the church wanted to do whatever was necessary to make the application work. He said the church was willing to get whatever permission was necessary in order to have the childcare center.

Daniel Brock, 3530 Courtland Drive, Susan Tepper, 3494 Paul Street, and Marco Johnson, President, Sunset Manor Civic Association, 3495 Paul Street, came forward to speak in opposition. They expressed concerns relating to parking, busses, traffic, noise, a facility too large for property, buffering, and an off site playground.

Pastor Baldwin stated in his rebuttal that the Sunset Manor Civic Association was fighting a battle from 1990 when the church application was originally approved. He said the association never wanted the church.

Ms. Pripeton added, in rebuttal, that the issues the speakers addressed related to the church and not to the child care center. She said the childcare center would have no parking issues and it was limited to church members.

Mr. Dively asked the applicant what changes they were requesting in the development conditions. Ms. Pripeton replied they would like Condition #5 to reflect 99 students instead of 75.

Ms. Gibb asked about the lack of buffering. Ms. Pripeton replied that in lieu of trees, the applicant built a 10 foot wall, but would be happy to replace missing trees.

Ms. Gibb asked about revitalization. Ms. Langdon responded that the 2 acre property was not within the Revitalization District.

Ms. Pripeton stated that the 2 acre property was on the edge of the Revitalization District and that Supervisor Gross's had indicated that they wanted the property included.

Ms. Langdon stated that the idea of revitalization was to be less restrictive than regular districts.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that this was a difficult case and most churches seemed to have the same issues. She said it was nice to have churches in residential neighborhoods. Ms. Gibb stated that the policy of the Comprehensive Plan was to encourage child care centers and the church had a positive effect from many people.

Ms. Gibb moved to approve SPA 90-M-036 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF CROSSROADS BAPTIST CHURCH, SPA 90-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 90-M-036 for church and related facilities to permit child care center and private school of general education with an enrollment of less than 100 students. Located at 5811 Hoffmans Ln. on approx. 1.09 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-4 ((1)) 112. (Continued from 8/10/99). 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 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 presented testimony indicating compliance with the required standards.
3. A child care center has existed on site for 4 years.
4. Staff reviewed the Comprehensive Plan, traffic analysis, and environmental analysis and determined the application should be approved.

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, 5811 Hoffmans Lane (1.09 acres) and is not transferable to other land.

2. This Special Permit is granted only for the church and related facilities, child care center and school of general education indicated on the special permit plat prepared by Charles J. Huntley, dated April 30, 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 permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The total maximum daily enrollment for the child care center and private school of general education shall be limited to 99 children; 25 of which will be students of the private school of general education, as qualified by Condition 7.

6. The maximum number of seats in the church shall not exceed 232; as qualified by Condition 7.

7. If a shared parking agreement or parking reduction is approved by the Department of Public Works and Environmental Services (DPWES) the number of parking spaces provided shall be 61. All parking shall be on site as shown on the special permit plat. If a shared parking agreement or parking reduction is not approved by DPWES, the number of seats in the sanctuary and/or the number of students in the child care center/school must be reduced to correspond to a number that can be supported by the parking spaces provided on site as determined by DPWES. No buses shall be parked or stored on the site.

8. Upon issuance of a Non-Residential Use Permit, the hours of operation for the child care center shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday. The hours of operation for the private school of general education shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.

9. The maximum number of children permitted in the outdoor recreational area at any one time shall be thirty (30). The outdoor recreational area of 9,000 square feet as shown on the special permit plat shall be provided. This area shall be enclosed with a six (6) foot high solid board on board fence on the southeastern side of the playground. The portable fence with a minimum of three (3) feet high shall be utilized any time children are present in the play area. This fence shall not block any accessible parking spaces or ramps.

   In addition to the play area outlined above, the applicant shall use the additional play areas as outlined in their statement of justification. These play areas shall consist of the three (3) playgrounds located on the Oakview Garden Apartment property and the Bailey's Crossroads Recreation Center. If the play areas at the Oakview Garden Apartments and/or the Recreation Center are not available, than the child care center and school use shall be null and void.

10. All existing vegetation around the periphery of the site shall be maintained and supplemented as deemed necessary by the Urban Forester to provide screening to adjacent residential properties. This landscaping 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.

The foundation plantings around the structure which are designed to soften the visual appearance of the structure shall be maintained and any dead or dying planting shall be replaced with Dogwoods, Silverbells, Magnolias and Crab apple to the satisfaction of the Urban Forester.

11. Barrier F (brick wall) shall be provided along a portion of the northern lot line and a board-on-board fence shall be provided along a portion of the northern lot line, the eastern lot line and a portion of the southern lot line as depicted on the plat. The barrier requirement shall be waived along the rest of the lot lines.

12. All outdoor lighting fixtures used to illuminate the parking area shall not exceed 12 feet in height and shall be of such design and so located and oriented as not to produce glare or cause illumination in excess of 0.5 foot candles on the adjacent existing residential uses. No outdoor area shall be lighted at any time other than when necessary due to evening functions or special occasions.

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

14. Stormwater detention shall be provided as determined as necessary by the Department of Public Works and Environmental Services (DPWES). If underground detention is used, the tanks shall be locked and secured such that children in the area are unable to enter the detention facility.

15. The Child Care Center and Private School of General Education shall be approved for a time limit of five (5) years from the date of approval of the Non-Residential Use Permit for SPA 90-M-036.

16. The applicant shall provide a written agreement signed by the owner or authorized agent of the owner of the Oakview Garden Apartment property authorizing use of its playground by the applicant.

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, six (6) months after the date of approval* unless the use has been established. Issuance of a Non-Residential Use Permit pursuant to SPA 90-M-036 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 6-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 329, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ST PAUL'S EPISCOPAL CHURCH & ST. PAUL'S EPISCOPAL DAY SCHOOL, SPA 98-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 for church and related facilities and nursery school to permit change of permittee, child care center and change in development conditions. Located at 3439 Payne St. on approx. 2.36 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((17))(B) 12-20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. C. Thomas Jackson, 3439 Payne Street, 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 allow a change of permittee from the St. Paul's Episcopal Church and Woodland Cooperative Pre-School to the St. Paul's Episcopal Church and St. Paul's Episcopal Day School and to add a child care center in addition to the existing nursery school and to permit a change in development conditions to extend the hours of operation. Currently the school had an enrollment of 26 children with the addition of the proposed child care center, the total maximum daily enrollment proposed is 50 children. Currently the hours of operation were from 9:00 a.m. to 12:00 p.m., Monday through Friday. The proposed hours of operation for the nursery school and child care center were from 7:00 a.m. to 7:00 p.m., Monday through Friday. There were no development or structural changes proposed to the property or the church. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and therefore, recommended approval.

Mr. Jackson presented the request as outlined in the statement of justification submitted with the application. He said the church was trying to fulfill the needs of the community.

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

Mr. Kelley moved to approve SPA 98-M-036 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ST PAUL'S EPISCOPAL CHURCH & ST. PAUL'S EPISCOPAL DAY SCHOOL, SPA 98-M-036 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 98-M-036 for church and related facilities and nursery school to permit change of permittee, child care center and change in development conditions. Located at 3439 Payne St. on approx. 2.37 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((17))(B) 12-20. 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 November 16, 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). 3-303of 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 (2.27 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 October 18, 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 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. The combined total maximum daily enrollment for the Nursery School and child care center shall be 50 children.

7. The maximum hours of operation for the nursery school / child care center shall be 7:00 a.m. to 7:00 p.m. Monday through Friday.

8. The barrier requirements shall be waived.

9. 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 with like kind to maintain the existing transitional screening.

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 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. If a parking reduction is approved by the Department of Public Works and Environmental Services (DPWES) the number of parking spaces provided shall be 39 parking spaces, including two (2) accessible spaces. If a parking reduction is not approved by DPWES, the number of seats in the sanctuary and/or the number of children/students in the nursery school/ child care center shall be reduced to correspond to a number that can be supported by the parking spaces provided on site as determined by 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 and a new Non-Residential Use Permit be obtained. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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

1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 332 November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. B.W. MANAGEMENT, SP 99-B-054 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at the terminus of Clara Barton Dr. on approx. 1.85 ac. of land zoned I-5. Braddock District. Tax Map 77-3 ((1)) 9A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Agent, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Tracy Swagler, Senior Staff Coordinator, Special Exception and Rezoning Branch, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the development of a Health Club, which is a Group 5 Special Permit use allowed under Section 5-503 of the Zoning Ordinance. The development required a waiver of the barrier requirement to the northeast and a waiver of the transitional screening and barrier to the west. Proposed development conditions would grant each of these waivers. The proposed development met all of the applicable Special Permit Standards. Staff recommended approval subject to development conditions contained in the staff report.

Mr. Martin, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. Mr. Martin stated that the Board of Supervisors approved a rezoning on the property next to it.

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

Mr. Pammel moved to approve SP 99-B-054 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

B.W. MANAGEMENT, SP 99-B-054 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at the terminus of Clara Barton Dr. on approx. 1.85 ac. of land zoned I-5. Braddock District. Tax Map 77-3 ((1)) 9A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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). 5-503 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, at the terminus of Clara Barton Drive (1.85 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by ATCS, P.L.C., dated October 25, 1999, which was submitted with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit shall be posted in a conspicuous place on the property of the use, and shall 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 or Sect. 8-004 of the Zoning Ordinance.

5. The hours of operation shall not be more than: 5:00 AM to 11:00 PM, seven days a week.

6. There will be a maximum of six (6) employees on-site at any one time.

7. Secure parking shall be provided for bicycles, for the use of employees and patrons.

8. All outdoor lighting shall utilize full cut-off fixtures and shall be directed inward and downward. All non-security lights shall be turned off by one hour after the close of business.

9. Trash dumpsters shall be screened with wood or masonry enclosures.

10. Prior to site plan approval, evidence shall be provided to DPWES that the Burke Conservancy has approved the architectural elevations of the proposed building, to include materials, color, and signage.

11. The child care center use associated with the health club shall be used only by members or employees of the club who are on-site at the time.

12. Additional landscaping shall be provided on the northern side of the proposed building in the area reaching from the northeastern corner of the site to a distance of fifty (50) feet to screen the use from the residential uses to the north. These plantings shall be not less than the plantings which would be found in a Transitional Screening 2.

13. Additional landscaping shall be provided on the southern side of the parking lot, facing the Fairfax County Parkway. This landscaping shall consist of at least twice the normal numbers of trees required for peripheral parking lot landscaping, and shall include a mix of over-story deciduous trees, under-story deciduous trees, and ground plantings as approved by the Urban Forester. The landscaping strip shall be increased in width if feasible while still meeting all other Zoning Ordinance requirements. All other parking lot landscaping shall be provided as required by the Ordinance.

14. The barrier requirements to the northeast shall be waived; the transitional screening and barrier requirements to the west shall be waived.

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 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 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 334 November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THE TRUSTEES OF ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 for church and related facilities to permit child care facility and nursery school for less than 100 children. Located at 9220 and 9222 Georgetown Pk. on approx. 6.81 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 8.

Mr. Hammack moved to limit speakers to one minute. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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 Peters, Agent, 9209 Weant Drive, Great Falls, Virginia, replied that it was.

Julie Schilling, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to amend the special permit for a church to allow a child care center and nursery school to operate within the existing facilities. The proposed child care center and nursery school would have up to 50 children and would operate from 9:30 a.m. to 1:30 p.m., Monday through Friday. In staff's evaluation, all land use, transportation, and environmental issues were addressed with the proposed revised development conditions. The revised development conditions reflect the addition of a condition limiting the hours of operation to 9:00 a.m. to 2:00 p.m., Monday through Friday. The hours of operation provide for an extra half-hour at the beginning and end of the session to allow for staff and administrative time.

Mr. Peters, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the proposal was for a facility of modest size to accommodate up to 50 children. Mr. Peters said the proposed hours were outside of rush hour to avoid traffic problems. Mr. Peters stated that the childcare center and nursery school would be an asset to the community because other neighborhood centers were at capacity and had a long waiting list. Mr. Peters submitted a proposed change to Condition #11 relating to screening. He presented photographs to indicate justification for the proposed change to Condition #11. Mr. Peters noted that the applicant's engineer was present to answer any questions from the Board.

Mr. Ribble asked whether the Great Falls Citizen's Association had any comment on the proposal. Mr. Peters replied that the Great Falls Citizen's Association recommended approval of the application.

Chairman DiGiulian called for speakers.

Robert Friend, Rector, 9220 Georgetown Pike, Diane Gay, 612 Walker Hill Lane, Cindy Taylor, 9130 Weant Drive, Hentzi Elek, 9220 Georgetown Pike, Lynne Kemmerer, 800 Aaron Court, Nora Lee Brown, 11132 Rich Meadow Drive, Suzanne Tulley, 355 Springvale Road, Liz Needham,1404 Beauford Court, Nancy Richard, and Lady Hodges, came forward to speak in support of the application. They expressed concerns about waiting lists at other child care facilities, which made the request more necessary.

Chairman DiGiulian called for speakers in opposition.

Charles DiBona, 9306 Georgetown Pike, stated that he was troubled by the fact that the Board limited the speakers' comments to 1 minute. He said staff told the speakers in opposition that they would have 3 minutes to speak and they had prepared 3-minute presentations.

After discussion of the matter between Board members, Mr. Hammack moved to allow the speakers 3 minutes and to allow an additional 2 minutes to a few of the speakers in support who indicated that their presentation wasn't finished. Mr. Pammel seconded the motion which carried by a vote 7-0. Mr. Dively commented that the Board shouldn't change the rules midstream.

The following speakers came forward to speak in opposition:

Evelyn Dibona, 9306 Georgetown Pike, Pamela Roseman, 9308A Georgetown Pike, Linda Davis, 9310 Georgetown Pike, Tony Blankley, 9310 Georgetown Pike, Dave Morine, 9314 Georgetown Pike, Don McCay, 9609 Georgetown Pike, and Charles Dibona, 9306 Georgetown Pike. They expressed concerns relating to traffic problems, commercial operation in residential neighborhood, safety, noise, transitional screening and barrier requirements.

Mr. Peters stated, in his rebuttal, that the neighbor closest to the church was in support of the application. He submitted a letter from the neighbor. He said there would be no increase in commercialism because the Zoning Ordinance didn't regard churches as being commercial. Mr. Peters said sight distance would be improved because they would be removing a tree as required by the Virginia Department of Transportation. He presented photographs of the trees reflecting that there was adequate transitional screening.

Mr. Kelley asked if the church would be making a profit from the childcare center. Mr. Peters replied no, that the fees would be consistent with other child care centers in the area.

The following speakers came forward to finish the presentations in support of the application. Robert Friend, Hentzi Elek, Diane Gay, and Lynn Kemmerer.

Chairman DiGiulian closed the public hearing.

Mr. Hammack said it was not his intention to curtail testimony, but when you hear similar testimony, it would sometimes get away from land use issues. He said there was a good presentation of the pros and cons. Mr. Hammack stated that the application was modest, with minimal impact on the neighborhood. He said most churches were in residential neighborhoods and the facility would not have a negative impact on the community.

Mr. Hammack moved to approve SPA 82-D-087-03 for the reasons noted in the Resolution.

Mr. Pammel stated that churches provided broad services to the community. He said they offer their facilities to several groups during hours when the church wasn't utilizing the facility. Mr. Pammel added that there was a strong demand for childcare centers.

Mr. Kelley said he agreed with Mr. Pammel.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE TRUSTEES OF ST. FRANCIS EPISCOPAL CHURCH OF GREAT FALLS, VA, SPA 82-D-087-03 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-087 for church and related facilities to permit child care facility and nursery school for less than 100 children. Located at 9220 and 9222 Georgetown Pk. on approx. 6.81 ac. of land zoned R-E. Dranesville District. Tax Map 13-2 ((1)) 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 November 16, 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-E03 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, 9220 and 9222 Georgetown Pike (6.81 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 Runyon, Dudley, and Associates, Inc. (Reid Dudley, P.E.) dated July 29, 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 seats shall be 250, with a corresponding number of parking spaces based on the requirements of Article 11 as determined by DPWES. There shall be a maximum of sixty six (66) parking spaces as shown on the plat.

6. Wheel stops or a similar barrier shall be installed along the eastern edge of the driveway and parking lot to prevent parking in the transitional screening area.

7. Prior to approval of any Non-Residential Use Permit for the child care center and nursery school, a reduction in parking shall be obtained, as determined by the Zoning Permit Review Branch, DPZ, and DPWES, for shared use of the parking lot by the church and the child care center/nursery school. If a parking reduction is not approved, the number of seats in the church and/or the number of children in the child care center/nursery school shall be reduced to a number that can be supported by the parking spaces provided on the site, as determined by DPWES.

8. The combined maximum daily enrollment for the child care center and nursery school shall not exceed 50 children.

9. The maximum number of children using the play area at any one time shall not exceed 16.

10. The septic system shall conform to state and local regulations as determined by the Fairfax County Department of Environmental Health, or this special permit shall be rendered null and void. The existing septic system serving the church office shall be abandoned and the building sewage connected to an approved sewage disposal system on-site.

11. Transitional Screening 1 shall be modified along all lot lines to allow the existing vegetation to satisfy these requirements, except that prior to the issuance of a Non-Residential Use Permit for the child care center and nursery school, supplemental landscaping shall be provided along the eastern property boundary adjacent to the driveway and parking lot to shield adjacent residential properties

from the view of the driveway and parking lot. Evergreen trees and/or evergreen plants shall also be provided along the existing tree line adjacent to the northern property boundary to supplement existing trees and vegetation as necessary to assure adequate screening as determined by the Urban Forestry Branch of DPWES, beginning at the northwest corner of the playground and extending to the eastern property boundary, and south along the eastern property boundary, ending at the existing 40" diameter Black Walnut tree adjacent to the travelway, the size, type, location and number of all transitional screening materials shall be subject to review and approval of the Urban Forestry Branch of DPWES. Transitional screening shall be maintained so that any dead or dying plant material shall be replaced with plant materials of a like kind. The Barrier requirement shall be waived.

12. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by DPWES. Foundation Plantings, the purpose of which shall be to soften the visual impact of the buildings, shall be provided around the existing church and the proposed parish hall/Sunday school structures on the property. The type, size, amount and location of these plantings shall be approved by the Urban Forestry Branch of DPWES.

13. Prior to issuance of a Non-Residential Use Permit for the child care center/nursery school, the applicant shall demonstrate that adequate site distance is provided along the front of the application property, subject to the review and approval of VDOT.

14. Any lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve 12) feet.
    - The lights shall be focused directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

15. The board fence located around the air conditioning unit shall be completed as shown on the special permit plat.

16. The maximum hours of operation for the childcare center/ nursery school shall be 9:00 a.m. to 2:00 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 or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the child care center/ nursery school 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 and Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 338, November 16, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-109 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3048 Cedar Ln. on approx. 10,112 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 152. (deferred from 11/2/99 for decision only)

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-110 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3046 Cedar Ln. on approx. 10,406 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 151. (deferred from 11/2/99 for decision only)

Chairman DiGiulian noted the request for deferral. Mr. Ribble moved to defer the subject applications to December 7, 1999. There was no second and the motion carried by a vote of 7-0.

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Page 338, November 16, 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 Pk. 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 and 5/11/99).

Chairman DiGiulian noted an Intent to Defer was granted on November 2, 1999, to defer the subject appeal to January 18, 2000. Mr. Hammack moved to defer A 1998-PR-033 to January 18, 2000. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 338, November 16, 1999, (Tape 1), Scheduled case of:

9:30 A.M. LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12. (DEFERRED FROM 8/10/99).

Chairman DiGiulian disqualified himself from the public hearing because his office had done work on the property.

Marshall Jenkins, Attorney for the appellant, came forward and requested a deferral for 30 days because he had not had adequate time to meet with the appellant.

Vice Chairman Ribble asked for staff's position.

William Shoup, Deputy Zoning Administrator, stated that staff had concerns about a deferral because the case had been around since April 7, 1999 and it was as a result of a Notice of Violation. He said staff had been dealing with the issue and the appellants for more than a year prior to the Notice. Mr. Shoup said the appeal involved operating a use without site plan approval and a Non-Residential Use Permit and the appellants had been doing that for more than 7 years. He stated that staff was concerned about the length of time the violation had been occurring. Mr. Shoup said staff met with the Department of Public Works and Environmental Services and found that there had not been much progress on the site plan.

George Knakmuhs came forward and presented a chronology of the progress they were making to get the issues resolved with the site plan and explained the need for the deferral.

Page 339 November 16, 1999, (Tape 1), LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020, continued from Page 338

Mr. Hammack moved to defer A 1999-SP-020 to January 11, 2000, at 9:30 a.m. with no further deferral requests. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Page 339, November 16, 1999, (Tape 1), After Agenda Item:

Approval of October 5, 1999 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Page 339, November 16, 1999, (Tape 1), Scheduled case of:

Approval of November 9, 1999 Resolutions

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

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Page 339 November 16, 1999, (Tape 1), After Agenda Item:

Acceptance of Appeal, Olde Salem Village, Ltd.

William Shoup, Deputy Zoning Administrator, stated the issue was whether or not the appeal should be accepted and scheduled for hearing. He said the appeal was of the Zoning Administrator's determination that the site plan for a proposed Eckerd Drug Store could be approved showing a segregated drive aisle on that plan. Mr. Shoup said it was staff's position that the decision about the drive aisle was merely one of a number of preliminary decisions made during the review of a site plan, all of which led to the final approval of the site plan. He said the final determination to approve the site plan would encompass all the preliminary administrative decisions that occur during the review of the plan, including the subject at issue. Mr. Shoup stated that staff's position was that it was the approval of the site plan that would be the determination that would appropriately be the subject of an appeal and that the subject appeal was premature; staff recommended that it not be accepted for public hearing. Mr. Shoup noted that Mr. Farrell was present to address the issue.

Mr. Farrell said he had quoted the statute in a letter that was provided to the Board. He said the statute stated that "any decision", not the final decision, of any officer was the subject of an appeal. Mr. Farrell stated that therefore, he felt the appeal was properly filed and properly before the Board and asked that it be heard. He said the decision would not be reversed, but if a special exception was approved on the property, then the issue would become moot; but as long as a decision had been made by the Zoning Administrator's office, that the segregated drive aisle could be incorporated into a site plan without a special exception, the decision becomes binding on them and binding on the applicant who would have the benefit of it. Mr. Farrell stated that without the opportunity to present the issue to the BZA, the site plan applicant and the adjacent property owners would be uncertain as to the ultimate result. He said the issue needed to be resolved by the BZA and the appeal should be scheduled and heard.

Mr. Pammel asked if the drive-through was an issue for the denied special exception application pertaining to this case. Mr. Shoup responded that it was a big issue.

Mr. Dively moved to accept the appeal and schedule it for February 8, 2000. Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian 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 11:46 a.m.

Minutes by: Regina Thorn

Approved on: March 7, 2000

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 30, 1999. 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 9:00 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 341, November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. DAVID EARL HALLA, SP 99-L-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit addition to remain 7.5 ft. from side lot line such that side yards total 17.8 ft. Located at 6818 Rock Creek Ct. on approx. 8,975 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 8052. (MOVED FROM 10/19/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Halla, 203 Yokham Parkway, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modification to minimum yards based on error in building location to allow an attached garage to remain 7.5 feet from the side lot line, such that the side yards totaled 17.8 feet. The Zoning Ordinance requires the total side yards to be a minimum of 20 feet; therefore, the amount of error was 2.2 feet or 11% of the total side yards.

Mr. Halla presented the special permit request as outlined in the statement of justification submitted with the application. He stated the purpose of the special permit was to enclose an existing carport. He said that in the past there had been two other similar instances in his neighborhood.

Chairman DiGiulian asked if the construction would bring the carport closer to the side lot line. Mr. Halla answered that the carport would not encroach any closer to the side lot line than it currently was.

Mr. Hammack asked if he had extended electricity to the carport. Mr. Halla replied that there was an electrical outlet in the carport and it had been there when he purchased the home.

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

Mr. Hammack moved to approve SP 99-L-049 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 EARL HALLA, SP 99-L-049 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit addition to remain 7.5 ft. from side lot line such that side yards total 17.8 ft. Located at 6818 Rock Creek Ct. on approx. 8,975 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 8052. (MOVED FROM 10/19/99). 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 30, 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 attached garage shown on the plat prepared by Kenneth W. White, dated July 22, 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. 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 8, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 342 November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. EFTHALIA T. TRIARHOS AND JACK L. WUERKER, VC 99-P-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 30B having a lot width of 30.0 ft. Located at 11400 Valley Rd. on approx. 2.73 ac. of land zoned R-1. Providence District. Tax Map 46-4 ((2)) 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. Lynne Strobel, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report.
The applicants requested a variance to allow the subdivision of one lot into two lots. The subject lot had a lot

width of 30 feet and the Zoning Ordinance requires a lot width of 150 feet. It was staff's evaluation that the variance did not specifically meet standards #2 through #9 for approval. The subject property did not suffer from unusual narrowness, shallowness, size, shape, or topography. The property already contained a single family dwelling; therefore; all reasonable use of the property was not prohibited. In addition, staff believed the approval of this variance would set a precedence considering that there were numerous lots in the vicinity that had the same shape and configuration.

Mr. Ribble asked if there were any lots in the area that had been sub-divided. Ms. Schilling replied that there was one subdivision variance approved in the late 1980's.

Lynne Strobel, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. She stated that the applicant's proposal conformed with the nature and character of the surrounding area and that the neighborhood was comprised of a variety of homes in a number of architectural styles. She said that the subdivision was originally platted in 1945 and the existing home on the property in question was constructed in 1962. She stated that the approval of the variance would ensure that the unique character of the area remained intact.

Ms. Strobel explained that the property had exceptional shape because it had narrow street frontage and unique stands of vegetation. She informed the Board that there were numerous flowering trees and shrubs on the property including several very large Rotodendrens that would be preserved with the conditions of the variance. She said that a strict application of the Ordinance would produce undue hardship as the applicants would be unable to subdivide and construct a single family dwelling to allow an aging parent to live on the property. Ms. Strobel explained that the property, with the subdivision, would be less than one dwelling unit per area, which was within what was permitted by the R-1 District. She stated that the variance would enhance the area by preserving existing vegetation, maintain a density in harmony with the current Comprehensive Plan and add stability to the area.

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

Mr. Pammel stated that there were examples of where this type of lot subdivision had previously occurred and said that the applicant's request was reasonable.

Mr. Hammack stated that he agreed with staff that the granting of the variance would set a precedence in the area and everyone in that neighborhood could file similar variance applications.

Mr. Pammel moved to approve VC 99-P-119 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EFTHALIA T. TRIARHOS AND JACK L. WUERKER, VC 99-P-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed lot 30B having a lot width of 30.0 ft. Located at 11400 Valley Rd. on approx. 2.73 ac. of land zoned R-1. Providence District. Tax Map 46-4 ((2)) 30. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 1999; and

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

1. The applicants are the owners of the land.
2. This type of land subdivision has previously occurred on neighboring lots.
3. The character of the community is changing; therefore, the variance request is reasonable.

4. The applicants have committed to the conditions as recommended by the staff.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 lot 30 as shown on the plat prepared by Kenneth W. White dated March 1, 1994, as revised through August 23, 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 Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the Procedural Guidelines adopted by the Board of Supervisors on November, 1982, as amended, subject to all creditable expenses, as determined by the Fairfax County Department of Transportation and DPWES.

3. Right-of-way measuring 26 feet from the centerline of Valley Road shall be dedicated to the Board of Supervisors, in fee simple, at the time of subdivision plat approval or upon demand, whichever occurs first. All ancillary easements along the frontage of the site shall be conveyed to the Board of Supervisors at the time of dedication.

4. At the time of either subdivision plat approval or grading plan approval, whichever occurs first, a tree preservation plan which preserves existing trees on-site to the maximum extent feasible, shall be provided for review and approval by the Urban Forestry Branch. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of

trees 12 inches in diameter and greater, as well as groupings of broadleaf evergreens. The condition analysis shall be prepared by a certified arborist using the eighth edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. Trees within the pipestem driveway shall be field located, and the driveway designed to minimize clearing of trees, as determined by the Urban Forestry Branch.

5. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for each lot shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The proposed dwelling unit on lot 30B and the septic field associated with the dwelling shall be located so as to provide the maximum width of undisturbed buffer areas along the drainage swales, as determined to be feasible and desirable by DPWES and the Urban Forestry Branch. The extent of clearing and grading shall be the minimum amount necessary to provide for the development shown on the approved plat, as determined by DPWES and to preserve vegetation as stated in Condition 4.

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

Mr. Ribble seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion 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 8, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 345, November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. GEORGE AND ELKE SUMMERS, SP 99-D-057 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 29.9 ft. from front lot line. Located at 1024 Millwood Rd. on approx. 6.28 ac. of land zoned R-E. Dranesville District. Tax Map 13-3 ((5)) 8B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George Summers, 1024 Millwood Road, Great Falls, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for the modification to minimum yards based on error in building location to permit a detached garage to remain 29.9 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 50 feet; therefore, the amount of error was 20.1 feet or 40 percent.

Mr. Summers presented the special permit request as outlined in the statement of justification submitted with the application. He illustrated, by aerial photograph, the layout of his property and explained where the detached garage was located. He said that due to the extreme topographic conditions of his property there was no other place to locate the garage.

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

Mr. Dively moved to approve SP 99-D-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE AND ELKE SUMMERS, SP 99-D-057 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 29.9 ft. from front lot line. Located at 1024 Millwood Rd. on approx. 6.28 ac. of land zoned R-E. Dranesville District. Tax Map 13-3 ((5)) 8B. 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 30, 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 detached garage shown on the plat prepared by Reid M. Dudley, P.E., dated May 12, 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. Ribble and 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 8, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 347, November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. PONTUS AND DANIELLE LINDEN, VC 99-D-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 9036 Weant Dr. on approx. 30,652 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((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. Danielle Linden, 9036 Weant Drive, Great Falls, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition 8.1 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 11.9 feet was requested.

Ms. Linden presented the variance request as outlined in the statement of justification submitted with the application. She stated that they were seeking to enclose the carport and to extend it to allow room to park two cars. She said that an enclosed garage would help prevent cars from rolling down the inclined driveway and provide shelter of their vehicles.

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

Mr. Ribble moved to approve VC 99-D-120 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PONTUS AND DANIELLE LINDEN, VC 99-D-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.1 ft. from side lot line. Located at 9036 Weant Dr. on approx. 30,652 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((3)) 30. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 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 narrow, the front yard is large and they are restricted by the drain field location.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Kenneth W. White, dated June 14, 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. Dively and 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 8, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SP 99-L-042 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 5911, 5919, 5923 Franconia Rd., 6218 and 6222 South Van Dorn St., and 6219 Villa St. on approx. 7.55 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((3)) 4, 5B, 6A, 8, N and P. (MOVED FROM 10/12/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, 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 applicants requested a special permit to establish a place of worship and related facilities. The proposed building would include 25,500 square feet of floor space and would contain 298 seats. A total of 290 parking spaces were proposed. The subject site adjoined residential properties on the south, west and partially on the east, with Franconia Baptist Church to the north and Edison High School to the east. The site was impacted by the planned construction of a road interchange at Franconia Road and South Van Dorn Street. Residential properties currently adjoining on the east were planned to be deleted or substantially reduced in size at the time of the interchange construction. The revised development conditions, dated November 29, 1999 included a new Development Condition #12 which specified the deletion of a driveway which was proposed to circle the front of the church building. On November 18, 1999, staff received proposed revised Development Conditions from the applicant which were received too late to address in the staff report. Approval of the application was recommended subject to staff's revised Development Conditions.

Mr. Lawrence presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the applicants held numerous meetings with staff, the neighboring citizen's associations and several churches in the immediate area. He informed the Board that the Lee District Land Use Advisory Committee voted to recommend approval of the application. He submitted a letter of support from the Chairman of that committee. Mr. Lawrence said the applicant spent considerable time addressing citizen concerns with respect to architecture and landscaping. Mr. Lawrence, using color charts, illustrated the layout of the property, pointed out the areas of citizen concern and explained how the applicants remedied those issues. He noted that the Comprehensive Plan called for the institutional use of the property.

Mr. Lawrence presented to the Board the applicant's proposed revised Development Conditons. The applicant suggested the following Condition changes: the addition of language to Condition #6 so the Urban Forester did not have the authority to cause the applicant to reconfigure their development to accommodate trees on the site; the addition of language to Condition #10 to make it clear that the applicant was committing to the actual right-of-way that the Virginia Department of Transportation (VDOT) had planned for the area; changed the wording in Condition #10 to allow the applicant to have full use of the curb cut onto South Van Dorn Street until the construction begins; the deletion of Condition #12 due to the fact that the driveway in the front of the building would help improve the traffic circulation before and after the construction of the interchange; changing the wording of renumbered Condition #13 to reflect that the church would retain the funds to proceed with the restoration curb cut; change wording of renumbered Condition #14 to have the front façade of the church lit up and to delete the prohibition against an up-lit sign; and adding Exhibit A illustrating the applicant's commitment to provide additional landscaping upon the construction of the interchange.

Chairman DiGiulian called for speakers.

John Parker, 6219 Villa Street, Alexandria, Virginia, came forward to speak in support of the application. He voiced his opinion that this was a good institutional use of the property.

Harold Royall, 6308 Villa Street, Alexandria, Virginia, came forward to speak in opposition of the application. He stated that the applicants had only met with the citizens once and they did not address their concerns regarding the need for and the location of a sewage system and a storm water management facility on the property. He said that there would be extreme traffic conditions when the church closed the curb cut onto South Van Dorn Street. He also said that the neighborhood was upset about the placement of a dumpster at the beginning of Villa Street and that he never received any written notification about the application.

Helen Pittas, 6227 Villa Street, Alexandria, Virginia, came forward to speak in opposition of the application.

She said she was concerned about the value of the homes in the area going down and for the safety of the neighborhood children due to the increase in traffic that the church would bring.

Mr. Lawrence, in his rebuttal, stated the church traffic would not be during the peak traffic hours and there would be very little traffic during the week. He pointed out that the Zoning Ordinance permitted the residential development of up to 37 townhouses on the property and that stormwater management had been provided for on the site. He pointed out that Development Condition # 17 stipulated the relocation of the dumpster to the South Van Dorn Street area and the proper notifications had been sent out to all adjacent and abutting residents.

Mr. Pammel asked where the sewer was proposed to be located. Mr. Lawrence answered that the applicant proposed a force main that would go up to Franconia Street and connect a few hundred feet to the west of the property.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he felt the applicant had done a good job with the Development Conditions and said that this was a good use of the land.

Mr. Pammel stated that any residential develoment of this property would make traffic far worse than the proposed institutional use.

Mr. Kelley moved to approve SP 99-L-042 with the applicant's proposed Development Conditions and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SP 99-L-042 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to permit church and related facilities. Located at 5911, 5919, 5923 Franconia Rd., 6218 and 6222 South Van Dorn St., and 6219 Villa St. on approx. 7.55 ac. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((3)) 4, 5B, 6A, 8, N and P. (MOVED FROM 10/12/99). 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 30, 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). 3-103 and 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, Church of Jesus Christ of Latter Day Saints, 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 Land Development Consultants, Inc., dated May 28, 1999, as revised through October 22, 1999 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 (DPWES). Any plan submitted pursuant to this special permit shall be in substantial 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. The maximum number of seats in the main area of worship shall be limited to 298 seats.

6. Limits of clearing shall be adjusted to accomplish the proposed construction in the least disruptive manner possible, to the satisfaction of DPWES. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Within the tree save area, any existing trees designated by the Urban Forester, or her agent, to be preserved, shall be protected from damage by construction activity, as prescribed by and to the satisfaction of the Urban Forester.

7. Transitional screening requirements shall be modified in favor of that shown on the Special Permit Amendment Plat. Existing trees within the designated transitional screening areas may be supplemented to achieve a full T/S 1 screen, as described by the Zoning Ordinance, to the satisfaction of the Urban Forester. All vegetation shall be maintained in good health and replaced with like-kind plantings when necessary, to the satisfaction of the Urban Forester.

8. The barrier requirement shall be waived for all boundaries.

9. Foundation plantings shall be provided around the church building, in the areas as depicted on the plat.

10. Right-of-way shall be dedicated as shown on the Special Permit Plat to facilitate the construction of the grade separated interchange at South Van Dorn Street and Franconia Road, along with the widening of South Van Dorn Street south of Franconia Road to a four-lane divided section, as included in the secondary road program and the Virginia Department of Transportation (VDOT) Six Year Plan. Said right-of-way shall be dedicated to the Board of Supervisors for public street purposes in fee simple when the final plans for the South Van Dorn Street /Franconia Road grade separated interchange are approved by VDOT, and construction of the interchange is funded and VDOT has authorized commencement of construction.

11. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 and shall be a maximum of 290 parking spaces. All parking shall be on site, as shown on the Special Permit Plat.

12. The applicant shall provide frontage improvements along Villa Street consisting of dedication of twenty-six (26) feet from centerline and construction of nineteen (19) foot cross section from centerline to face of curb.

13. The entrance on South Van Dorn Street shall be temporary. A temporary right hand turn lane shall be constructed to facilitate vehicles using this entrance. The entrance curb cut on South Van Dorn Street shall be permanently closed when the final plans for the South Van Dorn Street/Franconia Road grade separated interchange are approved by VDOT, construction of the interchange is funded and VDOT has authorized commencement of construction. At the time of the closing of the entrance, all curbing and asphalt associated with the entrance, including the driveway from South Van Dorn Street to the entrance of the southernmost parking lot, shall be removed. An asphalt area sufficient in size to accommodate vehicle turn-around at the southern end of the parking lot may

remain, to the satisfaction of DPWES. The area of the removed asphalt shall be stabilized, planted and restored to harmonize with surrounding vegetative conditions, to the satisfaction of DPWES.

14. All lighting on the site shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property and shall be full cut-off lights
    - Shields shall be installed, if necessary, to prevent light glare from projecting beyond the facility.
    - Up-lighting of buildings, except for the church façade facing Franconia Road shall not be permitted on the site.

15. Stormwater management for the application site shall be provided to the satisfaction of the Department of Public Works and Environmental Services. The applicant shall plant a minimum of fifteen (15) evergreen trees adjacent to the stormwater management pond, as may be permitted by the Public Facilities Manual (PFM). Said trees shall meet the size requirements and planting specifications of the PFM to the satisfaction of the Urban Forester.

16. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

17. The brick shed and dumpster enclosure shall be relocated to the eastern portion of the site, to the satisfaction of DPWES. The structures shall be located a minimum of 50 feet from a lot line shared with residential properties. The structures shall be screened from offsite by evergreen vegetation, to the satisfaction of DPWES.

18. When the construction of the grade separated interchange referenced in Development Condition No. 10 above is completed, the applicant shall provide supplemental vegetation along the frontage of Franconia Road, in general accord with the Landscape Plan described as "Franconia Frontage Landscaping," and attached hereto as Exhibit "A".

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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 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 8, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 352, November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM H. AND ROBIN T. WALKER, VC 99-D-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.9 ft. from front lot line of a corner lot. Located at 6511 Ridge St. on approx. 15,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((3))(2) 17 and 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. Phillip Kalminski, 1008 Braddock Road, Fairfax, 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 to the existing dwelling to be located 29.9 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 10.1 feet was requested.

Mr. Kalminski, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance would provide needed living space for the applicants expanding family. Mr. Kalminski explained that the neighborhood had undergone a tremendous transition from a grouping of small bungalow style homes to the current majority of large homes. He and said that the variance would allow the home to be more harmonious with the look and size of the homes in the surrounding neighborhood.

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

Mr. Pammel moved to approve VC 99-D-122 for the reasons stated in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM H. AND ROBIN T. WALKER, VC 99-D-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.9 ft. from front lot line of a corner lot. Located at 6511 Ridge St. on approx. 15,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-3 ((3))(2) 17 and 18. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 1999; and

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

1. The applicants are the owners of the land.
2. The development of the property is not consistent with the Zoning since it was built many years ago.
3. The lot complies with the R-2 standards as well as the dwelling itself.
4. The variance request is very reasonable.
5. The proposed addition will not encroach any further into the front yard than exists with the present 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 the addition shown on the plat prepared by Kephart & Company, dated March 5, 1990 as revised through August 16, 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.

Pursuant to Sect. 18-407 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 Mr. Kelley 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 December 8, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 354 November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. DOUGLAS AND REKHA SMITH, SP 99-D-059 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1906 Hillside Dr. on approx. 11,039 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 221.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Rekha Smith, 1906 Hillside Drive, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants

requested approval to permit modification to the limitations on the keeping of animals to allow a maximum of four dogs on their residential lot. To maintain four dogs in a residential zone the Zoning Ordinance requires a lot size minimum of 12,500 square feet. The subject lot contained 11,039 square feet. The rear and side yards of the residential lot were encircled by a six foot high fence.

Mrs. Smith presented the special permit request as outlined in the statement of justification submitted with the application. She stated that they currently had two adult dogs whom were adopted through the German Shephard Rescue of Maryland and said that they did significant foster family work with that organization. She said that they were extremely diligent and conscientious dog owners and their neighbors were in full support of the application.

Mr. Hammack asked if the applicants had read and agreed with the proposed Development Conditions. Mrs. Smith answered that they had read and concurred with all of the conditions.

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

Mr. Hammack moved to approve SP 99-D-059 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS AND REKHA SMITH, SP 99-D-059 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 1906 Hillside Dr. on approx. 11,039 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 221. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 30, 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). 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, 1906 Hillside Drive, 11,039 square feet, shown on the plat submitted by Rice Associates, P.C., dated April 12, 1995, as revised by Rekha A. "Rashmi" Smith, September 14, 1999, 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. 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.

4. The number of dogs in residence on the application property shall not exceed four (4).

This approval, 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. 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 8, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 356 November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. KAREN AND CHARLES E. CARLTON, SR., SP 99-V-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 9265 Davis Dr. on approx. 44,036 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 13. (Concurrent with VC 99-V-121).

9:00 A.M. KAREN AND CHARLES E. CARLTON, SR., VC 99-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.2 ft. from side lot line. Located at 9265 Davis Dr. on approx. 44,036 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 13. (Concurrent with SP 99-V-056).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Chuck Carlton, 1265 Davis Drive, Lorton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a reduction to minimum yard requirements based on error in building location to permit a playhouse to remain 4.0 feet from the rear lot line and 5.0 feet from the side lot line. The Zoning Ordinance requires a minimum rear yard of 10 feet and a minimum side yard of 20 feet is required; therefore, modifications of 6.0 feet for the rear yard 15 feet for the side yard.

The applicant also requested a variance to construct a two-story addition to be located 15.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 4.8 feet was requested.

Mr. Carlton requested to withdraw the variance application as the home had been sold and the new owners did not want to proceed.

Mr. Carlton presented the special permit request as outlined in the statement of justification submitted with the application. He informed the Board that the new owners wished to keep the playground intact.

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

Mr. Dively moved to approve SP 99-V-056 for the reasons stated in the Resolution.

Mr. Dively moved to approve the withdrawal of VC 99-V-121. Mr. Hammack 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

KAREN AND CHARLES E. CARLTON, SR., SP 99-V-056 Appl. under Sect(s). 8-914 of the Zoning

Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 9265 Davis Dr. on approx. 44,036 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 13. (Concurrent with VC 99-V-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 November 30, 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/ swing set) shown on the plat prepared by William S. Sikes, Jr., dated September 9, 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. Hammack and 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

8, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 358 November 30, 1999, (Tape 1) Scheduled case of:

9:00 A.M. THOMAS L. AND JEFFREY L. MARCEY, VC 99-P-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7))(44) F1. (DEFERRED FROM 8/3/99 AND 9/28/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Jenkins, 2071 Chain Bridge Road, Suite 400, Vienna, 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 five new dwellings which were proposed to be located within the 200 foot set back of Interstate 66. The Zoning Ordinance requires that all residential buildings be located a minimum distance of 200 feet of the right-of-way of an interstate highway. The following are the distances from the Interstate 66 right-of-way that the proposed homes were projected to be located; the first two dwellings were 25 feet; the third dwelling was 110.19 feet; the forth dwelling was 164.89 feet; and the fifth dwelling was 195.09 feet.

This case was heard by the Planning Commission on September 22 and 23, 1999. At that time the case was deferred to November 17, 1999, for decision only. The Planning Commision voted 10-0-1 to recommend that the Board of Zoning Appeals (BZA) deny the application. The Planning Commission's reasons for denial were; the belief that there was reasonable use of the property without the requested variance; the applicants had dismissed assertations from the neighboring homeowners regarding noise and errosion; the approval of the variance would be substantially detramental to the surrounding properties; the validity of the noise study was in question; and, there was public interest due to the air quality, noise and safety factors regarding the application. Staff noted that a verbatim of the November 17, 1999, Planning Commision hearing was located in the staff report and that a revised affidavit, dated September 2, 1999, was submitted by the applicant.

Mr. Jenkins, agent for the applicants, presented the variance request as outlined in the statement of justification submitted with the application. He submitted a video of the September 22 and 23, 1999 Planning Commission hearings. He said the key issue of the application was the performance standards that Fairfax County established and applied through the Comprehensive Plan. He referred to a list of three rezoning cases and two variance cases that deviated from the 200 foot set-back line. He explained that the pattern of each of these cases was that the applicant provided information which proved that those particular performance standards had been met, the Planning Commission then recommended approval and the Board of Supervisors approved them. Mr. Jenkins said, in this case, the Planning Commission had been inconsistent with the pattern, with the standards that were generally applied and, in several cases, had relied on inaccurate information. He ascertained that the current noise study mitigated the required performance standard.

Mr. Jenkins pointed out that there was an existing sound wall that bordered 35 feet of the property to the south of the property line and there was an area of vegetation between the south property line and the exisiting noise wall in which the trees would not be removed. He explained one condition of the on-site stormwater detention waiver was that 15% of the property to the east was to be placed in a conservation easement.

Mr. Jenkins said that the noise data and noise study submitted with the application were similar to what had been presented in previous cases and they provided more information than what was normally required. He said that the only complaint from the Planning Commision was their objection to the fact that field measuremens were taken during the week after Easter. He explained that, though the field measurements were taken at that time, the Fairfax County Schools had been in session and it was not considered a holiday week. He said that there had been some misunderstandings regarding the 15 year projected growth rate and that the correct rate was 3% annually.

Mr. Jenkins informed the Board that all of the trees and vegetation were deciduous and would not provide modest noise attenuation. He said that the new homes could provide some level of noise attenuation. He noted that the cul-de-sac was of substandard size; therefore, driveways could not be extended to the lots in question and Dellwood Drive would have to be extended. He said that the distances from the exisiting noise wall and the right-of-way to the two closest lots were comparable to others that had been approved in the area. He said that, if the Board requested, it would be possible to position Lot 4 approximately 15 feet farther back from the right-of-way and 75 feet farther away from the existing sound wall.

Mr. Jenkins, in closing, stated the property in question was very exceptional and it was constrained by its shape and size as well as the stormwater management issues and the necessity to extend Dellwood Drive.

Chairman DiGiulian called for speakers.

Mike Harrigan, 1309 Ross Drive, Vienna, Virginia, came forward to speak in support of the application. He voiced his opinion that this type of application would raise the property value of the homes in the area.

The following citizens came forward to speak in opposition of the application:

Lynne Smith, 1125 Pekay Street, Vienna, Virginia; Myron Smith, (no address given for record); Mark Hughman, 1125 Pekay Street, Vienna, Virginia; Lorretta Williams, 1209 Ware Street, Vienna, Virginia; Howard Williams, 1209 Ware Street, Vienna, Virginia; Andrew Pierce, 1119 Pekay Street, Vienna, Virginia; Steve Lord, 9022 Dellwood Drive, Vienna, Virginia.

The following were their concerns and opinions: if the variance was denied, the applicants would not lose all viable economic use of the property because they could still build one home and extend a driveway from the cul de sac on Dellwod Drive; the removal of the buffering trees, that the applicants had proposed to cut down, aided in sound reduction; the proposed homes would not be effective for the abatement of traffic noise from Interstate 66; the granting of the variance would exacerbate the growing erosion on the surrounding properties; the applicants did not meet three of the nine standards for the granting of a variance and, there was the possiblility of future expansion of Interstate 66 and the 200 foot set back provided for these expansions. The speakers submitted a petition with 60 signatures in opposition of the variance.

Mr. Dively asked staff if there was any way the applicants could build more than one home by-right.

Susan Landon, Chief, Special Permit and Variance Branch, replied that the applicants had the right to locate one or as many homes as they could outside the 200 foot set back limit but if they wanted to construct more than one home they would have to meet their set back requirements and the minimum lot size.

Mr. Dively asked if the applicant could remove all of the trees on the property without the construction of a home. Ms. Langdon answered that in that instance there would be no restrictions.

Mr. Jenkins, in his rebuttal, stated that the 200 foot set back covered approximately 86% of the property and there was no ability to build more than one house beyond the set back. He stated that there was a requirement in the Development Conditions for a landscape and tree preservation plan to be carried out and implemented through the construction process to maximize tree save to the extent possible as well as to plant additional trees. Mr. Jenkins stated that the grades of the proposed homes after development would rise approximately 8 to 10 feet to get gravity flow for the sewer and the homes would be above the height of the sound barrier; therefore, they would provide noise attenuation. Mr. Jenkins reiterated that the sizing and engineering of the homes had to conform with the size of the drainage area and there was a requirement that obligated the applicants to stabilize the natural stream, that was a part of the drainage area, prior to construction.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he was in agreement with the Planning Commission and he felt that a different plan could be submitted that would be more appropriate.

Mr. Pammel said that he had visited the site and the noise was a steady drone. He said that he could not support the exposure of five more residences to the noise and the health issues that stemmed from

Interstate 66. He said that he would support a more appropriate plan.

Mr. Dively stated that he would be in favor of a more modest development plan and that the applicants owned the trees and did have property rights.

Mr. Kelley moved to deny VC 99-P-067 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS L. AND JEFFREY L. MARCEY, VC 99-P-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings within 200 ft. of interstate highway. Located at 9019 Dellwood Dr. on approx. 2.86 ac. of land zoned R-2. Providence District. Tax Map 48-2 ((7))(44) F1. (DEFERRED FROM 8/3/99 AND 9/28/99). 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 30, 1999 and

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

1. The applicants are the owners 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

Page 361, November 30, 1999, (Tape 1), THOMAS L. AND JEFFREY L. MARCEY, VC 99-P-067, continued from Page 360

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-0.

Mr. Kelley moved to waive the twelve (12) month waiting period. 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 8, 1999.

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Page 361, November 30, 1999, (Tape 1) After Agenda Item:

Additional Time Request
SP 97-Y-014
Ajey Bargioti

Mr. Dively moved to approve the Additional Time Request. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Ms. Gibb was absent from the meeting. The new expiration date is January 30, 2001.

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Page 361, November 30, 1999, (Tape 1) After Agenda Item:

Approval of September 14, 1999 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Dively seconded the motion which carried by a vote of 4-0-1. Mr. Hammack abstained from the vote, Mr. Ribble was not present for the vote, and Ms. Gibb was absent from the meeting.

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Page 361, November 30, 1999, (Tape 1) After Agenda Item:

Out-of-Turn Hearing Request
VC 99-Y-180
Mo Yam Chan

Mr. Dively moved to deny the Out-of-Turn Hearing Request. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 11:23 p.m.

Minutes by: Lori M. Mallam

Approved on: March 7, 2000

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 7, 1999. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel and John Ribble. Robert Dively was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 363 December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JAMES T. AND SUSAN D. KILGORE, VC 99-L-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line. Located at 6312 Hibbling Ave. on approx. 8,733 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3))(71) 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. James Kilgore, 6312 Hibbling Avenue, 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 a garage to be located 6.9 feet from a side lot line. A minimum 12 foot side yard is required; therefore, a variance of 5.1 feet was requested.

Mr. Kilgore presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kilgore stated that the request was to enclose an existing carport to make it more presentable to the neighborhood. He stated that the structure was existing; therefore, it would not come any closer to the property line and requested the Board's approval.

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

Mr. Hammack moved to approve VC 99-L-124 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 30, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES T. AND SUSAN D. KILGORE, VC 99-L-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line. Located at 6312 Hibbling Ave. on approx. 8,733 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 80-3 ((3))(71) 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 December 7, 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 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 garage addition (enclosure of existing carport) shown on the plat prepared by Guy H. Briggs, dated July 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.

3. The garage shall be architecturally compatible with existing dwelling.

Pursuant to Sect. 18-407 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 was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 364 December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER AND MAUREEN JOSEPH, VC 99-P-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.0 ft. from side lot line and 22.5 ft.

from front lot line. Located at 2834 Marshall St. on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 65.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Joseph, 2834 Marshall Street, 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 front porch addition to be located 22.5 feet from the front lot line and to permit the construction of a two-story addition to be located 8.0 feet from the side lot line. A minimum 30 foot front yard and a minimum 10 foot side yard are required; therefore, variances of 7.5 feet and 2.0 feet, respectively, were requested.

Mr. Joseph presented the variance request as outlined in the statement of justification submitted with the application. Mr. Joseph stated that the addition was a replacement of an existing screened porch. He stated that the yard was unusually narrow and that the house itself was within 8.0 feet of one side lot line and 9.0 feet of the other side lot line. Mr. Joseph stated that the front porch addition was a replacement of an existing awning, to be constructed in keeping with the rest of the neighborhood.

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

Mr. Pammel moved to approve VC 99-P-126 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 30, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER AND MAUREEN JOSEPH, VC 99-P-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 8.0 ft. from side lot line and 22.5 ft. from front lot line. Located at 2834 Marshall St. on approx. 6,250 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 65. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 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 presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The application meets the criteria of a variance because of the narrow size and width of the lot and the fact that the proposed addition of the screen porch will not encroach any more into the side yard than presently exists by the primary structure.
4. The proposed covered entrance on the porch in the front is a reasonable addition to the house.

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

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

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

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

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

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

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

1. This variance is approved for the location of additions shown on the plat prepared by Mark Allen Coupard, dated July 27, 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 additions shall be architecturally compatible with existing dwelling.

Pursuant to Sect. 18-407 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, 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 absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 366 December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ERIC AND BRIDGET HOFFMEYER, VC 99-B-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 5641 Mt. Burnside Wy. on approx. 9,901 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((15)) 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. Mark Rooney, Sage Construction, Agent, 2975 Prosperity Avenue, Fairfax, 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 an addition 11.0 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 14.0 feet was requested.

Mr. Rooney presented the variance request as outlined in the statement of justification submitted with the application. Mr. Rooney stated that the applicants had taken custody of their 14 year old niece and also aging parents; therefore, they were requesting the construction to have a room connected to the existing dwelling.

Chairman DiGiulian called for speakers.

Berry Hecker, 5639 Mt. Burnside Way, Burke, Virginia, came to the podium to speak in opposition of the application. Mr. Hecker stated that the property was located on a pipestem with three houses and that the addition would affect everyone located behind the property. Mr. Hecker presented photographs to the Board showing the location of the house and the pipestem driveway. He stated that the addition would be in the front yards of homeowners located on the pipestem. He expressed his concern with water runoff, drainage issues, and the height of the addition.

Jiyoko Tilley, 5635 Mt. Burnside Way, Burke, Virginia, came to the podium to speak in opposition of the application. Ms. Tilley expressed her concern with regard to the house addition and a proposed hot tub. She stated that there wasn't any room for a fence to enclose the hot tub. She also expressed concern about a wheelchair ramp.

Eric Hoffmeyer, Applicant, 5641 Mt. Burnside Way, Burke, Virginia, stated that the construction company was hired to specifically address the water runoff concerns. He stated that the wheelchair concern was an internal problem of the home and that he did not intend to do any other construction other than what was presented on the application. Mr. Hoffmeyer presented the proposed plans to the Board for their review.

Mr. Hammack questioned the plat submitted with the application, showing an ingress/egress easement on the property, and asked if the blacktop was within the existing easement or outside of the property line. Mr. Hoffmeyer stated that it was outside of the property line.

Mr. Hammack asked why the construction was proposed for the rear of the property rather than the side of the property with a new garage on the front of the home.

Mr. Hoffmeyer stated that the association regulations did not allow a garage wider than two cars and also the location of an electrical control box on the property made it necessary for the additions to be located where they were proposed on the plat.

Mr. Ribble questioned the height of the proposed addition. Mr. Hoffmeyer stated that the addition would not be any taller than the existing garage.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 99-B-127 for the reasons noted in the Resolution.

Mr. Pammel stated that he could not support the motion due to the bulk, the size of the proposal and the close proximity to the residents to the rear of the property. However, he stated that he would support an addition to the front of the house for a garage.

Ms. Gibb stated that she was in agreement with Mr. Pammel and could not support the application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ERIC AND BRIDGET HOFFMEYER, VC 99-B-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.0 ft. from rear lot line. Located at 5641 Mt. Burnside Wy. on approx. 9,901 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2 ((15)) 17. 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 7, 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 presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The applicant has presented due diligence and figured out a way to put the addition on the property so that it will not cause harm to the neighbors as far as drainage is concerned.
4. The exceptional shape of the lot causes the need for the variance, in particular, the way it goes across on the rear at an angle.
5. The proposed location was the only location for the addition.

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

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

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

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

deprive the user of all reasonable use of the land and/or buildings involved.

Mr. Kelley seconded the motion which failed by a vote of 3-3*. Ms. Gibb, Mr. Hammack and Mr. Pammel voted against the motion. Mr. Dively was absent from the meeting.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999. This date shall be deemed to be the final decision date of this variance.

*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of four (4) members of the Board of Zoning Appeals is needed to grant a variance.

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Page 369, December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WINK DEVELOPMENT, LLC, VC 99-H-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a fence greater than 4.0 ft. high in front yard. Located at the intersection of New Dominion Pkwy. and Explorer St. on approx. 1.61 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((17)) 3.

Chairman DiGiulian noted that the application had been administratively deferred to January 18, 2000.

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Page 369, December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-109 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3048 Cedar Ln. on approx. 10,112 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 152. (Deferred from 11/2/99 and 11/16/99 for decision only).

9:00 A.M. WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-110 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from side lot line and 15.0 ft. from other side lot line. Located at 3046 Cedar Ln. on approx. 10,406 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 151. (Deferred from 11/2/99 and 11/16/99 for decision only).

Chairman DiGiulian noted that the application was deferred for decision only to obtain additional information.

Julie Schilling, Senior Staff Coordinator, reviewed the history of the application and stated that the deferral of the November 2, 1999, hearing was for additional information and said that staff had submitted information to the Board regarding surrounding properties with single ownership and single homes constructed in the neighborhood. She stated that the November 16, 1999 deferral was for additional information to obtain how many of those single lots with a home on the lot were adjacent to a lot which was vacant. Ms. Schilling displayed a vicinity map showing those lots.

Shaman Foradi, Agent, 10680 Main Street, Suite 260, Fairfax, Virginia, distributed an exhibit showing a minimum of nine or more homes which were constructed on single lots. He stated that it showed that the character of the subdivision was a mixture of both homes constructed on single lots as well as double lots. He stated that the Board had granted a variance for a similar application, as presented in the staff report.

Ms. Gibb moved to deny VC 99-P-109 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-109 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from one side lot line and 15.0 ft. from other side lot line. Located at 3048 Cedar Ln. on approx. 10,112 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 152. (Deferred from 11/2/99 and 11/16/99 for decision only).
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 7, 1999; and

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

1. The applicants are the owners of the land.
2. The case was difficult because neighborhoods were changing and space is limited.
3. This is infill development and land is valuable, therefore everyone is trying to make optimum use of their properties.
4. There is too much bulk on the lot, combined with the location of the proposed house.
5. Through the years, the pattern of development in these subdivisions has been to combine lots.
6. Citizens are not entitled, under the law, to build just because there was a subdivided lot. Zoning requirements have to be met.
7. The majority of other homeowners within the area have dealt with this issue by building on two or three lots. On rare cases where one house was built on one lot, most of them were prior to the current Zoning Ordinance yard requirements.

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-2. Chairman DiGiulian and Mr. Ribble voted against the motion. Mr. Dively was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999.

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Ms. Gibb moved to deny VC 99-P-110 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WALTER A., MICHELLE L., AND SHERRIE WALKER, VC 99-P-110 Appl. under Sect(s) 18-401 of the Zoning Ordinance to permit construction of dwelling 5.0 ft. from one side lot line and 15.0 ft. from other side lot line. Located at 3046 Cedar Ln. on approx. 10,406 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 151. (Deferred from 11/2/99 and 11/16/99 for decision only).
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 7, 1999; and

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

1. The applicants are the owners of the land.
2. The case was difficult because neighborhoods were changing and space is limited.
3. This is infill development and land is valuable, therefore everyone is trying to make optimum use of their properties.
4. There is too much bulk on the lot, combined with the location of the proposed house.
5. Through the years, the pattern of development in these subdivisions has been to combine lots.
6. Citizens are not entitled, under the law, to build just because there was a subdivided lot. Zoning requirements have to be met.
7. The majority of other homeowners within the area have dealt with this issue by building on two or three lots. On rare cases where one house was built on one lot, most of them were prior to the current Zoning Ordinance yard requirements.

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

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

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-2. Chairman DiGiulian and Mr. Ribble voted against the motion. Mr. Dively was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999.

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Page 372, December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN C. BROWN, JR. AND KELLY A. JENKINS, VC 99-D-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6604 Moly Dr. on approx. 10,318 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((6)) 33.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kelly Jenkins, 6604 Moly 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 a detached garage 5.0 feet from the rear and side lot lines. A minimum 14 foot rear yard and a minimum 10 foot side yard are required; therefore, variances of 9.0 feet and 5.0, respectively, were requested.

Ms. Jenkins presented the variance request as outlined in the statement of justification submitted with the application. Ms. Jenkins stated that the home had been neglected by the previous owner and requested the garage addition, in its proposed location, to enable them to make future renovations to the rear of their home. She stated that the requested location of the garage would also leave adequate space for a future children's play area and would eliminate wasted space. Ms. Jenkins presented photographs to the Board showing other similar structures on adjacent properties within the neighborhood. She stated that it would not cause a hardship to adjacent property owners and asked for the Board's approval.

Mr. Hammack asked if the garage could be moved in on the property so that a variance would not be required. Ms. Jenkins stated that it was considered; however, the purpose of the proposed location was to allow for more space for future renovations on the rear of the home and also for a play area.

Chairman DiGiulian called for speakers.

The following speakers came to the podium to speak in support of the application: Shirley Leake, 6602 Moly Drive, Falls Church, Virginia; Tony Jones, 6618 Moly Drive, Falls Church, Virginia; Thomas Musket, 2222 Orchard Drive, Falls Church, Virginia.

The following were their reasons for support: The garage would not be as high as existing sheds in the neighborhood; the neighborhood was going through revitalization efforts and improvements were welcomed; it was normal family ownership to have a two car garage; it was a positive improvement to the neighborhood; the lots were not too small to accommodate such additions; the garage addition was not visible to homeowners on Beacon Street due to the lot sizes.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 99-D-156 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 30, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN C. BROWN, JR. AND KELLY A. JENKINS, VC 99-D-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line and 5.0 ft. from rear lot line. Located at 6604 Moly Dr. on approx. 10,318 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((6)) 33. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 1999; and

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

1. The applicants are the owners of the land.
2. Concern was expressed that the applicant should reduce the bulk of the proposed building, however, it was decided that it was not appropriate for the Board to alter the variance from that proposed.
3. The property had exceptional narrowness and there were other places within the subdivision which had been built up; therefore, a precedent was not set that had not already been set.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 accessory structure (garage) shown on the plat prepared by Alexandria Surveys, Inc., dated July 16, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MICHAEL V. SAZONOV, VC 99-M-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 7512 Walton Ln. on approx. 38,289 sq. ft. of land zoned R-2. Mason District. Tax Map 60-3 ((6)) 34B1.

Chairman DiGiulian noted that the applicant had requested a withdrawal.

Mr. Hammack made a motion to withdraw VC 99-M-158. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Dively was absent from the meeting.

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9:00 A.M. REID J. AND ELIZABETH M. BLISS, VC 99-Y-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 13022 Grey Friars Pl. on approx. 8,646 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 636.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Reid J. Bliss, 13022 Grey Friars Place, 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 covered porch 10.0 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 15.0 feet was requested.

Mr. Bliss presented the variance request as outlined in the statement of justification submitted with the application. Mr. Bliss stated that the request was to cover an existing deck with a screened porch. He stated that the yard backed to an open area and that the distance to the closest home was approximately 180 feet; therefore, it would not be a detriment to adjacent property owners.

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

Mr. Pammel moved to approve VC 99-Y-123 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 30, 1999.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

REID J. AND ELIZABETH M. BLISS, VC 99-Y-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 13022 Grey Friars Pl. on approx. 8,646 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 636. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 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 presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The shallow nature of the lot causes an encroachment and the request was only to enclose an area of the deck with a screened porch.

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

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

adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 VIKA Inc., dated September 14, 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.

4. Prior to issuance of a building permit for the addition, an Administrative Reduction shall be obtained to permit the existing deck to remain 12.69 feet from the rear 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 4-0. Mr. Kelley and Mr. Hammack were not present. Mr. Dively was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 376 December 7, 1999, (Tape 1), Scheduled case of:

9:00 A.M. FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 for church and related facilities, child care center and nursery school to permit increase in land area, enrollment, hours of operation, and site modifications. Located at 2730 Centreville Rd. on approx. 5.30 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 36 and 37.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sara Newman, 2730 Centreville Road, Herndon, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested the special permit amendment to permit an increase in land area, an increase in total maximum enrollment for the child care/nursery school, site modifications, and amendment to the development conditions. Ms. Wilson stated that the increase in land area entailed the inclusion of an adjoining property which contained an existing single family dwelling. Ms. Wilson stated that the applicant proposed to use the existing dwelling for Sunday morning study classes and other small group activities. The requested enrollment increase was from 82 maximum students to 99 students. The requested amendment to development conditions was to alter the morning opening hours of operation for the preschool from 9:15 a.m. to 8:30 a.m. and to permit the number of children on the playground to increase from 20 to 24. She stated that no significant exterior alternations were proposed for either site, other than the installation of sidewalks and ramps to the dwelling to meet ADA requirements, and a pedestrian path from the church to the dwelling.

Ms. Newman introduced Benjamin Leigh speaking on behalf of the applicant. Mr. Leigh stated that the request was a minor adjustment to the existing and approved special permit. He stated that the church was seeking additional space through the lease of the adjoining residential property. Mr. Leigh stated that letters were sent to adjacent landowners asking for comment on the proposed plans and that no negative comments were received. He stated that existing trees and an existing fence would buffer the use from adjacent property owners. Mr. Leigh requested that Condition Number 12, in the staff report, be deleted and stated that right-of-way dedication, as required by development condition #12, would only be appropriate if the application was a request for a rezoning.

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

Mr. Ribble moved to approve SPA 88-C-058-2 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated November 30, 1999, with the deletion of Condition #12.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FLORIS UNITED METHODIST CHURCH, SPA 88-C-057-02 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 for church and related facilities, child care center and nursery school to permit increase in land area, enrollment, hours of operation, and site modifications. Located at 2730 Centreville Rd. on approx. 5.30 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 36 and 37. 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 7, 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). 3-103 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, Floris United Methodist 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 Cervantes and Associates, P.C., dated July 7, 1999, as revised through August 12, 1999, 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 (DPWES). Any plan submitted pursuant to this special permit shall be in substantial 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. The maximum seating capacity of the sanctuary shall be limited to 270 seats.

6. Prior to commencement of use of the structure located on Lot 36, the site shall be in compliance with all applicable health and/or building codes or regulations, to the satisfaction of DPWES, and a Non-Residential Use permit shall be obtained.

7. Upon issuance of a Non-Residential Use Permit, the maximum daily enrollment for the child care center and nursery school shall be 99.

8. Upon issuance of a Non-Residential Use Permit, the hours of operation for the child care center and nursery school shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.

9. Upon issuance of the Non-Residential Use, a maximum of twenty-four (24) children at any one time shall use the outdoor play area.

10. The maximum number of parking spaces on Parcel 37 shall be 135 in the location shown on the Special Permit Plat. The maximum number of parking spaces located on Lot 36 shall be limited to (2) accessible spaces in the location shown on the Special Permit Plat. Wheel stops or other non-mountable curb shall be placed along the driveway to prevent parking on the adjoining grass area of Lot 36. Subject to the limitations of Article 12 of the Zoning Ordinance, a sign shall be placed at the entrance to the driveway from Centreville Road to Lot 36 which restricts the entrance to handicapped drivers only. All parking shall be on site.

11. There shall be no church parking on Maverick Lane or in the driveway to the dumpster.

12. Transitional screening and barrier requirements shall be modified in favor of that shown on the Special Permit Amendment Plat.

13. Stormwater management shall be provided in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, as approved by the Director, DPWES.

14. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance. All required plantings within the parking lot and within the transitional screening buffers, as shown on the special permit plat, shall be maintained in good health. All dead vegetation within these areas, either natural or supplemented plantings, shall be replaced with like kind plantings.

15. There shall be no illumination of that portion of the parking lot located along the western property boundary (that portion of the parking lot as approved to be added in conjunction with application SPA 88-C-057). All lighting on the site shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall be a low-intensity design which focuses the light directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent light glare from projecting beyond the facility.

16. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

17. The house located on Parcel 36 shall be limited in use to Sunday morning study classes and small group meetings throughout the week. The house shall not be used for continuous or extended classroom use for more than 25 persons. The house shall not be used as a residence or for use by the child care center/nursery school.

18. Parcel 36 shall not be altered in any way to change the character from residential in appearance.

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. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble made a motion to waive the eight (8) day waiting period. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 379, December 7, 1999, (Tape 1), Scheduled case of:

9:00 a.m. KENNEY BUILDERS, INC., A 1999-SP-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination that appellant has established a storage yard on property in the R-C District, in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5809 Hill Street on approx. 20,273 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((1)) 12.

Margaret Stehman, Zoning Administration Division, made staff's presentation as contained in the staff report. She stated that the subject property was developed with a 3 bay garage facility and associated storage yard. Ms. Stehman stated that a storage yard was defined in relevant part as the use of any space, inside or outside a building, for the storage or keeping of construction equipment and/or vehicles or parts thereof. As detailed in the staff report, over a several month period, Zoning Enforcement staff had observed several cars, pick-up trucks, a dump truck, stake body trucks and a utility trailer parked on the property. Several of these vehicles were owned by a landscape business and the vehicles display the name of the business. This vehicle storage activity is consistent with the definition of a storage yard. Storage yards are only

permitted in the I-5 General and I-6 Heavy Industrial Districts. Storage yards are not permitted under any circumstances in the R-C District, the low density residential district in which the property is located. Therefore, the appellant is in violation of the Zoning Ordinance. Ms. Stehman stated that the storage yard violation was related to a previous Notice of Violation which was issued to the appellant in April, 1999 for construction of a use, a 3 bay garage facility, that is not permitted in the R-C District and for construction of the facility without building permit approval. That notice was not appealed and staff initiated litigation to resolve the violation. It was determined that the storage yard issue should be addressed separately and therefore, the appellant was cited for the storage yard violation which he chose to appeal. Because of the integral relationship between the 2 violations, this appeal has stayed further enforcement of the Notice related to the garage facility.

Eric Kenney, Appellant, 10738 Burr Oak Way, Burke, Virginia, stated that the property adjoined I-5 and C-6 properties. He stated that the property was purchased with the intent of building a home. However, after purchasing the property, he stated that he found out that there was not an approved septic field and could not be approved through the normal process, due to the type of system he had selected, which would take approximately two years to process the application through the County. Mr. Kenney stated that he had a landscape contractor to keep the property clean, and in return, he could keep his three vehicles on the property. He stated that the three bay garage was for storage of brooms and that it was not on a foundation and could be removed with the approval of a septic field. Mr. Kenney stated that the vehicles were actually stored on the I-5 property, which was also used as the easement to the R-C property. Mr. Kenney asked the Board to allow the vehicles to continue to be stored along the side of the property while he was attempting to get a septic field application approved through the County. Mr. Kenney presented a letter to the Board from the Board of Supervisors expressing their appreciation for the clean up Mr. Kenney had done to the property.

The Board discussed the location of the easement, the parking of the vehicles on the I-5 property and the septic field progress.

Chairman DiGiulian called for speakers.

Frank Smurbeck (no address given for record), stated that he supported Mr. Kenney's efforts stating that the area was always treated as a dump and that Mr. Kenney had cleaned the property and was a good neighbor. He stated that the zoning lines were unclear with regard to where the vehicles were parked.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that the facts set forth by the Zoning Administrator were not denied by the appellant and that it was the appellant's responsibility to produce all evidence to support the appeal. Mr. Hammack stated that since the facts were undisputed and the zoning was R-C, he made a motion to uphold the determination of the Zoning Administrator in Appeal A 1999-SP-033.

Mr. Pammel seconded the motion.

Mr. Kelley stated that a decision should not be made until it was determined on which of the three zoning districts the vehicles were parked. Mr. Kelley suggested a deferral of the application.

Ms. Gibb stated that the issues were on going, one of which would be litigated, and stated that if an appeal was made, the appellant should be prepared to support the allegations.

Mr. Hammack stated that even if good intentions were made, certain issues were not appealed. Mr. Hammack stated that photographs were presented showing the vehicles parked on the R-C lot.

Mr. Kenney stated that he did not deny the violation, only that where the vehicles were being parked on the lot 12 area was on the I-5 easement and not on the R-C property. He stated that he only wanted the ability to allow the property to remain as it was until one buildable lot could be developed.

The motion carried by a vote of 4-2. Chairman DiGiulian and Mr. Kelley voted against the motion. Mr. Dively was absent from the meeting.

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Page 381, December 7, 1999, (Tape 1), After Agenda Item:

Approval of August 10, 1999 Minutes.

Mr. Pammel made a motion to approve the Minutes for August 10, 1999. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Dively was absent from the meeting.

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Page 381, December 7, 1999, (Tape 1), After Agenda Item:

Request for Reconsideration, VC 99-P-067
Thomas A. and Jeffrey L. Marcey

Mr. Kelley made a motion to deny the request for reconsideration for VC 99-P-067, Thomas A. and Jeffrey L. Marcey. He stated that the additional information could have been presented at the public hearing and noted that the 12-month waiting period had been waived. Mr. Hammack seconded the motion, stating that the configurations were different than what was presented and therefore, required a readvertisement and would also be unfair to the opposition. The motion carried by a vote of 6-0. Mr. Dively was absent from the meeting.

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Page 381, December 7, 1999, (Tape 1), After Agenda Item:

Approval of November 30, 1999 Resolutions

Mr. Hammack made a motion to approve the November 30, 1999 Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Dively was absent from the meeting.

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Page 381, December 7, 1999, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request, James Shumaker, SP 99-Y-073

Susan Langdon, Chief, Special Permit and Variance Branch, noted that the request had been withdrawn by the applicant.

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As there was no other business to come before the Board, the meeting was adjourned at 10:31 a.m.

Minutes by: Deborah Hedrick

Approved on: February 1, 2000

Regina Thorn

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, December 14, 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 9:04 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 383 December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. BRIDGET O. GIDLEY, VC 99-D-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. from side lot line and deck 14.2 ft. from side lot line. Located at 1129 Litton Ln. on approx. 50,083 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-4 ((2)) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bridget Gidley, 1129 Litton Lane, 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 an addition, a covered walkway, to be located 14.7 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 5.3 feet was requested.

Ms. Gidley presented the variance request as outlined in the statement of justification submitted with the application. She said the lot was exceptionally narrow, pie-shaped, and steep. Ms. Gidley stated that her house was the only one in the neighborhood that hadn't experienced major renovations. She said the changes were compatible with the neighborhood. Ms. Gidley requested 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-D-103 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIDGET O. GIDLEY, VC 99-D-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. from side lot line and deck 14.2 ft. from side lot line. Located at 1129 Litton Ln. on approx. 50,083 sq. ft. of land zoned R-1. Dranesville District. Tax Map 22-4 ((2)) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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 addition (covered walkway and deck) shown on the plat prepared by Kenneth W. White, dated July 29, 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 covered walkway shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 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, 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. Hammack moved to waive the 8-day waiting period. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mr. Dively and Mr. Ribble were not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 384, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOHN NESTLER, VC 99-L-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 5914 Craig St. on approx. 8,868 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2))(13) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Nestler, 5914 Craig 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 variance to permit an accessory structure (a detached garage) to be located 5.0 feet from the rear lot line and 5.0 feet from a side lot line. A minimum rear yard of 12 feet was required; while the minimum side yard requirement was 10 feet. Therefore, variances of 7.0 feet for the rear yard and 5.0 feet for the side yard were requested.

Mr. Nestler presented the variance request as outlined in the statement of justification submitted with the application. He said the neighbors were in support of the application and the garage would offer better access.

Mr. Hammack asked the applicant the reason he needed such a large garage. Mr. Nestler replied because he had 2 cars and wanted to buy another.

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

Mr. Pammel stated the garage had too much bulk and would impact the adjacent property owners. He moved to deny VC 99-L-132 for the reasons noted in the Resolution.

Mr. Hammack said the photographs submitted reflected the property as being fairly flat and if the applicant wanted to refigure to have a side entry, that might be acceptable.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN NESTLER, VC 99-L-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an accessory structure 5.0 ft. from rear lot line and 5.0 ft. from side lot line. Located at 5914 Craig St. on approx. 8,868 sq. ft. of land zoned R-4. Lee District. Tax Map 80-3 ((2))(13) 8. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 1999; and

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

1. The applicant is the owner of the land.
2. The accessory structure has too much bulk and would affect the adjacent property owner.

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

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 22, 1999.

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Page 386, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. PAUL J. AND JANET L. HINES, SP 99-B-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 1.8 ft. from side lot line and 6.8 ft. from rear lot line. Located at 4704 Bristow Dr. on approx. 12,714 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-1 ((18)) 5. (Concurrent with VC 99-B-138).

9:00 A.M. PAUL J. AND JANET L. HINES, VC 99-B-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 1.2 ft. from side lot line and eave 0.5 ft. from side lot line. Located at 4704 Bristow Dr. on approx. 12,714 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-1 ((18)) 5. (Concurrent with SP 99-B-061).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Janet Hines, 4704 Bristow Drive, Annandale, 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 (playhouse) to remain 6.8 feet from the rear lot line and 1.8 feet from a side lot line. A minimum rear yard of 8.5 feet and a minimum side yard of 12 feet is required; therefore, modifications of 1.7 feet for the rear yard and 10.2 feet for the side yard were requested for the playhouse.

The applicants also requested a variance to construct a carport addition to be located 1.2 feet from a side lot line with an eave of .5 feet to the side lot line. Extensions of 5.0 feet for the carport and 3.0 feet for the eave were permitted. A minimum side yard of 12 feet is required; therefore, variances of 5.8 feet for the carport and 8.5 feet for the eave were requested.

Ms. Hines presented the requests as outlined in the statement of justification submitted with the application. She said the playhouse was there when they purchased the property. She said the carport was requested for protection of their cars against the leaves and flowers from the adjacent neighbors' bushes. Ms. Hines stated that the neighbor submitted a letter indicating her support of the applications.

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

Mr. Dively moved to approve SP 99-B-061 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL J. AND JANET L. HINES, SP 99-B-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit modification to minimum yard requirements based on error in building location to permit accessory structure to remain 1.8 ft. from side lot line and 6.8 ft. from rear lot line. Located at 4704 Bristow Dr. on approx. 12,714 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-1 ((18)) 5. (Concurrent with VC 99-B-138). 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 14, 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.

3. 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) shown on the plat prepared by William S. Sikes, dated September 9, 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. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 22, 1999. 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 99-B-138 for the reasons noted in the Resolution.

Mr. Hammack the carport was long and too close to the property line. He said the carport would affect the adjacent property owner.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL J. AND JANET L. HINES, VC 99-B-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 1.2 ft. from side lot line and eave 0.5 ft. from side lot line. Located at 4704 Bristow Dr. on approx. 12,714 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-1 ((18)) 5. (Concurrent with SP 99-B-061). 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 14, 1999; and

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

1. The applicants are the owners of the land.
2. The request was to cover the existing driveway.
3. The eave could be maintained without infringing onto the neighbor's 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 (carport and eave) as shown on the plat prepared by William S. Sikes, dated September 9, 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 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 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 4-2. Mr. Pammel and Mr. Hammack voted against the motion. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 389, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS, SP 99-S-044 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit church and related facilities and private school of general education with a daily enrollment of 100 or more students. Located generally at the S.E. quadrant of the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (DEFERRED FROM 10/19/99; DEF. FOR DECISION FROM 11/2/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, 2200 Clarendon Blvd, Arlington, Virginia, replied that it was.

Chairman DiGiulian noted that this case was deferred for decision only.

Ms. Strobel stated that the subject application was deferred from November 2, 1999, because of traffic concerns relating to a median break at Pohick Road. She stated that the applicant had met with the Virginia Department of Transportation (VDOT) who determined that a median break was not appropriate. Ms. Strobel stated that the applicant had made changes which included additional parking, a fence, and trees to provide additional buffering. She said a carpooling program would be encouraged. Ms. Strobel stated that the applicant would have an officer present to direct traffic. She indicated that the Office of Transportation had submitted a revised trip generation study and the total trip generation reflected half of what was noted in the staff report.

Ms. Gibb asked how the applicant would encourage a carpooling program. Ms. Strobel replied because it would be a development condition, the applicant would be required to encourage carpooling and the applicant would have a designated person to actively institute a carpooling program.

Juan Bernal, Staff Coordinator, made staff's presentation. This case was deferred for decision by the Board of Zoning Appeals at its November 2, 1999, public hearing to allow the applicants and staff time to address traffic and parking concerns that were brought up by the BZA and by the surrounding neighbors. The addendum that was received this morning as well as revised development conditions dated December 14, 1999, address these concerns. The parking has been increased by 30 spaces from 255 parking spaces to 285 parking spaces. Unfortunately, the concern of access to the site could not be so easily corrected. As directed, staff met with the County's Office of Transportation and VDOT on November 18, 1999, to address the median break on Pohick Road that would allow traffic to enter and exit from Pohick rather than off of Groveland Drive. The conclusion from both the Office of Transportation and VDOT were that the distance along Pohick Road currently measures approximately 350 feet and the necessary distance to permit a left turn is 600 to 700 feet; therefore the proposed left turn would not be permitted.

A second meeting, at the request of Supervisor McConnell's office took place on December 2, 1999, to address the possibility of accessing the Hooes Road ramp located to the north of the site. This access was not allowed because VDOT would not grant any access to the ramp due to topographic and safety factors because the ramp is an acceleration lane to the County Parkway.

The revised development conditions dated December 14, 1999, also incorporated the applicant's proposed conditions with the additions and edits bolded for the BZA's review.

Mr. Dively asked the applicant whether two entrances on Pohick would improve the situation. Ms. Strobel said she felt that the entrances functioned well as designed and deferred to Gary Kirkbride, Dewberry and Davis, address the issue.

Mr. Kirkbride stated that the right-in/right-out served as a very easy turn. He said it was difficult to ascertain whether the second entrance would be beneficial.

Chairman DiGiulian closed the public hearing

Mr. Hammack said this was a close case and a fairly large site on the edge of a community, but at the same time, a rather intense use was proposed. He said the site would be used fairly intense and the problem he had with the application is that it routed a substantial amount of the traffic through the existing neighborhood. Mr. Hammack stated that the transportation issues had not been satisfied and he moved to deny SP 99-S-044 for the reasons noted in the Resolution.

Mr. Pammel said when you look at the site, you immediately come to the conclusion that the applicant was trying to do too much on too small a site. He said it didn't meet the established criteria for establishing a site with a school.

Mr. Dively said he disagreed. He said the need for a church was great. Mr. Dively stated that a church use was far less intense than a commercial use.

Ms. Gibb stated that the use was appropriate for the site but it was too intense.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS, SP 99-S-044 Appl. under Sect(s) 3-103 of the Zoning Ordinance to permit church and related facilities and private school of general education with a daily enrollment of 100 or more students. Located generally at the S.E. quadrant of the intersection of Hooes Rd. and Pohick Rd. on approx. 9.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 13A. (DEFERRED FROM 10/19/99; DEF. FOR DECISION FROM 11/2/99). 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 December 14, 1999; and

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

1. The applicant is the owner of the land.
2. The applicant did not satisfy the standards for a special permit to be granted. Specifically, section 8-006 of the Zoning Ordinance which requires that the proposed use be such that the pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 of the Zoning Ordinance.

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

Mr. Pammel seconded the motion which carried by a vote of 4-3. Chairman DiGiulian, Mr. Kelley, and Mr. Dively voted against the motion. Mr. Dively moved to waive the 1-year waiting period for refiling. 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 22, 1999.

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Page 391, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. DAVID J. AND CATHERINE M. GEIER, VC 99-S-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from side lot line. Located at 6111 Colchester Rd. on approx. 21,800 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((1)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. David Geier, 6111 Colchester Road, Fairfax, 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 an addition 17.5 feet from the side lot line. A minimum side yard of 20 is required; therefore, a variance of 2.5 feet was requested.

Mr. Geier presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose the existing carport.

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

Ms. Gibb moved to approve VC 99-S-134 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID J. AND CATHERINE M. GEIER, VC 99-S-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.5 ft. from side lot line. Located at 6111 Colchester Rd. on approx. 21,800 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-1 ((1)) 4 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 14, 1999; and

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

1. The applicants are the owners of the land.
2. The request was modest.
3. The addition could only be placed in the proposed location because of the septic field.
4. The addition will not encroach any further because the request was to enclose the existing carport.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Edward E. Manigold, Land Surveyor, revised by Matthew Grant Guenther, dated August 23, 1999, as revised through September 24, 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 December 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 393, December 14, 1999, (Tape 1), Scheduled case of:

9:30 A.M. ASSOCIATED BUILDERS, INC., A 1999-DR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the Zoning Administrator's determination that, in accordance with Sect. 8-003 of the Zoning Ordinance, the Board of Zoning Appeals has no jurisdiction to vary, modify or waive any of the regulations or standards established by the Board of Supervisors for Special Permits and, therefore, the appellant's variance application was accepted in error. Located at 1212 Spring Hill Rd. on approx. 1.22 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((16)) 3.

Robert Lawrence, Agent, came forward and requested a 30-day deferral. He said the appellant believed he could obtain compliance with the Ordinance without the need for pursuing the legal aspects of the appeal, which would probably result in litigation.

Julie Schilling, Senior Staff Coordinator, stated that staff would concur with a short deferral with the understanding that the contractor's office and shop would not do work in other locations in the County.

Mr. Lawrence stated he concurred with the condition.

Mr. Kelley stated that this type of condition would set a precedent.

Mr. Dively stated that if the appellant agreed with the condition, it should not be an issue.

Mr. Dively moved to the defer A 1999-DR-030 to January 25, 2000 at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote 6-1. Mr. Kelley voted against the motion.

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9:00 A.M. J. DAVID AND JEANNE A. BOHLIN, VC 99-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 3.0 ft. from side lot line. Located at 8504 Stable Dr. on approx. 10,504 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(7) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. J. David Bohlin, 8504 Stabel Drive, Alexandria, 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 carport 3 feet from the side lot line. A minimum side yard of 12 feet is required with a permitted extension of 5 feet; therefore, a variance of 4 feet was requested.

Mr. Bohlin presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to build an open sided carport in front of the dwelling. Mr. Bohlin stated the carport would be 19 ½ feet from the neighboring dwelling. He said the adjacent neighbor was in support of the application. Mr. Bohlin stated that nearby properties had similar additions.

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

Mr. Ribble moved to approve VC 99-V-137 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. DAVID AND JEANNE A. BOHLIN, VC 99-V-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 3.0 ft. from side lot line. Located at 8504 Stable Dr. on approx. 10,504 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((10))(7) 11. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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 narrowness and shallowness of the lot prevents the addition from being built in any other location.

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

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

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

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

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

1. This variance is approved for the location of a carport shown on the plat prepared by Kenneth W. White, dated September 13, 1999, as revised through September 29, 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 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 and 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 December 22, 1999. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. TRUSTEES OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-952 for church and related facilities and nursery school to permit building addition, site modifications and change in development conditions. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(39) 2 and 2A. (Concurrent with VC 99-L-131).

9:00 A.M. TRUSTEES OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, VC 99-L-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot line. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(39) 2 and 2A. (Concurrent with SPA 68-S-952-2).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ted Kalriess, 708 Bellview Court, Leesburg, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow site modifications to include completion of an unfinished cellar beneath the sanctuary, construction of three new entrances to the cellar space, and construction of a patio entrance. The associated variance requests permission to allow two parking spaces to remain less than 10 feet from the front lot line.

Mr. Kalriess, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He stated the request was not to increase sanctuary capacity. Mr. Kalriess stated that a community meeting was held and there was no opposition to the applications. He said the site was heavily treed and there would be no increase in traffic.

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

Mr. Kelley moved to approve SPA 68-S-952-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-952 for church and related facilities and nursery school to permit building addition, site modifications and change in development conditions. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(39) 2 and 2A. (Concurrent with VC 99-L-131). 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 14, 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). 3-303 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, 6320 Hanover Avenue (3.68 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 July 9, 1999 as revised through September 10, 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 seating capacity for the church shall be limited to a total of 270 seats.

6. The maximum daily enrollment for the nursery school shall be 75 children.

7. The hours of operation for the nursery school shall be limited to between 9:00 a.m. and 12:30 p.m., Monday through Friday.

8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11, as determined by the Department of Public Works and Environmental Services (DPWES), except that the two proposed parking spaces shown on the Special Permit Plat located in the northeast and northwest corners of the existing asphalt lot directly adjacent to Monticello Boulevard shall be deleted. Prior to issuance of a Non-Residential Use Permit for the additions, the applicant shall submit a parking reduction based on shared use of the church and nursery school, for review and approval of DPWES. All parking associated with this use shall be contained on-site. If a shared parking reduction is not approved, the seats within the sanctuary or the maximum number of students within the nursery school shall be reduced to meet the parking requirement as determined by DPWES.

9. Transitional Screening Type I shall be modified along the northern property boundary in favor of that shown on the Special Permit Plat. Transitional Screening Type 1 shall be waived along the southern and eastern property lines, in favor of that shown on the special permit plat, except that supplemental landscaping to screen the entrance to the cellar and recessed patio shall be provided in the southeastern corner of the lot between the ends of the retaining walls, extending to the asphalt parking lot on the south side, and the front lot line adjacent to Hanover Avenue on the east side. The location, type, size and number of plantings used shall be subject to the review and approval of the Urban Forestry Branch of DPWES. The barrier requirement along the northern, eastern and southern property boundaries shall be waived.

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 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 22, 1999. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley moved to approve VC 99-L-131 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, VC 99-L-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot line. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Lee District. Tax Map 80-3 ((3))(39) 2 and 2A. (Concurrent with SPA 68-S-952-2). 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 14, 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 parking spaces shown on the plat prepared by Charles F. Dunlop, Land Surveyor, dated July 9, 1999, as revised through September 10, 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. 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 December 22, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 399, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. JOHN DEWITT, VC 99-D-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition 12.0 ft. from a side lot line. Located at 1901 Kirby Rd. on approx. 20,665 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((1)) 48.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Dewitt, 1901 Kirby Road, McLean, 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 second story addition 12 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 8 feet was requested.

Mr. Dewitt presented the variance request as outlined in the statement of justification submitted with the application. He said the existing house was built prior to the current Zoning Ordinance. Mr. Dewitt stated that he assumed when he purchased the property that he would be allowed to build. He requested a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve VC 99-D-173 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN DEWITT, VC 99-D-173 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of

a second story addition 12.0 ft. from a side lot line. Located at 1901 Kirby Rd. on approx. 20,665 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((1)) 48. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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 second story addition causes no further encroachment.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Highlander Surveying Services P.C., Curtis L. McAllister, L.S., dated March 11, 1997, as revised by Dwight McNeill, Architect, through October 27, 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 5-0. Mr. Pammel moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Kelley 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 December 14, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 401, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. ANJUMANE ISLAHUL MUSLEMEEN OF NORTHERN VIRGINIA, SPA 95-S-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-S-049 for place of worship and related facilities to permit site modifications. Located at 8608 Pohick Rd. on approx. 1.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 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. Jane Kelsey, Agent, 4041 Autumn Lane, 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 because the gross square footage of the existing building was erroneously depicted on the approved special permit plat. The current revised plat included the square footage of the existing basement area, which was previously not included. The addition of square footage altered the proposed FAR from the previous calculation of 0.07 to the corrected FAR of 0.106. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions subject to the implementation of the Proposed Development Conditions. Therefore, staff recommended approval of SPA 95-S-subject to the proposed development conditions.

Ms. Kelsey, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. She said she had been recently retained. Ms. Kelsey indicated that the applicant shared an easement with neighboring Children's World. She requested that Condition #15, regarding review in one year, be removed.

Chairman DiGiulian called for speakers.

Mohammed Fikder, 8331 Rocky Fir Court and Shafik Rahman, 8404 Rainbow Bridge Lane came forward to speak in support of the application. They stated that the mosque would be very convenient for them.

A speaker from the Afton Glen subdivision (name inaudible) and Carol Ward, 7681 Green Garland Drive, came forward to speak in opposition of the application. They expressed concerns relating to drainage, noise and screening.

Ms. Kelsey stated in her rebuttal that the applicant would not remove existing vegetation. She said the drainfield would be removed and re-vegetated. Ms. Kelsey stated that transitional screening was not a requirement between two commercial sites.

Chairman DiGiulian closed the public hearing.

Mr. Dively moved to approve SPA 95-S-049 for the reasons noted in the Resolution.
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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ANJUMANE ISLAHUL MUSLEMEEN OF NORTHERN VIRGINIA, SPA 95-S-049 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-S-049 for place of worship and related facilities to permit site modifications. Located at 8608 Pohick Rd. on approx. 1.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 22. 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 14, 1999; and

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

1. The applicants are the owners of the land.
2. The request was made because the gross square footage of the existing building was erroneously depicted on the approved special permit plat; the current revised plat includes the square footage of the existing basement area which was not previously included.
3. There were no physical changes to the currently existing residential structure and the proposed addition remains as previously approved.

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). 3-103of 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, Anjumane Islahul Muslemeen of Northern Virginia, 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 Metropolitan Consulting Engineers, dated May 18, 1999, and certified on May 28, 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. Worship services cannot be held on the subject property prior to the issuance of the Non-Residential Use Permit.

4. 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 (DPWES). Any plan submitted pursuant to this special permit shall be in substantial 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.

5. The maximum number of people on site at any one time shall be 100.

6. Forty-eight (48) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.

7. Existing vegetation north of the existing septic field shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1 along the northern and rear portion of the

eastern lot lines.

Barrier H, consisting of one row of trees and averaging no more than 50 feet on center, shall be planted along the eastern and western lot lines between the front lot line and the rear of the proposed parking lot.

Evergreen trees shall be planted between the front parking lot and the front lot line to provide supplemental screening in conjunction with the existing deciduous trees. This vegetation will serve to screen the parking lot and enhance the residential character of the property and shall satisfy the transitional screening requirement along the southern lot line.

A row of evergreen trees shall be planted between the rear of the parking lot and the existing septic field to provide additional screening of the parking lot from the residential lots to the north and northeast of the subject property. If a stormwater management pond is required pursuant to Development Condition #9, a row of evergreen trees shall be planted around the pond and shall satisfy the transitional screening requirement along the northern and eastern lot lines.

Parking lot landscaping shall be provided as required by Article 13 of the Zoning Ordinance.

All trees shall be a minimum of six (6) feet in height at the time of planting, and the species and number shall be as determined by the Urban Forestry Branch of the Department of Public Works and Environmental Management (DPWES) at the time of site plan review.

8. The barrier requirement shall be waived along all required lot lines.

9. Stormwater Management/Best Management Practices (SWM/BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance, unless waived by the Department of Public Works and Environmental Services (DPWES). If a waiver of the SWM/BMP requirement is not approved and a structural SWM/BMP is required, the structure shall be located in the area of the abandoned drain field and no additional vegetation shall be cleared.

10. The applicant shall close the existing driveway and obtain access through the adjacent property, Children's World, Inc. The applicant shall be responsible for all construction of the aforementioned access.

11. At the time of site plan approval or upon request, whichever occurs first, the applicant shall dedicate to the Board of Supervisors right-of-way in fee simple and provide easements in accordance with VDOT project 0641-029-282,C 501 for road improvements to Pohick Road.

12. The applicant shall abandon the existing drain field and connect to public sewer.

13. A sign permit shall be obtained for any sign proposed for this site.

14. If parking lot lighting is proposed, it shall be of the low bollard-type lighting, no greater than four (4) feet in height.

15. The Board of Zoning Appeals will review the activity on the site, the operation of the mosque, and the compliance with all development conditions one year from the establishment of the use based on the issuance of the Non-Residential Use Permit.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 14, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 404, December 14, 1999, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF SINGH SABHA GURDWARA, SP 99-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 5200 and 5212 Second Rd. on approx. 5.29 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 35 and 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. Surrindar Singh Hansra, 6035 Makely Drive, 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 a place of worship and related facilities. The church would have a maximum of 140 worshipers and 94 parking spaces. Staff recommended approval subject to the development conditions contained in the staff report.

Mr. Hansra, the applicant's agent, presented the special permit request as outlined in the statement of justification submitted with the application. He stated that there weren't many churches in the community and they were hoping to serve the immediate community. Mr. Hansra said the building would be used for religious purposes. He said the applicant concurred with the development conditions. Mr. Hansra requested a waiver of the 8-day waiting period.

Chairman DiGiulian called for speakers.

James Mott, 12522 White Drive, came forward to speak in support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 99-S-058 for the reasons noted in the Resolution with the deletion of Development Condition #14 as noted in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF SINGH SABHA GURDWARA, SP 99-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 5200 and 5212 Second Rd. on approx. 5.29 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 35 and 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 December 14, 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). 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, Trustees of Singh Sabha Gurdwara, 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 Professional Design Group, Inc., dated October 24, 1999, as revised through November 1, 1999 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 (DPWES). Any plan submitted pursuant to this special permit shall be in substantial 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. The maximum number of worshipers in the main area of worship at any one time shall be limited to 140.

6. Irrespective of the note on the special permit plat, the limits of clearing shall be no greater than that shown on the plat, and to the extent feasible, shall be further limited to accomplish the proposed construction in the least disruptive manner possible, to the satisfaction of DPWES. Viable trees outside the limits of clearing on the application property shall be preserved to the maximum extent feasible while maintaining site development as shown on the special permit plat, as determined by DPWES. Such trees shall be protected from damage by construction activity, as prescribed by and to the satisfaction of the Urban Forester. Prior to any land disturbing activities, a pre-construction conference shall be held between the DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, area of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Further, prior to the issuance of the first Non-Residential Use Permit, all disturbed areas shall be stabilized and seeded for grasses and/or a naturalized wildflower/meadow mix, to the satisfaction of DPWES. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles or vines, and there shall be no fertilizing or mowing of weeds or grass within the undisturbed open space areas.

7. Existing trees within the designated transitional screening area on the southern boundary shall be supplemented to achieve an effective screen to prevent vehicle headlights penetration onto adjacent residential properties, to the satisfaction of the Urban Forester. All vegetation within all the designated transitional screening buffer areas shall be maintained in good health and replaced with like-kind plantings when necessary, to the satisfaction of the Urban Forester.

8. The barrier requirement shall be waived for all boundaries.

9. Irrespective of the Zoning Ordinance definition of height, the total height of all structures on site shall not exceed sixty (60) feet. All exterior finishes shall be visually compatible with the surrounding environment and development.

10. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 or shall be a maximum of 94 parking spaces. All parking shall be on site, as shown on the Special Permit Plat.

11. All signs shall conform with Article 12 of the Zoning Ordinance.

12. All lighting on the site shall be in accordance with the following:

    - Not withstanding that indicated on the plat, the combined height of the light standards and fixtures shall not exceed twelve (12) feet.

    - The lights shall focus directly onto the subject property and shall be full cut-off lights

    - Shields shall be installed, if necessary, to prevent light glare from projecting beyond the facility.

    - Up-lighting of buildings or signs shall not be permitted on the site.

13. Stormwater management for the application site shall be provided to the satisfaction of the Department of Public Works and Environmental Services.

14. In order to reduce the maximum interior noise level to a level of approximately 45 dBA Ldn, for all buildings located between the 65-70 dBA Ldn highway noise impact contours, at a minimum the following measures shall be employed:

    - Exterior walls shall have a laboratory sound transmission class of at least 39.

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

    - Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

15. Upon issuance of a Non-Residential Use Permit for the existing house located on the site, the house shall be approved for church meetings and functions, subject to the implementation of Development Conditions # 1, 2, 3, 4, 5, 8, 10, 11, 12, 17, 20. The existing house shall be demolished/removed from the site prior to issuance of the Non-Residential Use Permit for the place of worship facility.

16. Interior parking lot landscaping shall be provided to total no less than 6.7 percent of the total parking lot area, as indicated on the special permit plat.

17. The proposed driveway which circles the north side of the facility and joins the parking lot on the east and west ends shall be deleted.

18. No less than 50% of the application property shall be preserved as undisturbed open space as approved by DPWES.

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

20. Landscaping shall be provided around the foundations of the building to soften the appearance of the church from Braddock Road and Second Street, subject to the review and approval of the Urban Forestry Branch of DPWES.

This approval, contingent on the above-noted conditions, shall not relieve 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 22, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 407, December 14, 1999, (Tape 1), After Agenda Item:

Approval of September 21, October 12, October 19, 1999 Minutes

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

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Page 407, December 14, 1999, (Tape 1), After Agenda Item:

Additional Time Request
Pure Presbyterian Church of Washington, SP 95-Y-012

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is December 7, 2001.

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Page 407, December 14, 1999, (Tape 1), After Agenda Item:

Approval of December 7, 1999 Resolution

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote 6-0-1. Mr. Dively abstained from the vote.

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Page 407, December 14, 1999, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
William Giery, VC 99-P-189

Mr. Hammack moved to deny the out of turn hearing request. 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 11:27 a.m.

Minutes by: Regina Thorn

Approved on: March 7, 2000

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 21, 1999. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and Nancy Gibb. John Ribble 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.

Page 409, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. JACQUIE B. SHONK, VC 99-D-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a variance to minimum lot width and lot area requirements. Located at 1040 Bellview Rd. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((3)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Baskin, Jr., 301 Park Avenue, Falls Church, 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 for minimum lot area and minimum lot width to allow development of the lot with the width of 199.45 feet and a lot area of 1.05 acres. The variance request would result in an increase in density from that permitted in the zoning district, which is an unauthorized variance under the provisions of the Zoning Ordinance. The lot was originally created in 1964 and did not meet the minimum lot area provisions at that time and at the present time it did not meet the minimum lot area or the density provisions. The Zoning Ordinance strictly prohibits the granting of the variance.

Chairman DiGiulian asked if the lot was considered a legal parcel and whether it was legally subdivided. Ms. Schilling answered that the property was subdivided outside the provisions of the Subdivision Ordinance that was in effect at the time, but it was considered to be a legal parcel.

There was conversation between the Board, Ms. Schilling, William E. Shoup, Deputy Zoning Administrator and Jan Brodie, Office of the County Attorney, as to what powers the BZA had with regard to unauthorized variances and why the variance in question had been accepted. It was in staff's position that staff did not have the authority to make the decision not to accept the variance application and the BZA had the power to make the decision of whether or not the variance was unauthorized.
Mr. Baskin presented the variance request as outlined in the statement of justification submitted with the application. He stated that the BZA had the authority to hear the application because the Virginia State Enabling Statute did not limit the BZA's authority to grant only variances that did not impact the density of the property. He said that the application met all of the standards for the granting of a variance. He explained that the applicant purchased the property in 1960 with the intent to construct a retirement home and in 1997 the applicant was informed by the County that the lot was considered unbuildable even though the property had been assessed by the County as a buildable lot. He said the applicant had been paying taxes as such based on that assessment. Mr. Baskin stated that the lot in question, along with many others in the subdivision, did not meet the 2 acre minimum and it was the only lot that had not been developed.

Chairman DiGiulian called for speakers.

Martin Simon, 1044 Bellevue Road, McLean, Virginia, came forward to speak in opposition of the application. He stated that there was no legal basis to grant a variance to build on the lot because the lot did not meet the Zoning Ordinance criteria for area, lot width and density. He voiced his concern regarding the low water levels for all of the residents in the area and said that another home would add to this problem.

Prabhu Ponkshe, 1042 Bellevue Road, McLean, Virginia, came forward to speak in opposition of the application. He said that none of the water problems had been addressed in the proposed application.

Mr. Baskin, in his rebuttal, stated that the water problems would be addressed at the time of construction and the building of the well.

Mr. Dively asked staff to respond to the statements from Mr. Baskin, that the BZA could grant an unauthorized variance. Jan Brodie, Office of the County Attorney, stated that the Board of Supervisors had the authority for the zoning of the property, specifically providing for the minimum lot size. She said that the application was ineligible for a variance because it did not meet the minimum lot size requirement.

Mr. Dively stated that there were many variances granted for smaller lots and the County had never made this argument.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that Board did grant subdivision variances that met the density criteria of the Zoning Ordinance. She said that this application did not meet the current density requirements or the density requirements at the time the applicant purchased it and the lot in question was similar to an outlot.

Ms. Gibb asked for clarification that the applicant could not build on the land even without a variance for lot width.

Ms. Langdon stated that she was correct.

Chairman DiGiulian closed the public hearing.

Ms. Gibb asked staff if the other adjacent lots smaller than the minimum lot requirement were already built on. Ms. Schilling said those other lots had been built on.

Mr. Hammack stated that in this case a strict application of the Ordinance produced an inequitable result and that he was convinced that the lot was created as a nonbuildable lot. He said that the BZA derived their authority from what the County granted them under the State statutes.

Mr. Hammack moved to deny VC 99-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

JACQUIE B. SHONK, VC 99-D-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a variance to minimum lot width and lot area requirements. Located at 1040 Bellview Rd. on approx. 1.05 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((3)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1999; and

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

1. The applicant is the owner of the land.
2. The lot was created as a non-buildable lot.

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 failed by a vote of 3-3 with Chairman DiGiulian, Mr. Dively and Mr. Kelley voting nay.*

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 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 variance.

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Page 411, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. GORDON SCOTT AND MARYKAY EIFRIED PENCE, VC 99-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.2 ft. from rear lot line. Located at 3303 Lauren Oaks Ct. on approx. 36,022 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((19)) 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. Scott Pence, 3303 Lauren Oaks Court, Oak Hill, 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 an enclosed deck addition to be located 19.2 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 5.8 feet was requested.

Mr. Pence presented the variance request as outlined in the statement of justification submitted with the application. He said that the property had been aquired with the understanding that a screened porch would be constructed at a later time. He stated that the neighborhood was in full support of the application.

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

Mr. Pammel moved to approve VC 99-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

GORDON SCOTT AND MARYKAY EIFRIED PENCE, VC 99-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.2 ft. from rear lot line. Located at 3303 Lauren Oaks Ct. on approx. 36,022 sq. ft. of land zoned R-1. Sully District. Tax Map 35-4 ((19)) 10. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 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 very shallow in nature.
4. The variance request was only for a total of 5.8 feet.

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

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

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

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

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

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

1. This variance is approved for the location of an enclosed deck addition shown on the plat prepared by Frederick Ward Associates, Inc. (John P. Foster, Land Surveyor), dated September 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 enclosed 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. Kelley seconded the motion which carried by a vote of 4-0. Mr. Dively and Mr. Hammack were not present for the vote.

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 413 December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. MANORCARE HEALTH SERVICES, INC., VC 99-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence in a front yard. Located at 2701 Sutton Rd. on approx. 3.49 ac. of land zoned R-2. Providence District. Tax Map 48-1 ((1)) 55, 57, 58, 59, and 59A.

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, Arlington, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the construction of a 7 foot high fence in the front yard along the application site's Sutton Road frontage. A maximum fence height of 4.0 feet is permitted in a front yard.

Ms. Baker presented the variance request as outlined in the statement of justification submitted with the application. She stated that the facility was designed for Alzheimers care residents and that the fence would allow the residents of the facility the ability to move freely around the courtyard while providing a secure environment.

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

Mr. Dively moved to approve VC 99-P-136 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MANORCARE HEALTH SERVICES, INC., VC 99-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence in a front yard. Located at 2701 Sutton Rd. on approx. 3.49 ac. of land zoned R-2. Providence District. Tax Map 48-1 ((1)) 55, 57, 58, 59, and 59A. 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 21, 1999; and

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

1. The applicants are the owners of the land.
2. The request is appropriate for the safety of the residents of the facility.
3. The variance was foreseen by the Board of Supervisors when they approved the special exception.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 seven (7) foot high fence shown on the plat prepared by Paciulli, Simmons and Associates, Ltd. (Howell B. Simmons, P.E.), dated September 21, 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. Pammel seconded the motion which carried by a vote of 6-0.

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 415, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. THE MOST REV. PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VA AND HIS SUCCESSORS IN OFFICE, SPA 80-C-096-4 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-C-096 for church and related facilities to permit building addition and site modifications. Located at 11900 Lawyers Rd. on approx. 17.90 ac. of land zoned R-2. Hunter Mill District. Tax Map 26-3 ((1)) 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. Art Walsh, Walsh, Colucci, et. al., 2200 Clarendon Boulevard, 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 amendment to allow building additions containing 36,504 additional square feet and a three car garage to serve the rectory and site modifications which include additional parking spaces and an enlarged storm water management pond. On May 11, 1999, the BZA denied SPA 80-C-096-3 for the application parcel. The Board also waived the 12-month waiting period for re-application. Staff recommended approval of the application subject to the revised Development Conditions dated December 14, 1999.

Chairman DiGiulian asked if there was anyone in the audience present to address the Reston Association's letter requesting a deferral of the application. Larry Butler, Director of Parks and Recreation, stated that the Board of Directors requested the deferral so that they could have more time to review the Development Conditions as presented in the staff report.

Mr. Walsh presented the variance request as outlined in the statement of justification submitted with the application. He asked that the members of the parish, who were in support of the application, stand in the audience. He said that the Reston Association provided, at the hearing on May 11, 1999, an alternative development plan to help demonstrate why the church's development was excessive, and the church adopted the baseline from that alternative development plan for this revised application. Mr. Walsh stated that the application consisted of a building addition which connected the two existing church buildings, expanded the facility's seating to 1,000, and additional classroom and office space. He reported that there were several differences between the revised application and the previous application which had been denied. He said that the revised application reduced the number of seats from 1,200 to 1,000; maintained and extended the existing EQC protection on-site; it provided no new development on the western side of the site; provided at least 75 feet of buffer on the eastern side of the site; reducted the amount of parking spaces provided; and included bio-retention areas for best management practices. He said there were an additional

45 parking spaces than what was recommended by the Reston Association and the additional numbers reflected the church's number studies, which revealed a consistent average of 2.3 persons per vehicle attending mass on Saturday and Sunday.

Mr. Walsh informed the Board that although the Zoning Ordinance requires 25 foot buffers, the application proposed 75 and 80 foot buffers on the western and eastern sides. He stated that the application provided best management practices where none existed not only for the site itself, but for the entire contributing watershed to the stormwater management pond. Mr. Walsh stated that the application provided stormwater capacity far in excess of the public facilities maintenance requirements in order to prevent downstream bank erosion as a result of runoff from the site. He ensured that the traffic associated with the church would not be hazardous or conflict with traffic in the neighborhood. Mr. Walsh said the main entrance of the church would be located to the east, which was further away from the curve on lawyers road; the existing western entrance would be restricted to right-turn out and the church would utilize a traffic control officer at the main entrance. He said the church would also conduct mass at intervals of at least 2-hours to reduce the conflict between in- bound and out-bound trips. He said that a traffic study had been conducted and it revealed that all relevant intersections would maintain acceptable levels of service after this addition.

The applicant proposed an additional Development Condition to locate the new garage structure further away from the EQC area on the property.

Mr. Walsh stated that Catholic churches were restricted parishes and the church in question was a neighborhood church. He said that the opening of St. Veronica's Parish had little to no effect on the need of St. John Neumann to expand.

Chairman DiGiulian called for speakers.

The following citizens came forward to speak in support of the application:

Monseignor James McMurtry, no address given for the record; Andrea Hatler-Bramson, 2630 Fox Mill Road, Reston, Virginia; Mark Emory, 3032 Gianna Court, Oak Hill, Virginia; Sarah Shamback, (no address given for the record); Francis Steinbower, 2501 Fowlers Lane, Reston, Virginia; Pascalina Young, 11571 Shadbush Court, Reston, Virginia;

The following are their opinions and concerns:

The church expansion was greatly needed and the church had tried very hard to meet the concerns of the neighborhood; without the expansion the church would not be able to continue to create new energy in the community; in order to keep serving the growing public and keep the religious education and community outreach programs running the church needed the expansion; the sole purpose of the covenant between the Reston Homeowners Association and Henry Rolph was to define the residential density allowed on the Rolph property and, the covenent did not designate the property as being open space.

The following citizens came forward to speak in opposition of the application:

John Griggs, 2513 Fowlers Lane, Reston, Virginia; Larry Butler, Reston Association, (no address given for the record); Kathryn Parker-Martin, Chairman of the Fairfax County Tree Commission, 2625 Steeplechase Drive, Reston, Virginia; Michael Martin, 2625 Steeplechase Drive, Reston, Virginia; Christopher Bavoc, 2515 Valors Lane, Reston, Virginia; Barry Gohen, 2510 Pegasus Lane, Reston, Virginia; B.J. Sholvy, 2521 Trophy Lane, Reston, Virginia; Nancy Davis, 10907 Thamot Lane, Reston, Virginia; Bonnie Hawkness, 2505 Fowlers Lane, Reston, Virginia; Elfreide Walker, 2418 Silverfox Lane, Reston, Virginia; Faye Wallace, 2516 Pegasus Lane, Reston, Virginia; Margaret Richardson, 2502 Fowlers Lane, Reston, Virginia; Sarah Gohen, 2510 Pegasus Lane, Reston, Virginia; Marie Vincent 2354 Soft Wind Court, Reston, Virginia; George Payne, (no address given for record); Russ Wallace, 2516 Pegasus Lane, Reston, Virginia; Yonna Kromholtz, 2530 Trophy Lane, Reston, Virginia; John Clark, (no address given for the record),

The following were their opinions and concerns:

The appliant's revised proposal did not comply with the low density residential character of the district and was not harmonious with the use of the neighboring properties; the traffic impact statement was not complete; the church expansion would cause great traffic congestion; the expansion of the church would cause severe environmental problems; there was concern around saving the natural stream that runs on the application site; the removal of trees and construction would cause severe erosion and silt runoff into the stream; the area already had drainage and erosion problems and further construction would add to those problems; the lights from the parking lot would illuminate adjoining homes; a video of the area was shown illustrating the high water table and already existing erosion problems around the application site; the proposed structure was 91 feet in height; the proposed expansion was too big for the site; 1,000 seats were too many to have; the neighborhood suggested that the applicant retain the services of an arborist during the construction phase; the Reston Association requested that the application be deferred to give them more time to study the Development Conditions and, the Reston Association proposed that the church create a conservation easement that would cover all of the non-developed land on the parcel, including the area in the EQC and on the east and west boundaries granted to the Reston Association or Fairfax County.

Mr. Walsh, in his rebuttal, retiterated that the three areas of seating were the parish hall, the santuary and the chapel, which was used during the week. The parish hall would be used on rare occasions for overflow but was generally used as a nursery and would not be used at the same time as the santuary. He said the trafffic impact statement, based on 1,200 seats, was acceptable since they had reduced the seating to 1,000 seats. He said that they were provided a permit by the Corp of Engineers for the spring area and the wetlands. He said it would be duplicative to have a conservation easement over the EQC and buffer because they would have to come before the BZA to get amendments if they want to build anything else. Mr. Walsh reiterated that the stream conditions and the water quality would improve with the addition because they would have to comply with the best management practices of Fairfax County for the entire watershed area. He said that the height of the building was 45 feet but the belltower and the cross would make the total height 91 feet. He informed the Board that the FAR permitted for R-2 Zoning was 0.20 and the application totalled 0.085; therefore, they requested less than half of the permitted FAR. He said that the applicant agreed to retain an arborist to be involved during the construction process and that a letter had been sent to the Diocese regarding its view on the conservation easement, however, they had not received a reply.

Ms. Gibb asked Mr. Walsh for an explanation of the layout of the additional square footage that was requested with the most recent application. Mr. Walsh illustrated, by overhead, the additional square footage and said that it pertained to a three car garage, the connection of two existing buildings and the increase in seating in the sanctuary from 600 to 1,000.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SPA 80-C-096-4 for the reasons stated in the Resolution. Mr. Hammack moved to amend the motion with the addition of the applicant's proposed Development Condition. Mr. Kelley moved to amend the motion with the addition of a new Development Condition. Mr. Dively seconded the motions which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE MOST REV. PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VA AND HIS SUCCESSORS IN OFFICE, SPA 80-C-096-4 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 80-C-096 for church and related facilities to permit building addition and site modifications. Located at 11900 Lawyers Rd. on approx. 17.90 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

continued from Page 417

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1999; and

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

1. The applicants are the owners of the land.
2. The church has improved its plan.
3. The storm water pond is designed to not only help the church, but the neighboring properties and it will take care of the Best Management Practices that are necessary for offsite and onsite detention.
4. The church has increased its landscape buffer.

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, The Most Rev. Paul S. Loverde, Bishop of the Catholic Diocese of Arlington, 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 Ross, France & Ratliff, Ltd, dated August 20, 1999, as revised through November 5, 1999, and certified on November 9, 1999, 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 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. 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. The protected Environmental Quality Corridor (EQC) area on the application property shall be adjusted, as shown on the Plat, to incorporate the spring located to the northwest of the building addition. The EQC area shall be preserved and protected and shall be restricted in use to permanent open space. Other than the existing utilities already installed, no structures or fences shall be permitted within this the area. No additional clearing or grading shall be permitted in the area, except for removal of dead or dying trees. The limits of clearing shall be no greater than depicted on the approved Special Permit Amendment Plat.

6. All signs, existing and proposed, shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

7. Lighting for the church property shall focus only onto the subject property. Any and all parking lot lighting fixtures added to the site shall be limited in height to twelve (12) feet. All existing and all additional lighting fixtures shall be full cut-off lights, and shall be shielded in such a manner to prevent light from projecting onto adjacent residential property.

8. Stormwater management design satisfying all Public Facility Manual requirements shall be provided to the satisfaction of DPWES. Subject to approval by DPWES, the final stormwater management design shall provide for bioretention mechanisms within the parking lot islands, as depicted on the

Special Permit Plat. The bioretention islands shall be configured to the satisfaction of DPWES. All stormwater runoff shall be directed from the improved portion of the site to either the stormwater management pond shown on the Plat, or the bioretention or rain gardens, subject to review and approval by DPWES. In order to ensure that downstream bank erosion is not exacerbated by the proposed development, the final stormwater management design shall accomplish the following: (1) the water quality volume attributable to the pond's entire contributing watershed, based upon the current level of impervious area off-site and the proposed level of impervious area on-site; and (2) water quantity control for run-off contributed by the developed portion of the application property that reduces the peak flow rate of stormwater from the site in the two-year storm event to a level that is two-thirds less than the pre-development two-year peak flow rate from the site.

9. Prior to issuance of the Non-Residential Use Permit for the proposed expansion, the applicant shall reconstruct the existing western access to Lawyers Road as a right turn out only, with stop control. Notwithstanding that shown on the Plat, this exit lane shall measure a minimum of twenty (20) feet in width. In addition, the existing eastern access to Lawyers Road shall be relocated and reconstructed to include four (4) travel lanes internal to the site, as shown on the Plat. A right-turn deceleration lane on Lawyers Road, in conformance with VDOT standards, shall be provided to the eastern entrance to the site. These improvements to the ingress/egress points and the turn lane shall be completely constructed, to the satisfaction of DPWES, prior to the issuance of the Non-Residential Use Permit.

10. Upon issuance of a Non-Residential Use Permit for the expanded facilities, church services on Sundays and religious holidays shall be scheduled so that there is a separation of at least one (1) hour between the completion of one service and the commencement of the next service to minimize traffic conflicts between parishioners coming to and leaving the church parking lot.

11. Subject to any required approval by Fairfax County, the applicant shall utilize a traffic control officer to facilitate traffic movements at the eastern access point to Lawyers Road during Sunday morning services and on religious holidays, both before and during construction and after issuance of a Non-Residential Use Permit for the expanded facilities.

12. Church sanctuary seating shall be limited to a maximum of 1000.

13. All parking for the use shall be on site. There shall be a maximum of 435 parking spaces provided, as shown on the SP Plat. No additional areas shall be cleared or created to accommodate parking spaces beyond that depicted on the Special Permit Plat.

14. Transitional screening shall be modified in favor of that shown on the Special Permit Amendment Plat. Final size and species of plantings shall be as directed by the Urban Forester. In order to accomplish an effective screen between the stormwater management facility and the residential properties to the east, additional plantings may be required, subject to the PFM limitations on planting in the vicinity of a stormwater management pond. All plantings shall be maintained in good health and replaced with like-kind plantings when necessary.

15. Barrier requirements shall be waived for the perimeter of the site.

16. Any buses used in conjunction with the use shall be parked so as not to be seen from Lawyers Road or the adjoining properties.

17. In coordination with DPWES at the time of final engineering, the applicant shall adjust inward the limits of clearing and grading shown on the Plat as necessary to provide for additional tree save opportunities without otherwise affecting the proposed expansion.

    The final limits of clearing and grading shall be delineated on site by protective fencing, a minimum of four (4) feet in height, prior to any clearing and grading activities. Signage affirming "restricted access – tree save area" shall be provided on the temporary fence and shall be highly visible to construction personnel. The applicant shall provide silt and erosion controls including a double row of silt fencing, super-silt fencing, temporary berming or silt traps, as deemed necessary by, and to

the satisfaction of DPWES.

18. In coordination with DPWES, the applicant shall improve with mulch or wood chips an existing worn path which runs northeast through the EQC area to connect to the "Private 15 Foot Trail Easement" shown on the Plat. No clearing or grading activity shall be required to implement such path improvements.

19. Notwithstanding the location of the proposed garage shown on the Plat, the Applicant agrees to adjust the location of the garage structure approximately thirteen (13) feet to the south and to adjust the limits of clearing and grading southward as generally shown on Exhibit A attached hereto.

20. In coordination with DPWES, at the time of site plan approval, the Applicant shall grant a conservation or open space easement over the EQC area, as shown on the special permit plat, to the benefit of the Fairfax County Board of Supervisors, in a form acceptable to the Fairfax County Attorney. The purpose of such easement shall be to preserve the EQC area as a permanent open space subject to existing easements, trails and utilities and the right of the owner to remove dead, dying or diseased trees and debris.

21. The Applicant shall retain an arborist certified by the International Society of Arboriculture to monitor construction activities associated with the Church expansion to ensure that the limits of clearing and grading and the EQC area are maintained during construction.

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. Kelley and Mr. Pammel seconded the motion which carried by a vote of 6-0.

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 1999. This date shall be deemed to be the final approval date of this special permit.

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Page 420, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. J. THOMAS AND DARLENE J. FUTCH, VC 99-S-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.5 ft. from rear lot line. Located at 9401 Cleat Ct. on approx. 8,897 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 359.

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 Thomas Futch, 9401 Cleat Court, Burke 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 screen porch addition to be located 15.5 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 9.5 feet was requested.

Mr. Futch presented the variance request as outlined in the statement of justification submitted with the application. He said the addition would have no adverse impact on the neighborhood. He stated that the Homeowners Association and the surrounding neighbors were in approval of the application.

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

Mr. Kelley moved to approve VC 99-S-135 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. THOMAS AND DARLENE J. FUTCH, VC 99-S-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.5 ft. from rear lot line. Located at 9401 Cleat Ct. on approx. 8,897 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 359. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 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 property 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** 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 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 existing dwelling.

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

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 422, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. BURTON S. AND DOLORES N. CARNEGIE, VC 99-Y-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of two lots into three lots with proposed lot 1 having a lot width of 151.60 ft., proposed lot 2 a lot width of 12.04 ft. and lot 3 a lot width of 69.73 ft. Located at 2419 and 2417 Little Fox Ln. on approx. 6.75 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((3)) 13 and 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. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants were requesting a variance to permit the subdivision of two lots into three lots with the proposed lot 1 having a lot width of 151.6 feet, lot 2 having a width of 12.04 feet and lot 3 having a width of 69.73 feet. The Zoning Ordinance requires a minimum lot width of 200 feet; therefore, variances of 48.4 feet for lot 1, 187.96 feet for lot 2 and 130.27 for lot 3 were requested.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the application property contained approximately 6.753 acres and each proposed lot would exceed 2 acres. She informed the Board that the lots in question were of extraordinary shape with limited frontage. She said the applicant wished to consolildate the two existing parcels and resubdivide the property in a manor that did not increase the permitted density. Ms. Strobel said the density would be equitably distributed on the subject property and the proposed subdivision would result in three lots of approximately the same size. She stated the proposed subdivision had been designed in consideration of the preservation of vegetation on the exisiting property and to allow access to Outlots B and D which were easements for pedestrian and equestrian connections. She said that at the present time the lots in question did not meet the minimum lot width requirement; therefore, reasonable development was precluded.

Ms. Strobel requested that Paul Jennin, Landscape Architect, address the issue of how the homes were sited. Mr. Jennin explained, to the Board, the great measures that had been taken to preserve most of the valuable trees and vegetation on the property.

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

Mr. Hammack stated that he had a hard time granting the variances as they had been proposed and he did not feel the application met the hardship requirements.

Mr. Hammack moved to deny VC 99-Y-139 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BURTON S. AND DOLORES N. CARNEGIE, VC 99-Y-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of two lots into three lots with proposed lot 1 having a lot width of 151.60 ft., proposed lot 2 a lot width of 12.04 ft. and lot 3 a lot width of 69.73 ft. Located at 2419 and 2417 Little Fox Ln. on approx. 6.75 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((3)) 13 and 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1999; and

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

1. The applicants are the owners of the land.
2. The proposed configuration of the subdivision does not meet the hardship requirements.

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

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

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

Mr. Pammel seconded the motion which failed by a vote of 2-3 with Chairman DiGiulian, Mr. Kelley and Ms. Gibb voting nay.* Mr. Dively was not present for the vote.

Mr. Kelley moved to waive the 8-day waiting period. Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote 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 December 21, 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 variance.

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Page 424, December 21, 1999, (Tape 1) Scheduled case of:

9:00 A.M. COSCAN WASHINGTON, INC., VC 99-V-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 15.0 ft. from a side lot line. Located at 9033 Virginia Terr. on approx. 13,282 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 39.

9:00 A.M. JOHN D. AND S. GORDON LEARY, JR., VC 99-V-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a dwelling to remain 38.0 ft. from front lot line, 17.0 ft. from one side lot line and 7.0 ft. from other side lot line. Located at 9221 Hooes Rd. on approx. 9,342 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 4.

9:00 A.M. PATRICIA M. AND S. GORDON LEARY, JR., VC 99-V-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line of a corner lot. Located at 9233 Hooes Rd. on approx. 19,818 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 1.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from a side lot line. Located at 9029 Haywood Ave. on approx. 13,020 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 18.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from a front lot line of a corner lot. Located at 9200 Haines Dr. on approx. 12,402 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 9.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from the rear lot line. Located at 9012 Haywood Ave. on approx. 10,112 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 13.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9212 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 25.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 11.0 ft. from the rear lot line and 18.0 ft. from a side lot line. Located at 9016 Haywood Ave. on approx. 8,610 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 14.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.0 ft. from a front lot line of a corner lot. Located at 9225 Ox Rd. on approx. 13,427 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 35.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9222 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 26.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 25.0 ft. from the front lot line. Located at 9205 Haines Dr. on approx. 20,800 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 48.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 21.0 ft. from the rear lot line. Located at 9217 Hooes Rd. on approx. 10,099 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 5.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line, 10.0 ft from rear lot line and 12.0 ft. from a side lot line. Located at 9020 Haywood Ave. on approx. 7,426 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 15.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 12.0 ft. from a side lot line. Located at 9004 Haywood Ave. on approx. 10,070 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 11.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner

lot and 12.0 ft. from the side lot line. Located at 9206 Haines Dr. on approx. 10,668 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 10.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9230 Haines Dr. on approx. 13,085 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 47.

Mr. Pammel moved to defer VC 99-V-140 – VC 99-V-155 to January 6, 1999 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Ribble was absent from the meeting.

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Page 426, December 21, 1999, (Tape 1) Scheduled case of:

9:30 A.M. STARWOOD LODGING TRUST, INC., A 1999-HM-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the Zoning Administrator's determination that the construction of a proposed storage shed on the subject property is not in substantial conformance with the approval of Special Exception SE 82-C-125. Located at 8616 Westwood Center Dr. on approx. 120,339 sq. ft. of land zoned I-4. Hunter Mill District. Tax Map 29-3 ((20)) 10A.

Mr. Hammack moved to approve the withdrawal of A 1999-HM-031. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Ribble was absent from the meeting.

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Page 426 December 21, 1999, (Tape 1) Scheduled case of:

9:30 A.M. CRANK AND CHARGE, INC., A 1999-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that proposed expansion of an existing motor vehicle parts repair business to include the use of a service bay for the installation, servicing and testing of the parts in the vehicles, constitutes a change in use from business service and supply service establishment to a vehicle light service establishment which requires special exception approval by the Board of Supervisors. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8. Providence District. Tax Map 50-3 ((15)) A5. (DEFERRED FROM 10/12/99).

Mr. Baskin requested a deferral of the appeal application based on the fact that there were only 5 out of 7 board members present.

Mr. Kelley moved to defer A 1999-PR-027 to January 6, 1999 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Ribble was absent from the meeting.

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Page 426, December 21, 1999, (Tape 1) After Agenda Item:

Approval of October 26, 1999 Minutes

Page 427, December 21, 1999, (Tape 1), After Agenda Item, continued from Page 426

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Ribble was absent from the meeting.

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Page 427, December 21, 1999, (Tape 1) After Agenda Item:

Request for Reconsideration
St. Raymond Catholic Church
SP 99-S-044

Mr. Dively moved to deny the Request for Reconsideration. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and Mr. Ribble was absent from the meeting.

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Page 427, December 21, 1999, (Tape 1) After Agenda Item:

Approval of December 14, 1999 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Dively was not present for the vote and 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 12:04 p.m.

Minutes by: Lori M. Mallam

Approved on: March 7, 2000

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 4, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; Robert Kelley; James Pammel; and, John Ribble. Mr. Dively's seat was vacant following his resignation effective December 31, 1999.

Chairman DiGiulian called the meeting to order at 9:04 a.m. Mr. Ribble nominated John DiGiulian to continue to serve as Chairman of the BZA. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote.

Mr. Kelley nominated John Ribble and Paul Hammack to continue to serve as Vice-chairs of the BZA. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote.

Chairman DiGiulian called for the first scheduled case.

Page 429, January 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS L. AND FRANCES C. MCGEHEE, VC 99-B-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence in front yard. Located at 8105 Little River Tnpk. on approx. 44,561 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-4 ((10)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas McGehee, 8105 Little River Turnpike, 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 solid fence measuring six (6) feet in height, with five stone pillars measuring seven (7) feet in height, in the front yard area bordering Little River Turnpike. A maximum fence height of 4 feet is permitted in a front yard; therefore a variance of 3 feet was requested.

Mr. McGehee presented the variance request as outlined in the statement of justification submitted with the application. He said the fence was needed because of his children. Mr. McGehee stated that there was foot traffic through his yard to get to the bus stop. He said the fence would alleviate some of the noise from the trucks and the flashing lights in their window from passing vehicles. Mr. McGehee presented photographs of other 6 foot fences in the neighborhood. He stated that the neighbors had no objection to the fence.

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

Mr. Hammack said this case was tough and the residential nature of the neighborhood had declined over the years. He said he was sympathetic to the applicant but stated that Little River Turnpike was heavy with traffic and that every house fronting on that street experienced the same problems as the applicant. He said he didn't see the applicant's condition as being unique to the subject property. Mr. Hammack said it seemed more of a convenience to the applicant and he moved to deny the application.

The motion failed for lack of a second.

Mr. Pammel said he agreed with Mr. Hammack's statement about the residential nature declining and he was not sure a fence would be a mitigating factor of noise. He said the applicant felt strongly that a fence was needed and moved to approve VC 99-B-157 for the reasons noted in the Resolution.

Mr. Hammack said all the lots had the same problem.

Chairman DiGiulian said there were only five lots experiencing the problem.

Mr. Pammel suggested that the applicant explore other ways of addressing the noise issue, maybe through noise enforcement.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS L. AND FRANCES C. MCGEHEE, VC 99-B-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 7.0 ft. high fence in front yard. Located at 8105 Little River Tnpk. on approx. 44,561 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-4 ((10)) 4. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 4, 2000; and

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

1. The applicants are the owners of the land.
2. The property is 2-3 miles from the tank farm.
3. The area has declined over the years.
4. All the houses on Rt. 236 experience this noise problem.

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

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

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

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

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

1. This variance is approved for the location of a six (6) foot high solid fence with five stone pillars measuring a maximum of seven (7) feet in height, in the location shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated May 13, 1999, as revised through August 19, 1999,

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.

Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 431, January 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DONALD L. AND KIM P. WITMAN, VCA 99-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from a 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.

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 and Kim Witman, 8318 Colby Street, Vienna, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. On June 2, 1999, the BZA approved Special Permit Application SP 99-P-016, and approved, in part, concurrent Variance Application VC 99-P-032 for the application parcel. The special permit requested approval for an existing deck located 1.0 feet from a side lot line and for an existing playhouse located 3.0 feet from a rear lot line. The variance application requested approval of a proposed two-story addition to be located 7.3 feet from a side lot line, and also requested a proposed garage be located 27.5 feet from a front lot line and 4.7 feet from a side lot line. The BZA approved all requests except the garage. The BZA also approved a waiver of the one-year waiting period to reapply. The applicant requested a variance to permit construction of a garage addition 5.7 from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 6.3 feet was requested.

Mrs. Witman presented the variance request as outlined in the statement of justification submitted with the application. She said the lot had an exceptional shape. Mrs. Witman stated that the square footage of the garage had been reduced by 20% and moved 1 foot in, which eliminated the need for the variance from the front lot line.

Chairman DiGiulian called for speakers.

Susan McCollough, 8316 Colby Street, came forward to speak in support of the application. She said she had no objection to the application.

Mr. Pammel moved to approve VCA 99-P-032 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD L. AND KIM P. WITMAN, VCA 99-P-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from a 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. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 4, 2000; 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.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Alexandria Surveys, dated January 20, 1999, as revised through July 21, 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 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 433, January 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DEBORAH S. FROLING, VC 99-V-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 10.0 ft. from side lot line. Located at 8911 Cullum Dr. on approx. 14,867 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Deborah Froling, 8911 Cullum 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 a second-story addition to be located 10.0 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2 feet was requested.

Ms. Froling presented the variance request as outlined in the statement of justification submitted with the application. She submitted a petition in support of the application. She said the house was on a narrow lot and the only place to build was on top of the existing house. Ms. Froling stated that renovations would not add to the length or width of the house. She requested a waiver of the 8-day waiting period.

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

Mr. Ribble moved to approve VC 99-V-159 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH S. FROLING, VC 99-V-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 10.0 ft. from side lot line. Located at 8911 Cullum Dr. on approx. 14,867 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 108-1 ((2)) 43. 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 4, 2000; 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 is narrow.
4. There was no other location for the addition because of the way the house is situated 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 a second story addition shown on the plat prepared by Kenneth W. White, dated October 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 existing dwelling.

Pursuant to Sect. 18-407 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 5-0. Mr. Ribble moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. 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 4, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. THOMAS GEORGE STASIK, VC 99-P-168 Appl. under Sect(s). 3-307 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 2629 Bowdoin Cir. on approx. 18,264 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(E) 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. Thomas Stasik, 2629 Bowdoin Circle, 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 garage addition to be located 2.0 feet from a side lot line. A minimum side yard of 12 is required; therefore, a variance of 10 feet was requested.

Mr. Stasik presented the variance request as outlined in the statement of justification submitted with the application. He stated that he was handicapped and needed to have a covered area so that he wouldn't slip and fall during bad weather. Mr. Stasik stated that the garage would fit in with the community and the addition would be helpful to him.

Chairman DiGiulian noted a letter in opposition from a neighbor, which offered an alternative solution. The Chairman asked the applicant to respond to the letter. Mr. Stasik replied that the alternative solution wouldn't work because he was trying to alleviate dealing with the elements. He said the addition would enhance the property.

Ms. Gibb stated that the applicant would have difficulty building the addition without going onto the neighbor's property. Mr. Stasik replied that he could build without going onto the neighbor's property.

Chairman DiGiulian called for speakers.

Joseph Rippenger, 2631 Bowdoin Circle, came forward to speak in opposition. He stated that the applicant could put the garage anywhere on his property and a slight relocation would cause the addition not to affect his plants located on the property line.

Rebecca Hammer, 2633 Bowdoin Circle, came forward to speak in opposition, stating that the addition would be much too close to the neighbor's property line.

Mr. Stasik stated in his rebuttal that he needed the garage where he could use it. He said there was a storm drain at the very end of his property.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said this was a hard case and the lot was oddly shaped. She stated that she had a problem with the addition being 2 feet from the lot line. Ms. Gibb moved to deny VC 99-P-168 for the reasons noted in the Resolution and to waive the 12-month limitation on refiling an application.

Mr. Pammel stated that the applicant needed help from an architect.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS GEORGE STASIK, VC 99-P-168 Appl. under Sect(s). 3-307 of the Zoning Ordinance to permit construction of addition 2.0 ft. from side lot line. Located at 2629 Bowdoin Cir. on approx. 18,264 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9))(E) 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 4, 2000; and

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

1. The applicant is the owner of the land.
2. The lot is an odd shape; however, 40 foot area located 2 feet from the lot line is too much.
3. The other two cases granted in the area where further away.
4. Can't say that the addition can't be located anywhere else because a sketch was submitted by a neighbor showing another alternative.

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. Ms. Gibb moved to waive the 1-year period for refiling an application. Mr. Kelley seconded the motion which carried by a vote of 6-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 2000.

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9:00 A.M. JAMES V. GARZIONE AND CHRISTINE L. PUGH, VC 99-D-160 Appl. under Sect(s). 18-

401 of the Zoning Ordinance to permit construction of addition and roofed deck 9.0 ft. from side lot line. Located at 1808 Birch Rd. on approx. 14,581 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((11)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Rooney, Agent, 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 construction of an addition and a roofed deck 9.0 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 3 feet was requested.

Mr.Rooney, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the addition would be in the footprint of the existing carport.

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

Mr. Kelley moved to approve VC 99-D-160 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES V. GARZIONE AND CHRISTINE L. PUGH, VC 99-D-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and roofed deck 9.0 ft. from side lot line. Located at 1808 Birch Rd. on approx. 14,581 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((11)) 34. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 4, 2000; 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 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 an addition and roofed deck shown on the plat prepared by William E. Ramsey, Land Surveyor, dated October 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 addition and roofed 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. Ribble 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 January 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 438, January 4, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS D. AND KATHLEEN M.O. WILSON, TRUSTEES VC 99-V-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 15.0 ft. from side lot line. Located at 6033 River Dr. on approx. 37,581 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-1 ((2)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Wilson, 6033 River Drive, 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 construction of a garage addition 15.0 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 5 feet was requested.

Mr. Wilson presented the variance request as outlined in the statement of justification submitted with the application. He said he wanted to utilize the garage as living space. Mr. Wilson submitted a letter from the homeowner's association noting their support of the application. He said to put the addition in any other location would require removal of an oil tank. Mr. Wilson said there was floodplain in the rear of the house. He requested 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-V-162 for the reasons noted in the Resolution.

Mr. Pammel stated that when the house was built it was consistent with the Zoning Ordinance, and to make the applicant comply with the current Zoning Ordinance would cause an unreasonable hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS D. AND KATHLEEN M.O. WILSON, TRUSTEES VC 99-V-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of an addition 15.0 ft. from side lot line. Located at 6033 River Dr. on approx. 37,581 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 122-1 ((2)) 1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 4, 2000; and

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

1. The applicants are the owners of the land.
2. The house is 15 feet from the lot line.
3. The addition won't change the character of the neighborhood.
4. There was no other location to construct the addition.

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

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

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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

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

1. This variance is approved for the location of a garage addition shown on the plat prepared by Brian W. Smith, Land Surveyor, dated October 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 addition shall be architecturally compatible with the existing dwelling.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1999. This date shall be deemed to be the final approval date of this variance.

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Page 440, January 4, 2000, (Tape 1 & 2), Scheduled case of:

9:00 A.M. FELIX S. TANTOCO, ROCIO O. TANTOCO, GEORGINA P. TANTOCO AND CHRISTOPHER P. JAMES, VC 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed lot 17B having a lot width of 11.9 ft. Located at 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17. (DEFERRED FROM 11/9/99).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, 2200 Clarendon Boulevard, Arlington, 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 subdivision of 1 lot into 2 lots, with proposed lot 17B having a lot width of 11.9 feet, where 150 feet is required by Sect. 3-107 of the Zoning Ordinance.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. The applicants proposed to subdivide one lot into two with one lot having 3.03 acres and the other lot containing 2.41 acres, both which exceed the permitted density of the district.

Ms. Strobel said the applicant's parents wanted to live nearby to provide care for her during her illness which was the reason for the requested variance. She said they wanted to construct a second dwelling unit on their property. She stated that the applicant's complied with the variance standards. Ms. Strobel distributed a letter of "no objection" signed by 10 of the adjacent property owners. The applicants met with the neighbors and discussed the existing issue of storm drainage. Ms. Strobel indicated that Matt Marshall of Land Design was present to address concerns about the drainage issue. She said, by his calculation, the drainage associated with this proposal was minimal. Ms. Strobel distributed proposed revised development conditions in an attempt by the applicant to resolve the issues with the neighbors.

Mr. Ribble asked Ms. Strobel for the history of the surrounding lots.

Chairman DiGiulian called for speakers.

Christopher James, one of the property owners, came forward to speak in support of the application. He said they acquired the property in 1994. He said he went to talk with each of the neighbors and most had no opposition to the application. Mr. James stated that he didn't want neighbors to be affected by this property.

The following speakers came forward to speak in opposition.

Andy and Eleanor Hay, 10410 Marbury Road, Edwin Curle, 10450 Marbury Road, Howard and Carolyn Jones, 10411 Hunter Ridge Drive, Govind Idnani, 10409 Hunter Ridge Drive, Linda Kolodziej, 10406 Adel Road, Bernie Liebler, 10407 Hunter Ridge Drive, and Kathy Miller, 10402 Adel Road.

They expressed concerns relating to sharing the pipestem driveway, removal of trees, the septic field affecting flooding, increase in noise, traffic on the driveway endangering children, detrimental affect to property values, loss of privacy, erosion and water runoff.

Ms. Strobel distributed an exhibit reflecting the distance from existing homes to the lot line. In her rebuttal, she stated that when the property was purchased in 1992 they conducted a research of the land records and did not have knowledge of previous variance denials because that type of information was not recorded among land records. When they did become interested in constructing a home on the rear of the property is when they became aware of the history. Ms. Strobel said this was not the same application that was previously presented or approved. She said it was for the proposed division of one lot into two. She stated that the property demonstrated that it met the criteria of being an unusual shape. She read two statements noted on the subdivision plat-"An easement for ingress/egress, construction, maintenance of utilities and County and other emergency vehicles" and "Lot 4, which became 17C, shall share a proportional part of the expenses for the driveway construction and maintenance with future lot owners." Ms. Strobel stated that at that time it was contemplated that the ingress/egress easement would be used to service any lots that were subdivided at the rear of the property. She said she believed this application met the criteria for a subdivision variance.

Ms. Gibb said staff noted that the applicant could apply for a special permit for an accessory dwelling unit and asked if there was a reason why the applicant didn't feel that was appropriate.

Ms. Strobel replied that under 8-908 there were additional standards for accessory dwelling units. She said there were a number of restrictions with regard to accessory dwelling units.

Mr. Hammack said he had questions regarding the history of the lots and would need to have a title examination to fully understand what happened.

Ms. Strobel stated that she would answer any questions that she could and presented a subdivision plat from the land records when the previous owners subdivided the property.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said this was a difficult application but it was not the application that was before the BZA in 1984, which through subsequent actions, expired. He said the subject application was distinctly different. Mr. Pammel said he was concerned that this was the last large parcel in the general area that was requesting a division. Mr. Pammel stated that the applicant's proposal was half the density of the surrounding

lots and he didn't foresee the subdivision creating all the issues that the speakers addressed because of the size of the lot. He said the applicant's request was reasonable. Mr. Pammel moved to approve VC 99-P-101.

Mr. Kelley seconded the motion.

Mr. Ribble said he had a difficult time with the case because of the history. He stated that if he could review what happened with the past applications and see the similarities, if any, then he could support the motion.

Mr. Ribble said he would like to defer decision to obtain that information.

Mr. Hammack said he had the same feelings as Mr. Ribble. He said he would like to know what happened with the previous application and the denial and try to figure out what they acted on with a little more detail.

Mr. Hammack said he did feel this was a separate application.

Mr. Hammack made a substitute motion to defer decision to get information on the litigation and a little more history of what the BZA did in 1984.

Mr. Ribble seconded the motion which carried by a vote of 6-0. The application was deferred for decision to January 25, 2000.

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Page 442, January 4, 2000, (Tape 2), After Agenda Item:

Consideration of Acceptance for Appeal
Mobil Oil Corporation

William Shoup, Deputy Zoning Administrator, stated that this was an appeal of a decision from the Fairfax County Planning Commission to disapprove a concept plan for a service station and quick service food store on the subject property. At issue was whether or not the action by the Planning Commission on the concept plan, is a decision that is appealable to the BZA. As noted in staff's memorandum, Sect. 18-301 of the Zoning Ordinance provides that any person that is aggrieved by any decision of the Zoning Administrator, or by any decision or determination by any other administrative officer, in the administration or enforcement of the Ordinance, may appeal such decision to the BZA, except an appeal that relates to a proffered condition which shall be taken to the Board of Supervisors. The Planning Commission's authority for the review and approval of the concept plan at issue was established by a proffer that was associated with the approval of RZ 86-C-121. That proffer specifically required that a conceptual plan for the proposed development be prepared and submitted to the Planning Commission for review and approval. A copy of the applicable proffer was distributed to the BZA. The decision to not approve the concept plan was made by the Planning Commission and clearly was not a decision of the Zoning Administrator nor was it a decision or determination made by any other administrative officer. There was no basis to determine, as suggested by the appellant, that the Planning Commission in rendering its decision, was acting as the agent of the Zoning Administrator. Consequently, the appeal of the Planning Commission's decision does not satisfy the criteria of Sect. 18-301 of the Zoning Ordinance and therefore, staff's position was that the subject appeal should not be accepted for public hearing. The appellant filed suit in the Circuit Court regarding this subject matter. Mr. Shoup noted that Kevin Guinaw and Leslie Johnson of the Zoning Evaluation Division and David Stoner, County Attorney's Office, were present to respond to questions.

Stephen Fox, Agent, said there was a reason why the Planning Commission's action was the action of the Zoning Administrator. He said the County didn't cite Sect. 15.2-2299 of the State Code. Mr. Fox stated that this was a hybrid situation. He said the Planning Commission undertook this matter and went to the Zoning Administrator and said what does it mean. Mr. Fox said the Planning Commission then took action, which was outside of the ambit of what the Zoning Administrator said could be done. Mr. Fox said if the Zoning Administrator was constituted as the sole and exclusive arbiter of the Zoning Ordinances and proffers attached to Zoning Amendments, anyone acting in that manner, statutorily, is necessarily plying ground as the agent of the Zoning Administrator. He said he didn't think the Zoning Administrator had the ability under the State statute to cherry-pick those proffers that it wants to administer, enforce, and interpret.

Ms. Gibb asked Mr. Fox to respond to the County's citing of Sect. 18-301 as noted in their memorandum. Mr. Fox replied that the County's citing of Sect. 18-301 overlooks the fact that the overriding law is contained in the State Code to which they must follow.

Mr. Hammack said he wasn't prepared to make a motion because he would like to take time to consider it and take a look at the Ordinance. Mr. Hammack moved to defer decision on the acceptance of the appeal to January 11, 2000. Ms. Gibb seconded the motion, which carried by a vote of 6-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Minutes by: Regina Thorn

Approved on: March 28, 2000

Regina Thorn
Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiuliani
John DiGiuliani, Chairman
Board of Zoning Appeals

A special meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Thursday, January 6, 2000. The following Board Members were present: Chairman John DiGiulian; John Ribble; Paul Hammack; Robert Kelley; James Pammel; and Nancy Gibb.

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.

Page 445, January 6, 2000, (Tape 1) Scheduled case of:

9:00 A.M. COSCAN WASHINGTON, INC., VC 99-V-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 15.0 ft. from a side lot line. Located at 9033 Virginia Terr. on approx. 13,282 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 39.

9:00 A.M. JOHN D. AND S. GORDON LEARY, JR., VC 99-V-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a dwelling to remain 38.0 ft. from front lot line, 17.0 ft. from one side lot line and 7.0 ft. from other side lot line. Located at 9221 Hooes Rd. on approx. 9,342 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 4.

9:00 A.M. PATRICIA M. AND S. GORDON LEARY, JR., VC 99-V-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line of a corner lot. Located at 9233 Hooes Rd. on approx. 19,818 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 1.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from a side lot line. Located at 9029 Haywood Ave. on approx. 13,020 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 18.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from a front lot line of a corner lot. Located at 9200 Haines Dr. on approx. 12,402 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 9.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from the rear lot line. Located at 9012 Haywood Ave. on approx. 10,112 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 13.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9212 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 25.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 11.0 ft. from the rear lot line and 18.0 ft. from a side lot line. Located at 9016 Haywood Ave. on approx. 8,610 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 14.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.0 ft. from a front lot line of a corner lot. Located at 9225 Ox Rd. on approx. 13,427 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 35.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9222 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 26.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 25.0 ft. from the front lot line. Located

at 9205 Haines Dr. on approx. 20,800 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 48.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 21.0 ft. from the rear lot line. Located at 9217 Hooes Rd. on approx. 10,099 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 5.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line, 10.0 ft from rear lot line and 12.0 ft. from a side lot line. Located at 9020 Haywood Ave. on approx. 7,426 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 15.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 12.0 ft. from a side lot line. Located at 9004 Haywood Ave. on approx. 10,070 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 11.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot and 12.0 ft. from the side lot line. Located at 9206 Haines Dr. on approx. 10,668 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 10.

9:00 A.M. LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9230 Haines Dr. on approx. 13,085 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 47.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variety of variances from the minimum yard requirements for the R-1 district. These variances ranged from front, side, or rear yard requirements, to combinations thereof. The remaining lots could be developed without the need for variances. Of the existing 54 lots in the subdivision, only 5 contained dwellings. It appeared that 4 of the 5 dwellings would remain. One of the dwellings would require a variance to meet the side yard requirement. Most of the remaining lots were proposed to have new dwellings constructed by Coscan Washington, Inc. Fifteen of the lots would require variances because they would not meet the current R-1 district yard requirements.

On Wednesday, December 1, 1999, the Planning Commission held a public hearing on the variance applications. The Planning Commission voted unanimously (10-0) to recommend to the Board of Zoning Appeals that they deny all the variance applications filed by the Leary family and Coscan Washington, Inc.

The Planning Commission, in their recommendation for denial, stated that they believed the applications were not in conformance with the Comprehensive Plan for this area of the Mount Vernon District. The Commission felt that by granting approval of the variances, the character of the zoning district would be changed. In addition, the Commission further stated that the request did not meet all of the requirements for variances because the applicants would not suffer undue hardship if several of the lots were combined for development purposes, rather than being developed individually.

The John Leary Subdivision was originally platted in 1937 and the lots deemed lots of record when approved by the County Surveyor in 1942. With the adoption of the first Zoning Ordinance in 1941, this subdivision was zoned Agricultural. With the adoption of the Pomeroy Zoning Ordinance in 1959, the subdivision was reclassified to RE-1. The subdivision is currently zoned R-1 as per the 1978 adoption of the current Zoning Ordinance.

Sect. 3-107 of the Zoning Ordinance requires a minimum lot area in the R-1 District of 36,000 square feet with minimum yard requirements of 40 feet for the front yard, 20 feet for the side yard and 25 feet for the rear yards. The 1941 Zoning Ordinance required a minimum lot area of ½ acre and minimum lot width of 100 feet. It appears that these lots did not meet the requirements of the Agricultural District. However, on July 20, 1941, the Board of Supervisors amended Sect. XI of the 1941 Zoning Ordinance to add that lots of record shall remain legal.

Ms. Strobel, agent for the applicant, submitted a chart, which identified the variance criteria for each lot. She stated that the subdivision was originally platted in 1937 as 55 lots. The lots were deemed lots of record when approved by the County Surveyor in 1942. She said that in 1937 Fairfax County did not have a Zoning Ordinance and the lots were zoned R-1 in 1978. She stated that there had been an interpretation of the existing zoning of the lots and the result of that interpretation was that each lot in the subdivision could have been developed with a single family detached dwelling even though the lot might not meet the current area and lot width requirements.

Ms. Strobel said that the existing subdivision was unique as it had been platted prior to the first Zoning Ordinance in Fairfax County. She said the property owners had purchased the property with the expectations of constructing one single family detached dwelling per lot. She said the lots were reasonable sized lots for the development of single family detached homes. Ms. Strobel pointed out that the lots were not railroad lots and said that approximately 2/3 of the lots could have been developed without the necessity of a variance. She stressed that there was a unique feature associated with each variance request that was submitted. She stated that the character of the area would not change, as the applicant requested to construct reasonably sized dwellings on each lot that met all of the requirements with the exception of certain minimum yard widths. She informed the Board that the resulting density of the subdivision, if one home was constructed on each lot, was 2.58 dwelling units per acre and though that was slightly above the Comprehensive Plan recommendation, it was not out of harmony with the plan density. She stressed that the variance requests were not rezoning applications. She illustrated, by overhead and architectural elevations, the proposed layout of the lots.

There was discussion between Ms. Gibb and Ms. Strobel regarding whether or not the lots needed to be combined to meet the lot width requirements and if the variance applications would actually rezone the subdivision. Ms. Strobel reiterated that the lots were of reasonable size to construct single family detached dwellings; therefore, they did not need to be combined. She stated that the variance applications should have been studied under the merits of the variance criteria. Ms. Strobel restated that there was no necessity to rezone the lots and stressed that the lots were legally created and recorded lots. The applicant was only requesting certain modifications of certain yard requirements and the existing density would not be increased.

Ms. Gibb said that she could see how 1 or 2 lots could have provided a unique situation, however she did not see how 16 would. Ms. Strobel said that each lot needed to be studied individually due to their different variance needs. She said the subdivision was unique because it was recorded before the Zoning Ordinance.

Mr. Pammel asked if the applicant would have been able to develop the lots without the variance requests. Ms. Strobel stated that some of the lots could have been redesigned and built upon without the variances; however, the objective was to create a subdivision that was compatible and had some type of consistency so it would be a unified development.

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

Mr. Hammack moved to approve VC 99-V-140 - VC 99-V-155 for the reasons stated in the Resolutions.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

COSCAN WASHINGTON, INC., VC 99-V-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 15.0 ft. from a side lot line. Located at 9033 Virginia Terr. on approx. 13,282 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 39. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yards, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.

4. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN D. AND S. GORDON LEARY, JR., VC 99-V-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a dwelling to remain 38.0 ft. from front lot line, 17.0 ft. from one side lot line and 7.0 ft. from other side lot line. Located at 9221 Hooes Rd. on approx. 9,342 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The applicants presented testimony before the Board indicating compliance with the prescribed criteria for the granting of a variance.

4. The variance will allow an existing improvement to remain.

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

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

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

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

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

1. This variance is approved for the location of a dwelling shown on the plat prepared by John L. Marshall, dated August 17, 1999, 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.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICIA M. AND S. GORDON LEARY, JR., VC 99-V-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line of a corner lot. Located at 9233 Hooes Rd. on approx. 19,818 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((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 January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, beforethere was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.
2. The applicants are the owners of the land.

3. The applicants presented testimony before the Board indicating compliance with the prescribed

criteria for the granting of a variance.

4. This lot suffers from having 3 front yards.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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 and 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 January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.0 ft. from a side lot line. Located at 9029 Haywood Ave. on approx. 13,020 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 18. 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 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

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 dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from a front lot line of a corner lot. Located at 9200 Haines Dr. on approx. 12,402 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 9. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The property has double front yard 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 a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions

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

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 22.0 ft. from the rear lot line. Located at 9012 Haywood Ave. on approx. 10,112 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((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 January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally shallow.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9212 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 25. 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 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally narrow.

4. The property has double front yard 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 a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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 and 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 January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 11.0 ft. from the rear lot line and 18.0 ft. from a side lot line. Located at 9016 Haywood Ave. on approx. 8,610 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 14. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is small and exceptionally narrow.

4. The lot is only 8,610 square feet and is clearly substandard.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 24.0 ft. from a front lot line of a corner lot. Located at 9225 Ox Rd. on approx. 13,427 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((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 January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942 Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are

shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally narrow.

4. The lot has double front yard 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 a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as

Attachment 1 of the Proposed Development Conditions.

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

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9222 Haines Dr. on approx. 13,039 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 26. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

   I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that

these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally narrow.

4. The lot has double front yard 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 a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 25.0 ft. from the front lot line. Located at 9205 Haines Dr. on approx. 20,800 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 48. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is of an unusual shape which is exacerbated by the construction of the cul-de-sac.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 21.0 ft. from the rear lot line. Located at 9217 Hooes Rd. on approx. 10,099 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally shallow.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 30.0 ft. from front lot line, 10.0 ft from rear lot line and 12.0 ft. from a side lot line. Located at 9020 Haywood Ave. on approx. 7,426 sq. ft. of land zoned R-1 Mt. Vernon District. Tax Map 106-4 ((2)) 15. 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 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally shallow.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

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

Mr. Kelley seconded the motion which carried by a vote of 4-2. Mr. Pammel and Chairman DiGiulian voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 12.0 ft. from a side lot line. Located at 9004 Haywood Ave. on approx. 10,070 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 11. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

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 dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot and 12.0 ft. from the side lot line. Located at 9206 Haines Dr. on approx. 10,668 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((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 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally narrow.

4. The lot has double front yard 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 a dwelling shown on the plat prepared by John L.

Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

Pursuant to Sect. 18-407 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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REVISED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEARY LOTS FAMILY PARTNERSHIP, VC 99-V-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a dwelling 20.0 ft. from a front lot line of a corner lot. Located at 9230 Haines Dr. on approx. 13,085 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 47. 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 6, 2000; and

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

1. The properties the BZA were considering consist of 16 out of 54 lots located in an existing John Leary subdivision. The John Leary subdivision was originally platted in 1937, before there was any Zoning Ordinance in Fairfax County. The lots were deemed lots of record when approved by the County Surveyor in 1942. Many of these lots have already been developed with residents on them. The majority of the lots could be developed meeting the existing zoning requirements without any requests for variances.

   The first Zoning Ordinance was adopted in 1941. This subdivision was initially zoned agricultural. When the Pomeroy Zoning Ordinance was adopted in 1959, the subdivision was reclassified RE 1. The subdivision is currently zoned R-1 under the 1978 Zoning Ordinance. Section 3-107 of the Zoning Ordinance would require a minimum lot area in an R-1 District of 36,000 square feet with the minimum yard requirements of 40 feet for the front yard, 20 feet for the side yards and 25 feet for the

rear yards. These lots preexist the Comprehensive Plan.

I would respectfully disagree with the recommendation from the Planning Commission that these are not in conformity with the Comprehensive Plan. The Zoning Administration Office has ruled that these lots are all legal lots and developable provided set back requirements can be met. The applicant has gone over individual lots and presented evidence to indicate that different lots meet the requirements in their own unique way. Some of them have narrow frontage requirements, some are shallow and some have double front yards.

2. The applicants are the owners of the land.

3. The lot is exceptionally narrow.

4. The lot has double front yard 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 a dwelling shown on the plat prepared by John L. Marshall, dated August 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 dwelling shall be in substantial conformance with the architectural elevations included as Attachment 1 of the Proposed Development Conditions.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 480, January 6, 2000, (Tape 1) Scheduled case of:

9:30 A.M. CRANK AND CHARGE, INC., A 1999-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that proposed expansion of an existing motor vehicle parts repair business to include the use of a service bay for the installation, servicing and testing of the parts in the vehicles, constitutes a change in use from business service and supply service establishment to a vehicle light service establishment which requires special exception approval by the Board of Supervisors. Located at 2842 Stuart Dr. on approx. 9,178 sq. ft. of land zoned C-8. Providence District. Tax Map 50-3 ((15)) A5. (DEFERRED FROM 10/12/99).

Laura E. Clarke, Zoning Administration Division, presented staff's position as contained in the staff report. The appeal related to the determination that vehicle repair was not an accessory use to a business service and supply service establishment, but it constituted a change in use to a vehicle light service establishment which required special exception approval by the Board of Supervisors (BOS). The specific issue of the appeal was whether the installation, servicing, and testing of parts and vehicles, even on a limited basis, could be considered an accessory use to the authorized principle vehicle parts repair use or did the proposed use constitute a vehicle light service establishment. Upon request from the appellant, staff made a formal zoning interpretation that vehicle repair was not an accessory use to a business service and supply service establishment but it was a vehicle light service establishment. The existing vehicle parts repair use was authorized as a business service and supply service establishment; therefore, direct work on vehicles was not permitted. Staff found that although the appellant offered to limit the work to 3 vehicles per day, the minor vehicle repair services proposed in conjunction with the authorized auto parts repair and service shop significantly changed the characteristics of the overall use to the extent that it changed the use from a business service and supply service establishment to a vehicle light service establishment. The appellant did have the option to request a special exception from the BOS.

Mr. Hammack asked why the proposed use was not considered an extension to the principle use or contributed to the necessity of the occupant's business enterprise or industrial operation within the principle use category under the accessory use definition. Ms. Clarke answered that it was staff's opinion that the

business service and supply use was defined as a business working for other businesses and when the vehicle repair was added, it clearly changed the definition of the use on the site.

Mr. Hammack asked what would be permitted as a secondary and subordinate ancillary activity under the definition of the business service supply establishment. William E. Shoup, Deputy Zoning Administrator, replied that retail sales could have been permitted as a secondary subordinate ancillary activity under the definition. He said that the use fell under the vehicle light service establishment definition because the appellant had requested to perform work directly on vehicles. He said the location and repair of vehicles on the site changed the characteristic of the use.

Mr. Baskin presented the appeal as outlined in the statement of justification. He stated that the appellant's primary business was sales to other businesses. He said the appellant had requested the use of the existing garage bay, on a limited basis, to examine and test alternators on vehicles to determine whether or not they were faulty. He informed the Board that the appellant had no desire to change the use of his business to vehicle light service and repair. Mr. Baskin stated that the appellant did not agree with staff's opinion that the examining of up to 3 vehicles per day changed the primary use of the business. He said the appellant's request was within the definition of accessory use and it was clearly subordinate both in the purpose and in the area to be utilized with the principle use. He stated that the appellant had examined alternators at nearby garages instead of his own due to the Zoning Ordinance restrictions.

Mr. Pammel voiced his concerns that the Board of Zoning Appeals could not restrict the activity to 3 cars and the fact that in 1997 the appellant was sited for having 18 vehicles on site. Mr. Baskin stated that the appellant had since corrected the violation.

Mr. Hammack asked why vehicles were being brought to the appellant's business to check the alternators instead of the business that installed them. Mr. Baskin deferred to the appellant to give a clearer explanation to Mr. Pammel's concerns and Mr. Hammack's question. Gagik Vartainian, 2842 Stuart Drive, Falls Church, Virginia, stated that the 1997 violation stemmed from a misunderstanding that he had with regard to what he was approved for under his permit. He explained that in most cases the garages that purchased his alternators had problems installing them; therefore, he would have to travel from his business to the garages and examine the alternators to see if they were faulty. He explained that this took away from his business and the whole purpose of his request was to be able to have the customer come to him instead.

Mr. Hammack asked how the cars would get to his shop if the alternator was faulty. Mr. Vartainian answered that usually the cars were given new batteries and were able to run far enough to get to his shop, although some cars did have to be towed.

Chairman DiGiulian called for speakers.

Bob Moore, 3900 Prince William Drive, Fairfax, Virginia, came forward to speak in support. He explained that he had been taking different parts of his lawn tractor in to Mr. Vartainian for repair but the problem still remained. He said that he finally brought the tractor to Mr. Vartainian's shop where the problem was fixed. He stated that the whole ordeal could have been easier if he initially could have brought the tractor to Mr. Vartainian.

Heidi Bragdon, 1701 N. Pokamock Street, Arlington, Virginia, came forward to speak in support. She explained that during a conversation with Mr. Vartainian regarding the purchase of an alternator he suggested that he examine her car and determined that the alternator was not faulty. She said Mr. Vartainian's determination had saved her quite a bit of money.

Jay Balko, 1701 N. Pokamock Street, Arlington, Virginia, came forward to speak in support. He stated that, during their conversation, Mr. Vartainian clearly informed him that due to the Zoning Ordinance restrictions, any examination of the alternator would have had to be performed at a neighboring garage.

Mr. Shoup stated that when both definitions were studied in the context of what the appellant had described the characteristics of the use changed to a vehicle light service establishment.

Mr. Baskin stated that the applicant did not wish to make any changes to his business except to use the existing bay to examine alternators.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he had spent a good deal of time reviewing the two definitions and he felt that the principle use originally should have been under the light service establishment. He voiced his opinion that the Zoning Administrator stretched the definition of business service and supply service establishment when the appellant's permit was approved. He said due to the type of use that was proposed, though the appellant assured the Board that it would be minimal and subordinate to a principle use, he could not support overruling the Zoning Administrator's decision.

Mr. Pammel said that the Ordinance was consistent with the interpretation of the Zoning Administrator and that a special exception was required for what the appellant had proposed to do.

Mr. Hammack moved to uphold the determination of the Zoning Administrator with regard to A 1999-PR-027. Mr. Pammel seconded the motion which failed by a vote of 3-3 with Mr. Kelley, Mr. Ribble and Mr. DiGiulian voting nay. However, the determination of the Zoning Administrator was upheld.*

* Par. 2 of Sect. 18-306 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to reverse a decision of the Zoning Administrator.

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As there was no other business to come before the Board, the meeting was adjourned at 10:57 a.m.

Minutes by: Lori M. Mallam

Approved on: March 28, 2000

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 11, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Chairman DiGiulian called the meeting to order at 9:03 a.m. Chairman DiGiulian welcomed the new Board of Zoning Appeals Member, James Hart. Mr. Hart thanked the Board and staff for a warm welcome. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 483, January 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. PLANTATION PIPE LINE COMPANY, VC 99-V-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 37 ft. from the front lot line and parking spaces to remain less than 10.0 ft. from front lot line. Located at 8208 Terminal Rd. on approx. 2.89 ac. of land zoned I-6. Mt. Vernon District. Tax Map 99-3 ((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. Charles Watson, AEC Engineering, 5540 Falmouth Street, Richmond, 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 an office addition to be located 37 feet from the front lot line and for parking spaces to remain less than 10 feet from the front lot line. For the office addition, a minimum 40 foot front yard is required; therefore, a variance of 3.0 feet was requested. For the parking spaces, a minimum of 10 feet is required between parking spaces in the front lot line. The parking spaces are located on the front lot line; therefore, a variance of 10 feet was requested.

Mr. Watson presented the variance request as outlined in the statement of justification submitted with the application. Mr. Watson stated that the requested location was the only logical place for the addition due to underground conduits, a septic tank and a large bay door. He stated that the approval of the request would alleviate a number of hardships and would provide space for maintenance and repair of electrical and mechanical equipment, as well as provide for a safer and more efficient operation of the station and additional space for training.

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

Mr. Hammack moved to approve VC 99-V-161 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PLANTATION PIPE LINE COMPANY, VC 99-V-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 37 ft. from the front lot line and parking spaces to remain less than 10.0 ft. from front lot line. Located at 8208 Terminal Rd. on approx. 2.89 ac. of land zoned I-6. Mt. Vernon District. Tax Map 99-3 ((1)) 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 11, 2000; 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 reasons for the approval are set forth in the applicant's written statement of justification and public 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 the location of the office addition and parking spaces shown on the plat prepared by Charles W. Watson, Jr. P.E., dated September 27, 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.

Page 485, January 11, 2000, (Tape 1), PLANTATION PIPE LINE COMPANY, VC 99-V-161, continued from Page 484

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 485, January 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS AND ALMEDA M. CHINLOY, VC 99-D-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 4.1 ft. from side lot line. Located at 1707 Westmoreland St. on approx. 10,530 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((27)) 44.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Chinloy, 1707 Westmoreland Street, McLean, 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 a carport to be located 4.1 feet from a side lot line. A minimum 7 foot side yard is required; therefore, a variance of 2.9 feet was requested.

Mr. Chinloy presented the variance request as outlined in the statement of justification submitted with the application. Mr. Chinloy stated that the request for the carport was to protect his vehicle, which had been damaged by weather and vandalism. He stated that the requested location was the only logical place on the property and requested the Board's approval.

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

Mr. Pammel noted a letter in opposition from the adjacent property owner.

Mr. Pammel moved to approve VC 99-D-166 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS AND ALMEDA M. CHINLOY, VC 99-D-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 4.1 ft. from side lot line. Located at 1707 Westmoreland St. on approx. 10,530 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((27)) 44. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 11, 2000; and

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

1. The applicants are the owners of the land.
2. The request was reasonable due to the unusual configuration of the lot, which tapers from the front to the rear, creating the difficulty.
3. The applicants have 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 carport shown on the plat prepared by Kenneth W. White, Land Surveyor, dated October 12, 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. PETER AND SARAH ROUSSOS, SP 99-Y-063 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13221 Ladybank Ln. on approx. 10,567 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 265. (Concurrent with VC 99-Y-163).

9:00 A.M. PETER AND SARAH ROUSSOS, VC 99-Y-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.9 ft. from rear lot line. Located at 13221 Ladybank Ln. on approx. 10,567 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 265. (Concurrent with SP 99-Y-063).

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah Roussos, 13221 Ladybank 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 special permit to allow a 569 square foot accessory dwelling unit, which would be contained within a proposed addition to the main dwelling. The applicant also requested a variance to permit the accessory dwelling unit to be located 13.9 feet from the rear lot line. A minimum 25 foot rear yard is required; therefore, a variance of 11.1 feet was requested.

Ms. Roussos presented the special permit and variance requests as outlined in the statement of justification submitted with the application. Ms. Roussos stated that the accessory dwelling was to be used as a residence for her elderly disabled mother. She stated that it would allow for the use of a wheelchair and walker through the main portion of her home as well as a portion of the connection to the main dwelling unit. Ms. Roussos stated that the property backed to woods and would not be an impact on adjacent property owners.

Mr. Hammack asked Ms. Roussos if she understood the limitations that applied to accessory dwelling units. Ms. Roussos stated that she did.

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

Mr. Ribble moved to approve SP 99-Y-063 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND SARAH ROUSSOS, SP 99-Y-063 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 13221 Ladybank Ln. on approx. 10,567 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 265. (Concurrent with VC 99-Y-163). 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 11, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the general 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). 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, 13221 Ladybank Lane, 10,567 square feet, 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 Robert D. Larsen, P.E., dated July 20, 1999, as revised through November 19, 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. 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 Ordinance standards and regulations.

6. 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.

7. 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. 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 99-Y-163 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND SARAH ROUSSOS, VC 99-Y-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.9 ft. from rear lot line. Located at 13221 Ladybank Ln. on approx. 10,567 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 265. (Concurrent with SP 99-Y-063). 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 11, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the nine required standards for the granting of a variance.
3. The way in which the house is situated on the lot and the shallowness of the rear lot cause an unusual 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 the addition shown on the plat prepared by Robert D Larsen, P.E., dated July 20, 1999, as revised through November 19, 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. 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 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 490, January 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP G. DZYAK, VC 99-S-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 4.87 ft. from side lot line such that side yards total 25.67 ft. Located at 7507 Mullingar Ct. on approx. 10,455 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((21)) 48.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Philip Dzyak, 7507 Mullingar Court, 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 an addition to be located 4.87 feet from a side lot line. A minimum 8 foot side yard is required; therefore, a variance of 3.13 feet was requested.

Mr. Dzyak presented the variance request as outlined in the statement of justification submitted with the application. Mr. Dzyak stated that the request was to construct a 14 x 16 foot study on the southwest side of the existing dwelling. He stated that the addition would have the same architectural features as the existing structure, including matching bricks, siding, windows, overhang, shingles and trim colors. He stated that the lot was unusually shaped and necessitated the requested variance. Mr. Dzyak stated that there was an established tree line on the property line, which provided a natural barrier to adjacent property owners and, therefore, would not be intrusive to them and requested the Board's approval.

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

Ms. Gibb moved to approve VC 99-S-164 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP G. DZYAK, VC 99-S-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction

of an addition 4.87 ft. from side lot line such that side yards total 25.67 ft. Located at 7507 Mullingar Ct. on approx. 10,455 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 89-4 ((21)) 48. 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 11, 2000; and

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

1. The applicant is the owner of the land.
2. The request was a reasonable request because the lot was an unusual shape and the lot line was not parallel to the house.
3. The new addition would be well screened, based on photographs and testimony, and the neighbors would not be impaired in any way.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 addition shown on the plat prepared by Charles P. Johnson & Associates, P.C., dated May 14, 1992, as revised and recertified by Charles D. Farmer on September 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. 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 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 492, January 11, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JAMES E. KELLER, VC 99-Y-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from side lot line such that side yard totals 36.9 ft. Located at 3231 Betsy Ln. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 35-4 ((7)) 7.

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 Keller, 3231 Betsy 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 a one story sunroom to be located 10.7 feet from a side lot line, such that side yards totaled 36.9 feet. A minimum 12 foot side yard is required with minimum total side yards of 40 feet; therefore, variances of 1.3 feet for the minimum side yard and 3.1 feet for the total side yards were requested.

Mr. Keller presented the variance request as outlined in the statement of justification submitted with the application. Mr. Keller stated that he had filed a similar request, which was approved, in March, 1994. He stated that due to illnesses in the family, the project could not be continued. Mr. Keller stated that the requested location was due to a septic field and that there were no other locations for the addition. He stated that neither adjacent property owner, upon discussion with them, had any objection to the proposed addition and that there was sufficient shrubbery and trees to minimize impact on those adjacent property owners. Mr. Keller stated that the addition was in keeping with the character of the neighborhood. Mr. Keller noted that the variance report did not include the deck addition.

Ms. Wilson stated that the deck did not require a variance because it could extend into the minimum required yard and that only the sunroom addition required the variance.

Mr. Ribble asked if the current application was identical to the application which was approved in 1994. Ms. Wilson stated that research did not uncover the previous application. Mr. Keller stated that he had not identified the previous application in the current application and gave the Board a copy of the previous approval and stated that it was a unanimous vote for approval.

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

Mr. Kelley moved to approve VC 99-Y-165 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 11, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. KELLER, VC 99-Y-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.7 ft. from side lot line such that side yard totals 36.9 ft. Located at 3231 Betsy Ln. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 35-4 ((7)) 7. 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 11, 2000; 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 unusual placement of the house on the lot, due to the drainfield, made the request necessary.
4. A similar application had been previously approved.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Gallifant, Hawes & Jeffers, dated September 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 19, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 494, January 11, 2000, (Tape 1), Scheduled case of:

9:30 A.M. LILIANE P. AND GEORGE J. KNAKMUHS, A 1999-SP-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that appellant is operating a business (Clifton Pottery) without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of Zoning Ordinance provisions. Located at 7601 Clifton Rd. on approx. 91,476 sq. ft. of land zoned R-C, C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 12. (DEFERRED FROM 8/10/99 AND 11/16/99).

Chairman DiGiulian removed himself from the hearing due to a conflict of interest and asked Mr. Ribble to proceed as Chair with the appeal request.

Susan Epstein, Zoning Administration Division, made staff's presentation as contained in the staff report. She stated that the property was developed with a single family dwelling, which was converted to a retail sales and office use. The appellant was using the property for the operation of a retail sales establishment known as Clifton Pottery. Ms. Epstein stated that Clifton Pottery, owned by the appellants, had continuously operated from the property since the first Non-Residential Use Permit (Non-RUP) was issued on May 19, 1989.

Ms. Epstein stated that retail sales establishments was a permitted use in the C-5 District, subject to a site plan or minor site plan approval, unless exempt. She stated that there were no applicable provisions in the Zoning Ordinance which would exempt this use from the requirements for site plan approval. The appellants initially commenced their business operation pursuant to two temporary site plan waivers issued for retail sales and office use on the subject property, the first of which began in October of 1988. The last approved site plan waiver expired on September 10, 1992, and there was no record of any further approvals. It was noted that the last Non-RUP issued to Clifton Pottery also expired September 10, 1992. Since there was no valid site plan or Non-RUP approval for the appellants' retail sales establishment, the continued use of the property without site plan approval is a violation of the Zoning Ordinance and the occupancy of the property without a valid Non-RUP is also a violation of the Zoning Ordinance.

Ms. Epstein stated that the appellants were not disputing the fact that they were in violation for not having either a valid site plan or valid Non-RUP. She stated that they did attempt to obtain minor site plan approval, but that plan could not be recommended for approval because many of the required public improvements had not been constructed or waived by the Director. Although some of the required improvements had since been waived, there were still several outstanding issues, including BMPs, street lights and screening issues. Ms. Epstein stated that it had been over 7 years since the last site plan waiver and Non-RUP expired, and that while staff could appreciate the efforts that were needed to resolve the remaining site related issues, that did not negate the fact that the appellants had been operating in violation of the Zoning Ordinance.

Marshall Jenkins, Agent for the appellants, P.O. Box 57, Fairfax Station, Virginia, came to the podium to speak to the appeal request. Mr. Jenkins asked the appellant, George Knakmuhs, 7603 Clifton Road, Fairfax Station, if a Non-RUP was obtained in 1988. Mr. Knakmuhs replied that it was and stated that it was also renewed for two years in 1990. Mr. Jenkins asked if the gravel driveway existed at that time. Mr. Knakmuhs replied that it had. Mr. Knakmuhs stated that the property had operated as a business since 1988. He stated that the Non-RUP was denied due to conditions imposed by the County. Mr. Knakmuhs said that numerous site plans had been prepared; however, the County requirements had changed and, therefore, the plans had been denied.

Mr. Jenkins stated that Mr. Knakmuhs had retained an Engineer from J.P. DiGiulian Services, which stated that a gravel driveway would be the best substance due to water percolation into the ground and would also fit in with the rural character of the area. Mr. Knakmuhs stated that there were no changes to the use of the property. He said that all merchandise was purchased off-site. He stated that the house was over 100 years old and that the property was in its natural state and, therefore, could not understand why the County was requiring such items as street lights, sidewalks and a hard surface driveway in order to issue a Non-RUP.

Mr. Jenkins stated that the County was imposing impossible conditions on the appellant and asked that the Board reverse the decision of the Zoning Administrator.

Ms. Gibb asked how the sale of the property was progressing. Mr. Knakmuhs stated that they had two contracts; however, on one contract, the purchaser went to the County who informed them not to purchase the property. Ms. Gibb asked if the property was for sale as a business. Mr. Knakmuhs replied that it was and requested to be permitted to operate as a store until the property and the inventory was sold. He stated that no new inventory was coming onto the property.

Liliane Knakmuhs stated that they had sold approximately 30% of the existing merchandise. She stated that they had resided on the property for 23 years and that the gift shop was for a retirement occupation. Ms. Knakmuhs reviewed the history of the site plan approval process with the Board.

Ms. Gibb stated that the requirements of the County had changed since 1992 and said that in the future there would be even more stringent requirements to meet. She asked the appellants if they had done everything possible to obtain waivers and asked if they were not going to proceed further to obtain a Non-RUP.

Mr. Knahmuhs stated that they were not making any changes to the existing property and therefore did not believe that the requirements were necessary.

Ms. Gibb stated that if the requirements were met, an approval of the minor site plan would be given.

William Shoup, Deputy Zoning Administrator, stated that the appellants seemed to be challenging the fairness of the application of the site plan requirements. He stated that whether they were fair or not was not the issue of the appeal. Mr. Shoup noted that the appellants had requested a number of waivers through the site plan process, of which some had been approved. He said that approval of a waiver of the requirement for right-of-way improvements was given; a waiver of the sidewalk requirements was also given. Mr. Shoup stated that there were three outstanding issues: streetlights; a hard surface parking lot, of which a portion could remain gravel; and a BMP requirement. Mr. Shoup stated that the issue was whether they were operating without site plan approval and a non-residential use permit. He stated that the temporary site plan waivers that had been approved expired in 1992.

Ms. Knakmuhs stated that the requirements of the County included sidewalks, curbs and gutters. She stated that the area was rural and that no one had these items. She also stated that the electric company had informed them that upgrades of the streetlights should not be their responsibility. Ms. Knakmuhs stated that both of these items had received waiver approval, however, it was costly and should not be a requirement.

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

Mr. Hart asked if there was such a thing as an indefinite extension to allow the appellant to maintain the business until the sale of the property or the sale of the inventory could be obtained.

Mr. Shoup stated that there was nothing in the Zoning Ordinance that would provide for this.

Mr. Hart asked if waivers were not granted for the screening, the gravel driveway, lighting and a conservation easement, what use of the property would be permitted.

Mr. Shoup stated that any use of the C-5 portion would be subject to site plan approval.

Mr. Jenkins asked if a deferral of a decision could be made for a six month period of time.

Mr. Hammack stated that the application had been deferred in the past to allow the appellants the opportunity to resolve outstanding issues. He stated that the non-compliance had existed for several years and that the appellants knew of the temporary waivers which were applied for in 1988 and could not ignore the fact that they had been operating without a Non-RUP since 1992. Mr. Hammack stated that the appellants could have appealed to the Board the issue of the denial of site plan waivers in the past; however, this was not the issue of this appeal. Mr. Hammack stated that if he believed that the appellant could vacate the property in a short period of time, he would consider a deferral of the decision to a later date.

Mr. Hammack made a motion to uphold the Zoning Administrator's decision on Appeal A 1999-SP-020. Mr. Pammel seconded the motion.

Ms. Gibb stated that she could not support the motion and suggested a deferral and stated that they should be given time to reevaluate what could be done with the understanding that something would have to be done. Ms. Gibb made a substitute motion to defer the decision to August, 2000.

Mr. Kelley stated that he could not support Mr. Hammack's motion, and would support a deferral motion, but he believed the Board should vote the motion down and get on with business. He stated that the County should have better things to do with their time then to go after people like the appellants. Mr. Kelley stated that the equity of the situation should be considered in the decision.

Mr. Hammack stated that the problems had existed for seven years and that the appellants obtained minor site plan waivers, which they knew were temporary. Mr. Hammack stated that the options presented by staff were not unreasonable and that if the matter would have been pursued more diligently in 1993, the requirements might not have been as stringent. Mr. Hammack stated that the Board had taken, in the past, staff to task for not enforcing the Zoning requirements, and said that now it has been done, and the Board now took staff to task in enforcing the requirements and stated that it was not fair to staff and that a signal had been sent to other members of the community that they could operate a business without a Non-RUP because of the inequity of the system.

Mr. Hammack stated that he supported a motion to a six month deferral of the decision until August, 2000 and therefore withdrew his first motion.

Mr. Pammel stated that he agreed with the deferral request; however, stated that the issue was a narrow focus of the appeal and stated that the answer was clear that the appellants were operating without a Non-RUP.

Mr. Hammack made motion to defer decision to August 1, 2000 at 9:30 a.m.

Mr. Kelley stated that if the determination of the Zoning Administrator was upheld, the appellant would be put out of business and stated that he would not do this.

Mr. Hart stated that he supported the motion for deferral; however, that seven years was too long to operate a business without a Non-RUP and that he would hope that there would be a resolution by the August 1, 2000 date.

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

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Page 497, January 11, 2000, (Tape 1), After Agenda Item:

Consideration of Acceptance
Application for Appeal Filed on behalf of Mobil Oil Corporation

Stephen Fox, Agent, read a letter to the Board from the County Executive's office which stated that the Board of Supervisors could not hear the case and asked the Board of Zoning Appeals to accept jurisdiction in the matter. Mr. Fox stated that the Planning Commission had been conferred jurisdiction by a voluntary proffer, who would ultimately administer this.

Mr. Hammack stated that the letter from the County Executive's office required another deferral so that the Board could seek counsel. He stated that the Board did not have jurisdiction and that the case had been filed with the Circuit Court. Mr. Hammack expressed his concern, at length, with hearing the application and the Board's jurisdiction.

Mr. Fox stated that the fact could not be overlooked that once a proffer was put in place and adopted by the Board of Supervisors, it became part of the Zoning Ordinance.

Mr. Hammack said that, traditionally, the Board of Zoning Appeals had referred interpretations of special exception plans back to the Board of Supervisors.

Mr. Fox stated that the development plan amendment, which defined the use, was approved by the Board of Supervisors. He stated that the concept plan, which was delegated to the Planning Commission for approval, was denied. He said that the Planning Commission had overridden the Board of Supervisors determination. Mr. Fox stated that he had asked the Zoning Administrator for an interpretation for the administration of the proffer.

Mr. Hammack stated that the interpretation by the Zoning Administrator could be appealed to the Board. Mr. Hammack suggested an indefinite deferral until another remedy could be determined.

Mr. Hammack made a motion to defer the request for 30 days for further consideration. Mr. Ribble seconded the motion which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

Mr. Shoup recommended February 8, 2000, as an After Agenda Item.

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Page 497, January 11, 2000, (Tape 1), After Agenda Item:

Approval of January 11, 2000 Resolutions

Mr. Hammack made a motion to approve the January 11, 2000 Resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hart abstained from the vote. Ms. Gibb was not present for the vote.

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Page 497, January 11, 2000, (Tape 1), After Agenda Item:

Additional Time Request, Stump Dump, Inc., SP 94-D-058

Mr. Pammel made a motion to approve the additional time request to March 8, 2000. Mr. Hart 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 10:50 a.m.

Minutes by: Deborah Hedrick

Approved on: March 28, 2000

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 18, 2000. The following Board Members were present: Paul Hammack; Robert Kelley; James Pammel; John Ribble; Nancy Gibb and James Hart. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 499, January 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. STEVEN J. AND ROBYNE EDLEY KENTON, VC 99-D-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 7901 Old Falls Rd. on approx. 21,785 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 4.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robyne Edley Kenton, 7901 Old Falls Road, McLean, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to construct an attached two-car garage 10 feet from a side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, a variance of 10 feet was requested.

Martin Cezler, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the dwelling lacked a garage and due to the extreme width of the home and its location on the property, there was no other area available to construct the garage. He said the garage would be in character with the neighborhood.

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

Mr. Hammack moved to approve VC 99-D-167 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN J. AND ROBYNE EDLEY KENTON, VC 99-D-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 7901 Old Falls Rd. on approx. 21,785 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-2 ((2)) 4. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 2000; 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 relatively small in size.
4. The lot is exceptionally narrow.

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

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

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Bartlett Consultants, Ltd., as certified on October 21, 1999, by Joseph J. Chavez, 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.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day waiting period. 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 18, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. NORTHERN VIRGINIA REGIONAL PARK AUTHORITY, VC 99-H-106 Appl. under Sect(s). 18-401 the Zoning Ordinance to permit the construction of a 10 ft. high fence. Located at 9746 and 9750 Meadowlark Gardens Ct. on approx. 95.92 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 8, 8A, 8C, 8D, and 9. (DEFERRED FROM 11/16/99).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Todd Hafner, Northern Virginia Regional Park Authority, 5400 Ox Road, Fairfax, 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 a fence measuring 10 feet in height to be located inside of the parcel boundaries. The Zoning Ordinance limits fence height on the location in question to 7 feet; therefore, a variance 3 feet was requested.

Mr. Hafner presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the white tail deer that roamed in and out of the subject property had devastated the plants. He said that in recent years the Park Authority had tried various measures to protect the plants, but to no avail; the plants were still damaged. He said that after months of research, the Park Authority concluded that fencing the perimeter would solve the problem He said that after speaking with wildlife experts, it was determined that the fence needed to be 10 feet in height to keep the deer out of the gardens. Mr. Hafner stated that the Park Authority had met with the surrounding neighbors on two separate occasions and felt that they had modified the application to address their concerns. He said the deer herd would be culled prior to the installation of the fence and as a result the deer population on the surrounding properties would not increase. He noted that the culling of the deer herd combined with the fence installation could result in less deer in the surrounding areas. Mr. Hafner illustrated the proposed approximate location of the fence and its location from the park property lines. He explained that the proposed vinyl coated chain link fence would be black in color. He informed the Board that upon the neighbor's request, the Park Authority was in the process of coordinating a meeting between the Homeowners' Association, the County Park Authority and the County wildlife biologist to address the deer issues outside of Meadowlark Gardens.

Vice Chairman Ribble called for speakers.

Thomas Appler, 9717 Meadowlark Road, Vienna, Virginia; stated that he was a 22 year resident of the area. He said that the fence would produce the image of a prison and that there were other alternatives to control the deer population.

Mr. Hafner stated that the Park Authority studied several different options for the fence and said that the proposed fence was chosen because it provided the least visibility.

Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 99-H-106 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY, VC 99-H-106 Appl. under Sect(s). 18-401 the Zoning Ordinance to permit the construction of a 10 ft. high fence. Located at 9746 and 9750 Meadowlark Gardens Ct. on approx. 95.92 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 8, 8A, 8C, 8D, and 9. (DEFERRED FROM 11/16/99). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 2000; 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 subject property is a botanical garden that has been damaged extensively by deer.
4. A 7-foot fence will not be sufficient protection for the plants in the gardens.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 10 feet at its maximum height, in the location shown on the plat prepared by William H. Gordon Associates, Inc., dated June 1999, as revised through December 22, 1999, 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.

Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Pammel voted nay. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 503, January 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. SHEILA CHEATHAM, SP 99-D-064 Appl. under Sect(s). 8-918 and 8-914 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 19.2 ft. from rear lot line. Located at 8514 Lewinsville Rd. on approx. 2.54 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((3)) 13.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Baskin, 301 Park Avenue, 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 for an accessory dwelling unit within an existing structure and an error in building location for the accessory dwelling to remain 19.2 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, the amount of error for the accessory building is 5.8 feet or 23 percent.

Mr. Baskin, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He said that the Board, by its policy, favored this type of application and that it met the requirements of the Zoning Ordinance. Mr. Baskin informed the Board that the accessory structure was constructed at the same time as the main structure and it had remained unchanged since that time. He said that the applicant was unaware that there was an error in building location at the time of purchase. He said that the neighbors were in support of the application.

Mr. Baskin stated that the applicant had requested the deletion of Condition #11, which called for the dedication of 5 feet of frontage to the County. He said the donation of the frontage was not necessitated by the use of the property by having an accessory dwelling unit.

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

Mr. Pammel moved to approve SP 99-D-064 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHEILA CHEATHAM, SP 99-D-064 Appl. under Sect(s). 8-918 and 8-914 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 19.2 ft. from rear lot line. Located at 8514 Lewinsville Rd. on approx. 2.54 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((3)) 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 18, 2000; 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 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, 8514 Lewinsville Road, 2.54 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 Harold A. Logan Associates P.C., dated November 19, 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 servants' quarters shall consist of a maximum of one (1) apartment and contain no more than one kitchen.

6. The servants' quarters shall be occupied by persons who provide bona fide domestic and related services for the occupants of the principal dwelling, such as child care, housekeeping, and grounds maintenance.

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 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. All vehicle parking shall be on site.

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. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote and 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 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 505, January 18, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MICHAEL A. PECK, VC 99-D-172 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a 6.0 ft. high fence in a front yard of a corner lot. Located at 1044 Douglass Dr. on approx. 13,472 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((12)) 1.

Vice Chairman Ribble stated that the applicant had requested an indefinite deferral.

Mr. Kelley moved to indefinitely defer VC 99-D-172. Mr. Hart seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 505, January 18, 2000, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON D.C., SPA 89-S-013 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 for church and related facilities to permit child care center, increase in land area and building additions. Located at 11911 and 11919 Braddock Rd. on approx. 8.91 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 34, and 42. (ADMINISTRATIVELY DEFERRED FROM 12/7/99).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, 9324 West Street, 3rd Floor, Manassas, 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 amendment to construct a child care center with a maximum daily enrollment of 50 children. The proposed hours of operation were 9:00 a.m. to 3:00 p.m., Monday through Friday. The

applicant also requested to increase land area from 3.1 acres to 8.9 acres and to permit construction of additions to be constructed in two phases. Phase 1 would be the construction of a classroom and administrative building and Phase 2 would be the construction of a gymnasium and a multi-purpose building. The Department of Transportation (DOT) recommended the hours of operation of the child care center to be between 10:00 a.m. and 2:00 p.m., to keep it outside peak traffic hours.

Mr. McBride, agent for the applicant, presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the church needed the classrooms and multipurpose areas to provide adequate space for their youth program. He said that the proposed daycare was needed primarily for the church members. He asked for all of the people seated in the audience that were in support of the application to stand.

Mr. McBride submitted the applicant's revised development conditions. The following were the proposed changes to the Development Conditions: Condition #7 to amend the hours of operation for the day-care center to be between 9:00 a.m. to 3:00 p.m. Mr. McBride submitted a traffic study, which revealed that by 9:00 a.m. and after 3:00 p.m., the majority of the traffic had dissipated. Condition #10 to delete the sentence that dealt with the limitation of the time period of denuded areas. Mr. McBride stated that the Public Facilities Manual already addressed the period of time that land could be denuded. Condition #12 to add the phrase "off-site" concerning views of the building and delete the requirement for foundation planning. Condition #18 to insert "+/-" at the height limitation of 29 feet because the number of feet could change by a small margin. Condition #22 to replace the requirement of 165 parking spaces with a maximum of 180 parking spaces. Condition #24 to delete f the entire condition that dealt with noise abatement issues. Mr. McBride said that this condition pertained only to residential areas.

Vice Chairman Ribble called for speakers.

The following citizens came forward to speak in support of the application:

Father Androse, (no address given for the record); Adel Messa, (no address given for record); Mr. Singh, (no address given for record); Carolyn Gergess, (no address given for record); Peter Radloff, Northern Virginia Training Center, (no address given for record).

The following were their confirmations regarding the application:

At the present time there were no classrooms or recreation areas for the youth programs; the expansion of the church was needed to continue to allow the members of the youth program to volunteer at many agencies in the surrounding area and the daycare center would provide children of the same ethnic, cultural, and religious background to both grow up and learn together.

Vice Chairman Ribble closed the public hearing.

There was conversation between Ms. Gibb and staff regarding the applicant's proposed Development Conditions. The following was staff's position regarding the applicant's proposed development conditions. The proposed change to Condition #7 regarding the hours of operation was in conflict with what was recommended by the Department of Transportation; due to the asbestos and soil issues on the property, the environmental reviewer requested that Condition #10 be included to reiterate the requirement in the Public Facilities Manual. Staff had no objections to the change to Condition #12. Staff recommended the insertion of +/- a foot in Condition #18. Staff was opposed to the proposed changes to Condition #22 because the applicant already had more than double the amount of parking spaces required by the Zoning Ordinance. Staff was opposed to the deletion of Condition #24 because it was recommended by the Comprehensive Plan. It was a typical condition that was not specifically residential and it was included in all applications that pertained to gatherings of people.

Mr. Hart asked how many parking spaces existed at the present time. Mr. McBride answered that there were approximately 99 parking spaces.

Ms. Gibb moved to approve SPA 89-S-013, with the addition of the applicant's revised Development Conditions, for the reasons stated in the Resolution.
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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF THE ST. MARK COPTIC ORTHODOX CHURCH OF WASHINGTON D.C., SPA 89-S-013 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 89-S-013 for church and related facilities to permit child care center, increase in land area and building additions. Located at 11911 and 11919 Braddock Rd. on approx. 8.91 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-1 ((4)) 27A, 34, and 42. (ADMINISTRATIVELY MOVED FROM 12/7/99). 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 18, 2000; 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). 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, 11911 and 11919 Braddock Road (8.9 acres) and is not transferable to other land.

2. This Special Permit is granted only for the church and related facilities to permit a child care center with a maximum daily enrollment of fifty children, an increase in land area and building additions as indicated on the special permit plat prepared by William M. Robson of Robson Group Architects, dated September 13, 1999, as revised through December 16, 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. The maximum number of seats in the church shall be 300.

6. Upon issuance of the Non-Residential Use Permit for SPA 89-S-013, the maximum total daily enrollment for the child care center shall be 50 children with a maximum staff of 10 employees.

7. The maximum hours of operation for the child care center shall be limited to 9:00 a.m. to 3:00 p.m., Monday through Friday.

8. The outdoor recreational area of 3,000 square feet shown on the SP plat shall be enclosed with a

four (4) foot high chain link fence.

9. Existing vegetation shall be used to satisfy the Transitional Screening I requirement along all lot lines, with the supplementation as needed of evergreen plantings to obtain the effectiveness of Transitional Screening I. The size, type and location of new supplemental plantings shall be approved by the Urban Forestry Branch of DPWES. All existing vegetation around the periphery of the site shall be maintained and supplemented as deemed necessary by the Urban Forestry Branch. The Barrier requirements shall be waived.

10. The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between DPWES and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. Further, prior to the issuance of the first Non-RUP, areas disturbed with the clearing and grading for Phase I shall be stabilized with a ground cover to consist of grasses and/or a naturalized wildflower/meadow mix which shall be maintained until such time as subsequent phased construction is initiated.

11. At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by the Urban Forestry Branch. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the eighth edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.

12. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the DPWES. Foundation plantings shall be provided for the purpose of softening the off-site visual impact of non-residential buildings and blend the development in with the adjacent residential subdivision. The type, size and location of these plantings shall be approved by the Urban Forestry Branch and shall depict a combination of flowering and evergreen shrubs and ornamental tree plantings along the perimeters of the parking areas and building foundation landscaping plantings.

13. Structural Best Management Practices shall be provided for stormwater management in accordance with the Public Facilities Manual standards for commercial developments in the Water Supply Protection Overlay District and as approved by DPWES.

14 Right of way to total 68 feet from the existing centerline of Braddock Road plus ancillary easements necessary for future road improvements shall be dedicated for public street purposes and shall convey to the Board of Supervisors, fee simple on demand or at time of site plan approval, whichever occurs first. A deceleration turn lane shall be constructed at the site entrance as determined by DPWES and VDOT at the time of site plan review.

15. Any proposed lighting of the parking areas shall be in accordance with the following:

- The combined height of the light standards and fixture shall not exceed 12 feet and shall be full cut-off lights.

- The lights shall be of a design which focuses the light directly onto the subject property.
- Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
- The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
- There shall be no up-lighting of any of the proposed building additions.

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

17. The two trailers shall be removed at the completion of Phase I.

18. The building height should not exceed 29 feet +/- a foot and the maximum height of the dome should not exceed 54 feet.

19. No less than 46% of the application property shall be preserved as perpetually undisturbed open space as approved by DPWES and as shown on the special permit plat. All of the site outside the limits of clearing and grading shall remain as perpetually undisturbed open space and if any feature such as the SWM pond is eliminated or reduced in size, the area shall become part of the perpetually undisturbed open space.

20. A geo-technical engineering study shall be submitted to DPWES for review and approval in accordance with Chapter 107 of the Fairfax County Code as determined necessary by DPWES and shall be implemented as determined by DPWES. If DPWES determines that a potential health risk exists due to naturally occurring asbestos, all construction personnel shall be alerted to the potential health risk and appropriate construction techniques, as determined by DPWES, shall be implemented.

21. The architectural design elements and materials utilized in the existing church building shall be continued throughout the proposed building additions.

22. A maximum of one hundred and eighty (180), parking spaces shall be provided. All parking shall be on site.

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

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. 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 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 January 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. WESTERRA RESTON, LLC, VC 99-H-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard. Located at the intersection of New Dominion Pkwy. and Explorer St. on approx. 1.60 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((17)) 3.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jill Gottdeiner, 1750 Tysons Boulevard, McLean, 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 allow a 6 foot high fence in a front yard. The Zoning Ordinance allows a maximum fence height of 4 feet; therefore, a variance of 2 feet was requested.

Ms. Gottdeiner, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. She stated that the application site had double front yard requirements; therefore, only a portion of the fence would be 6 feet in height. This portion of fencing, located in the back of the building, surrounded the play area to provide additional safety for the children.

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

Mr. Kelley moved to approve VC 99-H-128 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WESTERRA RESTON, LLC, VC 99-H-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 6.0 ft. high fence in front yard. Located at the intersection of New Dominion Pkwy. and Explorer St. on approx. 1.6 ac. of land zoned PRC. Hunter Mill District. Tax Map 17-1 ((17)) 3. 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 18, 2000; 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 property has double front yard 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 and height of a fence shown on the plat prepared by Eric S. Siegel, P.E. dated July 1, 1999, are revised through September 7, 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. 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 26, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 511, January 18, 2000, (Tape 1& 2) Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities and child care center. Located approx. 1100 Ft. East of Bull Run Post Office Rd. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, 9324 West Street, 3rd Floor, Manassas, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to construct a church and related facilities and a child care center in 4 Phases with a total of 1,200 seats for the church and a maximum daily enrollment of 99 children in the child care center. There were 250 parking spaces proposed. The entrance of the site would be a driveway entrance onto Lee Highway. A left turn lane was proposed to be constructed at a median break into the site and would require closure of a second median break further west.

continued from Page 511

Mr. McBride, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. Mr. McBride stated that the church had approximately 350 member families and it was currently leasing property from Fairfax County. He said the application met the general and specific standards applicable to special permits. Mr. McBride informed the Board that the majority of the community was in support of the application.

Mr. McBride submitted the applicant's revised Development Conditions. The following were the proposed changes to the Development Conditions: Condition #9 to include up-lighting for the main recessed entrance due to the architectural structure of the alcove. Condition #15 to delete the sentence that dealt with the limitation of the time period of denuded areas. Mr. McBride stated that the Public Facilities Manual already addressed the period of time that land could have been denuded. Condition #12 to add language that required the church to pay the cost for the adjoining Parcel 6 owner to redirect their existing gravel driveway from Route 29 to the applicant's median break entrance. This entrance would be a standard commercial size entrance with turn lanes in both directions on Route 29. This would ensure that the owner of Parcel 6 would have the ability to go North on Route 29. Condition #16 to delete the entire condition that dealt with noise abatement issues. Mr. McBride said that this condition pertained only to residential areas. Condition #18 to substitute "general conformance" with "substantial conformance". Mr. McBride stated that, at the present time, the applicant was not able to commit to "substantial conformance". Condition #20 to delete the condition in its entirety and retain the 450 parking spaces shown on the special permit plat. Condition #5 to substitute "450" for "421" parking spaces on site.
Mr. McBride stated that the applicant had no issues with any of the other Development Conditions.

Mr. Kelley asked for clarification that 450 parking spaces would be enough to contain all cars on-site. Mr. McBride stated that the applicant was confident that 450 parking spaces would be enough.

Vice Chairman Ribble called for speakers.

The following citizens came forward to speak in support of the application:

Reverend Robin Bromhead, Pastor, Centreville Presbyterian Church, (no address given for the record); Fred Hills, (no address given for record); Sharon Hoover, (no address given for record).

The following were their confirmations regarding the application:

The church had grown too large for the current facility; the parishioners were in need of a day-care center; the proposed site was most satisfactory for church purposes and access of parishioners; the church had met and worked with the neighbors regarding their concerns, and the church needed the expansion to be able to continue to serve the needs of the community.

The following citizens came forward to speak in opposition of the application:

John J. Belloski, McGuire, Woods, Battle & Boothe, 1750 Tysons Boulevard, McLean, Virginia, spoke on behalf of Ira Slattery. He stated that Ms. Slattery was the owner of Parcel 6 and her family business had been located on that parcel for 35 years. He said the family had arranged a meeting with Mr. McBride but had not received any answers to their questions and concerns. He said the family had concerns regarding the proposed elimination of direct access to their property and the proposal that entailed a shared entrance and shared inter-parcel drive. He said the family was not opposed to a shared inter-parcel drive; however, they requested a deferral to discuss the configuration and design of the inter-parcel access with the applicants.

Caryn Slattery, 14018A Sullyfield Circle, Chantilly, Virginia, stated that although her family had no objection to the church being located next door to them, there were serious access issues that would affect the heart of their business. She said their business required the ingress and egress of large vehicles to their property several times per day. She asked the Board to defer the application until they could meet with the applicants and address their concerns. Ms. Slattery stated that they were the last people in the neighborhood to be notified of the proposed church construction.

Robert Slattery, (no address given for record), informed the Board that their property was their world wide distribution center for their entire business. He said that an inter-parcel access shared with the church could

present a serious traffic hazard.

Donna Bradford, 15509 Lee Highway, Chantilly, Virginia, stated that she was informed of the proposed church construction at the same time that the Slattery family was. She said that she had concerns regarding the closure of the median break closest to her home. She stated that the median break provided direct access to her driveway and without that median break she would have to make a very unsafe U-turn to get to her home. She requested that the Board defer the application so she could meet with the applicants to discuss her concerns.

Patrick Kessler, Engineer for Ida Slattery, voiced several concerns regarding ingress and egress issues. He said that eliminating the median break and not connecting the inter-parcel access to the existing driveway on the Slattery property would eliminate the left-hand turn and would create an unsafe situation where all traffic would have to make a U-turn in a high traffic area.

Mr. McBride, in his rebuttal, stated that staff and the Virginia Department of Transportation (VDOT) proposed to close the second median break. He said the applicant had proposed to provide turn lanes and to widen the median break further to the east. He said that Condition #12 ensured that the applicant would provide the money to redirect the Slattery driveway to connect with the applicant's median break entrance prior to the closure of the existing median break; therefore, the Slattery family would never be without median access. He stated that the Slattery family would be able to control the design parameters with regard to the redirection of their driveway.

Ms. Schilling informed the Board that VDOT recommended the closure of the median break because the two existing median breaks were located too close together to provide acceptable stacking room.

Mr. Hammack asked why VDOT had chosen the median closest to an existing business rather than the one closest to the proposed application. Ms. Schilling replied that VDOT's decision was based on the projected increase of left turns into the proposed site and the distance between the two median breaks.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision regarding SP 99-Y-065, to February 8, 2000 to allow staff and the applicants to meet with VDOT to discuss the inter-parcel access and the median break issues. 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 513, January 18, 2000, (Tape 2) Scheduled case of:

9:00 A.M. DULLES INDOOR SPORTS COMPLEX, LLC, SP 99-Y-043 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit indoor recreational use. Located at 13714 Barnsfield Rd. and 3228 Centreville Rd. on approx. 7.84 ac. of land zoned I-5. Sully District. Tax Map 34-2 ((1)) 7 and 8. (ASSOCIATED WITH PCA 84-C-097-2).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John McBride, 9324 West Street, 3rd Floor, Manassas Virginia, replied that it was.

Tracey Swagler, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow indoor commercial recreational fields to be co-located with a by-right manufacturing facility.

Mr. McBride, agent for the applicants, presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the proposed facility would allow an indoor recreational facility for indoor soccer, volleyball and other sports. He stated that recreation of this sort was needed and requested in the community. Mr. McBride stated that this application, if approved, would be the first proposed development to implement the recent Comprehensive Plan change from an industrial use to a more entertainment-oriented use.

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

Mr. Pammel moved to approve SP 99-Y-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

DULLES INDOOR SPORTS COMPLEX, LLC, SP 99-Y-043 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit indoor recreational use. Located at 13714 Barnsfield Rd. and 3228 Centreville Rd. on approx. 7.84 ac. of land zoned I-5. Sully District. Tax Map 34-2 ((1)) 7 and 8. (ASSOCIATED WITH PCA 84-C-097-2). 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 January 18, 2000; 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). 5-503 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, 13714 Barnsfield Road and 3228 Centreville Road (7.84 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the Special Permit Plat prepared by Rinker-Detwiler & Associates, P.C., dated October 22, 1999, which was submitted with this application, as qualified by these development conditions. Other by-right, special permit, and/or special exception uses may be permitted on the Application Property without the approval of a Special Permit Amendment if such uses do not affect this Special Permit.

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 (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 or Sect. 8-004 of the Zoning Ordinance.

4. All outdoor lighting shall utilize full cut-off fixtures and shall be directed inward and downward. There shall be no lights on any outdoor playing fields.

5. Any outdoor artificial amplification of sound, including loudspeakers, shall be limited to emergency use only.

6. Trash dumpsters shall be screened with wood or masonry enclosures and shall be located as shown

on the SP Plat. The location of the trash dumpster shown on the SP Plat may be moved farther north behind the building if it remains accessed from the proposed loading and trash access. This shall not constitute approval of two distinct trash dumpster locations.

7. Any free standing sign shall be designed in a monument style and constructed of materials and colors compatible with those used in the building.

8. All parking shall be on-site. There shall be no parking on the roads around the property.

9. The retail uses on-site shall be limited to sales of those items produced in the on-site manufacturing facility and to those items normally sold in retail stores associated with recreational uses. The amount of retail space allowed on-site shall be limited to that appropriate as determined by the Zoning Administrator.

10. The hours of operation shall not be more than: 8:00 AM to 12:00 midnight, Monday through Friday; and 7:00 AM to 12:00 midnight Saturday and Sunday.

11. The maximum number of employees on site at any one time shall not exceed 30.

12. The barrier requirement on the eastern property boundary shall be waived.

13. This special permit shall not be valid unless and until the Board of Supervisors approves PCA 84-C-097-02. If the Board of Supervisors denies PCA 84-C-097-02, or the application is withdrawn, this special permit shall be considered null and void.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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. Hart 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 26, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 515, January 18, 2000, (Tape 2) 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 Pk. 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, 5/11/99 and 11/16/99).

Laura E. Clarke, Zoning Administration Division, presented staff's position as contained in the staff report. The appeal related to the determination that the appellants had erected an off-premis sign. The sign was free-standing, and it was located at Tysons Office Park, 7631-7639 Leesburg Pike. The appeal had been deferred several times in order for the appellants to pursue other options that might have allowed the sign to

remain. Staff had stayed all enforcement action pending the outcome of the appeal. Staff found that the sign at issue violated the Zoning Ordinance because it was considered an off-premis sign. A provision of the Zoning Ordinance required signs related to residential family uses to be located on the same lot as the principle use. If there were future Zoning Ordinance Amendements that permitted the posting signs such as the one in question, a new sign would be permitted.

Ms. Strobel, agent for the appellant, stated that the sign was erected and displayed with the permission of the owner of the property on which the sign was located. She stated that the circumstances surrounding the appeal provided a compelling reason to review the pertaining Ordinance provision. She said that some type of relief granted to the appellant would not result in a proliferation of unwanted or unnecessary signs. She illustrated that the Renaissance Apartment complex did not have public street frontage and was not visible from the public streets. She said that directional signs were critical for citizens to locate the property in a safe and efficient mannor. Ms. Strobel informed the Board that the few rental projects in Fairfax that had the magnitude of the one in question, had the added benefit of public street frontage. She explained that signs were critical to the continued viability for the apartment complex. Ms. Strobel stated that the Zoning Ordinance was discriminatory because commercial property owners were permitted the right to post signs in different locations due to issues of topography and visibility; however, similar provisions were not available for the owner of a multi-family residential project. She informed the Board that this item was placed on the Zoning Administrator's work agenda as part of the 1999 Priority 1 issues. She submitted to the Board a draft Zoning Ordinance Amendment that was similar to the current provisions that were available to commercial properties. She requested that the appeal be indefinitely deferred until the issue was addressed as part of an Ordinance Amendment that was on the agenda.

Vice Chairman Ribble asked when the sign was constructed. Ms. Strobel said that sign was in place before 1998.

Mr. Hammack asked for a time-frame as to when this issue would be addressed as part of a Zoning Amendment. Ms. Strobel stated that it would be approximately 1 year before it was addressed.

Mr. Pammel asked if the apartment complex had any signage on the beltway frontage. Ms. Strobel stated that although the building was visible from the beltway, a person would not know how to locate the complex from the beltway; therefore, there was no signage.

William E. Shoup, Deputy Zoning Administrator, stated that the provisions that were referred to by Ms. Strobel, regarding the Board of Zoning Appeals' authority to grant relief in certain situations, applied only to shopping centers and commercial areas. He noted that the provisions did not provide the opportunity to grant off-site signage. He stated that staff did not support the proposed Zoning Ordinance Amendment and that the trend had been to get away from allowing off-site signage.

Ms. Strobel, in her rebuttal, acknowledged that the Ordinance did not permit the type of sign in question, and requested an indefinite deferral to review the issue further. She said the sign as it was did not create a public safety or health issue and requested that it be allowed to remain until there was a decision on the proposed Zoning Ordinance Amendment.

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

Mr. Pammel stated that he agreed with the appellant that the Zoning Ordinance was discriminitive in this instance and that without public street signage people would not be able to figure out how to get to the apartment complex.

Mr. Pammel moved to defer the appeal to July 18, 2000, at 9:30 a.m., to allow staff and the appellant to meet and discuss the issues regarding the proposed Zoning Ordinance Amendment. Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Page 516, January 18, 2000, (Tape 2&3) Scheduled case of:

9:30 A.M. SOUTHERN MANAGEMENT CORPORATION, A 1999-MA-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination that a new commercial or office use may not be established in a vacant suite located in the appellant's multiple family residential

building and that the suite cannot be converted into a residential dwelling unit because the existing density already exceeds the 20 dwelling units/acre maximum density limitation for the site. Located at 6200 Wilson Blvd. on approx. 5.64 ac. of land zoned R-20 and CRD. Mason District. Tax Map 51-3 ((1)) 43.

John Bell, Zoning Administration Division, presented staff's position as contained in the staff report. The issue of the appeal was the determination that a new commercial office use could not have been established in a vacant suite located in the appellant's multi-family apartment building. The suite could not have been converted into a residential dwelling unit because the existing density already exceeded the maximum for the site. The appellant had related that the suite had been used for various commercial uses since the late 1960's. These uses consisted of a private office for one of the residents and a massage parlor. A dental office and a beauty parlor had also been in operation in other ground level suites on the property since the 1960's. The appellants had stated that all three suites had been rented out as commercial uses since the building was new. The dental office and the beauty parlor were lawfully established under the previous Zoning Ordinance pursuant to the BZA approval of Special Permits and they were allowed to operate under the current Zoning Ordinance as non-conforming uses. The commercial use of the suite in question was never lawfully established and there was no basis to allow the space to operate for commercial purposes. The two Non-Residential Use Permits (Non-Rup) that were issued for this suite were issued in error. The current Zoning Ordinance states that the issuance of the two permits could not be used as a justification to allow the commercial use of this suite since office use was not a permitted use at the time that the permits were issued.

Ms. Scott maintained that the space had always existed as a commercial and/or accessory use to the apartment community. She said that Fairfax County had continued to issue Non-Rups since 1985, however, there was no written verification available to justify that a commercial use had ever been established for the suite. Ms. Scott submitted that the use should have been grandfathered due to the number of years the suite had been utilized for a commercial use.

William E. Shoup, Deputy Zoning Administrator, stated that there was no process to allow the space to continue to be used for commercial purposes. He said there were no provisions to allow the previous Non-Rups to be issued. He said the space could be used as an accessory use to the apartment complex, such as a fitness room, meeting room or storage space. He said the use could strictly serve the residents of the complex. He said there were no longer any provisions to allow for any non-residential uses on the property.

Ms. Scott, in rebuttal, stated that there were already several existing storage spaces for their tenants and if the Board ruled with the Zoning Administrator, the space would be rendered as useless. She said that certain provisions of the Zoning Ordinance permitted another form of accessory use, which would provide rental revenue to the owners, could be established.

Mr. Shoup stated that accessory uses that the appellant requested were only applicable to apartment complexes that contained a minimum of 250 units. He said the appellant's development had only 220 units; therefore, those provisions were not applicable.

Mr. Pammel asked if there were any special permit uses that were applicable. Mr. Shoup replied that the only use that could be approved by a special permit would be a childcare center.

Ms. Gibb asked what the appellants could do with the empty space. Mr. Shoup stated the appellants could establish any use that would serve only the residents of the complex.

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

Mr. Hammack stated that if the Board permitted a new commercial use to be established in the suite they would have allowed a continuation of an unlawful use. He said the appellant's argument did not justify the overruling of the Zoning Administrator even though it resulted in a disservice to them.

Mr. Pammel stated there was a 60 day provision that went into effect in 1998 which allowed the Zoning Administrator 60 days to correct any error and he was not convinced that this was not applicable with respect to the appeal since the notice was given in 1999.

Page 518, January 18, 2000, (Tape 1), SOUTHERN MANAGEMENT CORPORATION, A 1999-MA-035, continued from Page 517

Mr. Hammack moved to uphold the determination of the Zoning Administrator regarding appeal application A 1999-MA-035. Mr. Hart seconded the motion which carried by a vote of 4-2. Mr. Pammel and Mr. Kelley voted nay and Chairman DiGiulian was absent from the meeting.

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Page 518, January 18, 2000, (Tape 3) After Agenda Item:

Request for Reconsideration
Crank & Charge
A 1999-PR-027

Mr. Ribble stated that the original hearing date was December 21, 1999 and the motion had failed with a vote of 3-3. He said at the time of the hearing there were only 6 Board members present because a seventh Board member had not yet been appointed.

Mr. Hammack moved to approve the reconsideration request. The new hearing was scheduled for March 28, 2000, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Mr. Hart abstained from the vote and Chairman DiGiulian was absent from the meeting.

Mr. Pammel moved to waive the 12 month waiting period regarding VC 99-D-129, because the Board had waived the 8-day waiting period for all cases on December 21, 1999, due to their holiday recess; therefore, a request for reconsideration could not have been filed. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Hart abstained from the vote and Chairman DiGiulian was absent from the meeting.

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Page 518, January 18, 2000, (Tape 3) After Agenda Item:

Approval of January 6, 2000 and January 11, 2000 Resolutions.

Mr. Pammel moved to approve the 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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As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Minutes by: Lori M. Mallam

Approved on: March 28, 2000

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 1, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; James Pammel and John Ribble. Robert Kelley was absent from the meeting.

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

Page 519, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH E. CHONTOS, VC 99-V-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line and wall 7.0 ft. in height in a front yard. Located at 7943 Bolling Dr. on approx. 14,842 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 164.

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 Chontos, 7943 Bolling Drive, Alexandria, 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 an addition 25 feet from the front lot line and a 7.0 foot high wall in the front yard. With respect to the addition, a minimum 35 foot front yard is required; therefore, a variance of 10.0 feet was requested. For the wall, a maximum of 4 feet in height is permitted; therefore, a variance of 3.0 feet was requested.

Mr. Chontos presented the variance request as outlined in the statement of justification submitted with the application. Mr. Chontos stated that the addition was to enclose a carport, which had existed on the property for 50 years. He stated that the masonry wall request was to have a natural courtyard appearance. Mr. Chontos stated that there was a storm drain easement on the property and that the Board had granted a variance to his adjacent property owner, making the variance request necessary because it had impaired the use and enjoyment of his side yard.

Mr. Pammel asked for more of an explanation as to why a 7.0 foot high wall was necessary in the front yard. Mr. Chontos stated that the request was due to the two conditions on his property, both on the side yard of his home. He stated that the opposite side of the house was a wooded area and that he proposed to enclose the carport, which had a solid brick wall along that side of the property for 50 years. He stated that it was to enclose that part of the house, which would in effect enclose a portion of the carport.

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

Mr. Pammel moved to approve in-part VC 99-V-171 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 25, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH E. CHONTOS, VC 99-V-171 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.0 ft. from front lot line and wall 7.0 ft. in height in a front yard **(7.0 FT. HIGH WALL DENIED)**. Located at 7943 Bolling Dr. on approx. 14,842 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 164. 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 1, 2000; and

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

1. The applicant is the owner of the land.
2. To approve a 7.0 foot high wall would be setting a precedent. If the wall is to be constructed, it should be in conformance with the standards prescribed by the Zoning Ordinance; and, therefore, denial of this portion of the application is recommended.
3. The applicant has presented testimony indicating compliance with the nine required standards for the granting of a variance for the addition.
4. The application is only to enclose the existing carport.

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated July 17, 1997, as revised through September 23, 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. Hart seconded the motion which carried by a vote of 4-0-2. Mr. Hammack and Mr. Ribble 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 February 9, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 521, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DARIO DAVIES, VC 99-B-177 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 4100 Pineridge Dr. on approx. 46,587 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-4 ((10)) 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. Dario Davies, 4100 Pineridge Drive, Annandale, 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 a 6.0 foot high fence to remain in the front yard of a corner lot. A maximum of 4.0 feet is permitted; therefore, a variance of 2.0 feet was requested. Ms. Schilling noted that the property was the subject of outstanding zoning violations, as noted in the staff report.

Mr. Davies presented the variance request as outlined in the statement of justification submitted with the application. Mr. Davies stated that the fence was built to deter his child from climbing over the fence and playing near the road. He expressed his concern with traffic on Little River Turnpike, a community bus stop and also with noise abatement of that roadway. He stated that his property was considered as having two front yards, because it was located on a corner lot, and the variance request was necessary to permit the fence to remain and asked for the Board's approval.

Mr. Hammack asked how far the fence was placed back on the property from Little River Turnpike. Mr. Davies stated that the fence was located 55.0 feet from the edge of the road and 28.8 feet from the edge of the property line.

Mr. Hart questioned if there were any outstanding violations on the property, other than the fence. Ms. Schilling stated that all other outstanding zoning violations had been cleared on the property with the exception of the fence.

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

Mr. Hammack moved to approve VC 99-B-177 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 25, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DARIO DAVIES, VC 99-B-177 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 4100 Pineridge Dr. on approx. 46,587 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-4 ((10)) 5. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 1, 2000; 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 fence is pulled well in from the property line.
4. The property suffers with double front yard requirements, one of them being against the very busy Little River Turnpike.
5. The fence will not in any way detract from the existing character of the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of a 6 foot high fence shown on the plat prepared by Dario Davies, Architect, dated November 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. 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 9, 2000. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. HARVEST ASSEMBLY BAPTIST CHURCH, SPA 89-V-020 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 89-V-020 for church and related facilities to permit increase in land area, building additions and site modifications. Located at 8008 Fordson Rd. on approx. 2.25 ac of land zoned R-3 and HC. Mt. Vernon District. Tax Map 102-1 ((1)) 60A, 61; 101-2 ((1)) 54B.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Reverend Johnnie L. Abraham, 5308 Harbor Court Drive, Alexandria, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to allow an increase in land area and the construction of a new sanctuary building along with an increase in seating capacity and on-site parking. Ms. Schilling stated that a new access driveway would also be developed to serve the church. Ms. Schilling stated that staff recommended approval of the application subject to the development conditions contained in the staff report.

Reverend Abraham presented the special permit amendment request as outlined in the statement of justification submitted with the application. Reverend Abraham stated that the church had an increase in its membership and therefore, the expansion was necessary to accommodate worship classes, storage space, and a study. Reverend Abraham stated that he had the support of the New Gum Springs Civic Center and the local Board of Supervisors member.

Chairman DiGiulian called for speakers.

Clinton Moore, 8348 Rockham Drive, Alexandria, Virginia, came to the podium to speak in support of the application. Mr. Moore stated that the current facilities did not meet the requirements of the membership and asked the Board to approve the application.

Dan Moon, 8002 Fordson Road, Alexandria, Virginia; Eric Wilder, 3115 Douglas Street, Alexandria, Virginia and Ron Chase, 2908 W. Street, President of the Gum Springs Historical Society, came to the podium to speak in opposition of the application.

The following were their concerns: The church expansion was not in the best interest of the community; a small church was acceptable but not the expansions proposed; the property adjacent to the church should be used for single family homes; the church had assured Mr. Moon that there would be no further expansion of the church when the application was approved in 1989; traffic and safety were concerns with the new entrance onto Douglas Street; the proposed development would degrade the nature of the neighborhood on Douglas Street; the proposal would not maintain the character and history of Gum Springs as stated in the Conservation Plan.

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

Reverend Abraham came to the podium to rebut the opposition and stated that he had not told anyone that the church would not consider future expansions. He also showed the Board a letter of support from the Gum Spring Civic Association, supporting the proposed expansion, and asked for the Board's approval.

Mr. Ribble moved to approve SPA 89-V-020 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 25, 2000.
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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HARVEST ASSEMBLY BAPTIST CHURCH, SPA 89-V-020 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 89-V-020 for church and related facilities to permit increase in land area, building additions and site modifications. Located at 8008 Fordson Rd. on approx. 2.25 ac. of land zoned R-3 and HC. Mt. Vernon District. Tax Map 102-1 ((1)) 60A, 61; 101-2 ((1)) 54B. 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 1, 2000; and

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

1. The applicant is the owner of the land.
2. The application has been supported by the Planning Commission and the Board of Supervisor member for that area.
3. The staff has reviewed the application closely.

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, 8008 Fordson Road (2.25 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 Ronald J. Keller, Land Surveyor, dated October 25, 1999, as revised through January 3, 2000 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. A maximum of 111 parking spaces shall be provided as shown on the approved special permit plat. All parking shall be on-site in the locations shown. The four parallel spaces shown across from the entrance to the church building shall be marked on-site as reserved for the pastor and church staff only. In the event that a stormwater detention facility is required to be constructed on the optional layout as shown on the special permit plat, the seating capacity of the church shall be limited to 424 seats with a minimum of 106 parking spaces.

6. The seating capacity of the church shall be limited to 444 seats, except as qualified in Development Condition 5.

7. Transitional screening shall be provided as follows:

   - Transitional screening 1 shall continue to be provided along the northern lot line. The plantings in these screening yards shall be Type 1 Transitional Screening in addition to an evergreen hedge at least 4 feet in planted height, the purpose of which shall be to block headlight glare.

   - Transitional Screening Type 1 with a minimum width of 25 feet shall be provided along the eastern, western and southern lot lines, as shown on the special permit plat, subject to the review and approval of the Urban Forestry Branch of DPWES. At the time of the site plan submission, a tree preservation plan shall be provided for review and approval by the Urban Forestry Branch. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of all trees 12 inches in diameter and greater within the transitional screening yards and within proposed parking lot islands. The condition analysis shall be prepared by a certified arborist using the most current edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed and implemented with the intention of maintaining the existing mature trees within the transitional screening yards and within parking lot islands where feasible, subject to the determination of DPWES.

   - The existing sidewalk shall be allowed to remain in the transitional screening yard along the eastern lot line. The barrier requirements shall be waived along all lot lines.

   - Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

8. The total height of all structures on the site shall not exceed 30 feet.

9. All signs shall conform to the provisions of Article 12 of the Zoning Ordinance.

10. The church sanctuary shall be constructed in general conformance with the conceptual elevation contained in Attachment A.

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

12. Any outdoor lighting of the site shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed 12 feet,

    - The lights shall be focused downward directly on the subject property,

    - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,

    - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.

    - Up-lighting of buildings or signs shall not be permitted on the site.

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.

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 9, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 526, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EARL E. KLIOZE, SP 99-B-067 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with VC 99-B-170).

9:00 A.M. EARL E. KLIOZE, VC 99-B-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 23.5 ft. from front lot line and parking to remain 3.7 ft. from front lot line. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with SP 99-B-067).

Chairman DiGiulian noted that the applications had been administratively moved to February 22, 2000 at 9:00 a.m.

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Page 526, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. THE TRUSTEES OF THE PURE PRESBYTERIAN CHURCH OF WASHINGTON, SPA 95-Y-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-Y-012 for a church and related facilities to permit site modifications. Located at 12818 Lee Hwy. on approx. 2.95 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((1)) 7A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, 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 the demolition of an existing structure and the construction of a complete new building containing classrooms and a sanctuary with basements. Mr. Bernal stated that staff recommended approval of the application subject to the development conditions contained in the staff report.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that the applicant proposed to modify the previous approval to allow the existing building to be demolished and a new building of the same dimensions be reconstructed on the existing foundation with a basement. Ms. Strobel stated that the parking requirements would remain the same because the total number of seating would not change. Ms. Strobel submitted an additional proposed development condition regarding a fence for the adjacent property owner.

Mr. Hart asked whether an outstanding out-of-turn plan amendment regarding Steuben Pike would affect the subject application. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the plat included dedication for that proposed loop road.

Mr. Pammel asked if the proposed condition for a 6 foot high fence to be located in a front yard would require

a variance. Ms. Langdon stated that the Zoning Ordinance provided for screening requirements to be met without a variance.

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

Mr. Hart moved to approve SPA 95-Y-012 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 25, 2000, with one additional condition from the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE TRUSTEES OF THE PURE PRESBYTERIAN CHURCH OF WASHINGTON, SPA 95-Y-012 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 95-Y-012 for a church and related facilities to permit site modifications. Located at 12818 Lee Hwy. on approx. 2.95 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((1)) 7A. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 2000; and

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

1. The applicant is the owner of the land.
2. The applicants have presented testimony indicating compliance with the general 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). 3-103 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, 12818 Lee Highway (2.68 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 Gary A. Wolfe, Professional Engineer, dated July 30, 1999, as revised through January 4, 2000 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. The maximum number of seats in the main area of worship shall be 80.

6. Twenty-seven (27) parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.

7. Existing vegetation along the northern and southern lot lines shall be preserved and maintained as indicated on the approved special permit plat and shall satisfy the requirements of Transitional Screening 1.

   Supplemental landscaping shall be planted along the southern lot line adjacent to Route 29 and foundation plantings shall be installed along the southern and western sides of the proposed building to soften the visual impact of the church structure in conformance with the Comprehensive Plan language for the Fairfax Center Area. A row of evergreen trees shall be planted along the eastern and western lot lines to supplement existing vegetation to satisfy the requirements of Transitional Screening 1

   All existing vegetation shall be preserved along the eastern and western lot lines except that the minimum amount of clearing necessary shall be allowed for the driveway entrance and drainfield location. Every effort shall be made to save the 30 inch oak tree on the southern end of the proposed building. If, as determined by the Urban Forestry Branch, the oak tree cannot be preserved, replacement planting(s) may be required.

   Interior and peripheral parking lot landscaping shall also be provided in conformance with the requirements of Article 13 of the Zoning Ordinance. Size, species and number of all plantings shall be as determined by the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES) at the time of site plan review. The barrier requirement shall be waived along all lot lines.

8. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch. The entrance driveway shall be located and designed so that loss of high quality vegetation is minimized.

9. The existing entrance to the site from Route 29 shall be removed and the driveway scarified and replanted with a grassy seed mixture and/or landscaping as determined by the Urban Forestry Branch.

10. Right-of-way dedication of 52 feet shall be provided for the east/west collector road as shown on the special permit plat and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided if necessary to facilitate any improvements.

11. No amplification of bells or electronic equipment shall be used for services or related activities on the exterior of the church.

12. Any proposed lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixture shall not exceed 12 feet and shall be full cut-off lights.
    - The lights shall be of a design which focuses the light directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
    - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.
    - There shall be no up-lighting of any of the proposed building additions.

13. A sign permit shall be obtained for any sign proposed for this site.

14. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by DPWES. If approved by DPWES, they may consist of the infiltration trenches as depicted on the special permit plat. If a structural SWM/BMP is required, then the type, location and size shall be determined by DPWES. If the location requires clearing any additional vegetation not shown to be cleared on the approved special permit plat, the clearing plan shall be reviewed by the Urban Forester and tree replacement may be required.

15. In order to reduce the maximum interior noise level to a level of approximately 45 dBA Ldn, for all buildings located between the 65-70 dBA Ldn highway noise impact contours, the following measures shall be employed:

    - Exterior walls shall have a laboratory sound transmission class (STC) 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 façade they should have the same laboratory STC as walls.

    - Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

16. A 6 foot high board-on-board fence shall be provided along the west property line, of a length in agreement with the adjacent property owner on Tax Map 55-4 ((1)) 6.

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

Ms. Gibb 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 9, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 529, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. FATHIA ELSAID SOLIMAN, SP 99-P-069 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit home child care facility. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((10)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Fathia Elsaid Soliman, 10044 Blake Lane, Oakton, 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 home child care facility with a maximum daily enrollment of 12 children and a maximum of 10 children on-site at any one time. Mr. Bernal stated that staff proposed hours of operation of 9:00 a.m. to 3:00 p.m. due to traffic concerns on Blake Lane.

Ms. Soliman presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Soliman stated that she currently was taking care of 5 children and requested the special permit to be able to take care of 5 additional children.

Ms. Gibb discussed, at length, with Ms. Soliman, the issue of the proposed development conditions regarding the hours of operation and traffic concerns. Ms. Gibb explained that the purpose of the condition was due to parents dropping their children off and picking them up during peak traffic hours.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that without special permit approval, up to 7 children, not including her own, at any one time were allowed; however, with the special permit approval, with the applicant requesting 10 children, the parking requirement and hours of operation development conditions would have to be met.

Mr. Soliman, the applicant's husband, came to the podium to state that he could arrange time arrivals with parents so that everyone would not drop off and pick up at the same time. He also stated that there was a U-turn 100 yards from the front of their home for parents to drop off and pick up their children; however, he could redesign the front parking area for 10 cars, if so required.

Carl Arbiss, 10036 Blake Lane, Oakton, Virginia, came to the podium to speak in opposition. He stated that there were safety concerns for children being dropped off and picked up due to traffic on Blake Lane.

Chairman DiGiulian closed the public hearing.

Mr. Soliman stated that he could extend the driveway and arrange with parents drop off and pick up times between 7:00 – 9:00 a.m. and 4:00 – 6:00 p.m.

Chairman DiGiulian asked if he would accept the approval of the application with the development conditions as proposed for the hours of operation being 9:00 a.m. – 3:00 p.m. Mr. Soliman stated that he could not. He said that his wife currently watched three children who were dropped of between 7:00 a.m. – 8:00 a.m. and were picked up around 5:00 p.m., and therefore could not have that restriction.

Mr. Pammel made a motion to continue the public hearing to March 7, 2000, at 9:00 a.m., stating that additional work needed to be done on the design of the driveway and also requested a redesign showing a right turn into the property and right turn out of the property, so that there would be no left turn movements from Blake Lane. If this was workable, support could be given for the request of extending the hours of operation. Mr. Hammack seconded the motion and requested staff to explain the alternatives to the applicant regarding not being under a special permit. Mr. Hammack stated that if parking could be provided, with safe ingress/egress on the site, the hours of operation should be extended.

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

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Page 530, February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DENNIS HERGENRETER, VC 99-P-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 23.3 ft. from side lot line such that side yards total 38.5 ft. Located at 3300 Saddle Stone Ct. on approx. 32,241 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 46-2 ((20)) 43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Hergenreter, 3300 Saddle Stone Court, Oakton, 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 deck 23.3 feet from the side lot line, such that side yards total 38.5 feet. A minimum 12 foot side yard is required with a minimum total side yard of 40 feet; therefore, a variance of 1.5 feet for the total side yard was requested.

Mr. Hergenreter presented the variance request as outlined in the statement of justification submitted with

the application. Mr. Hergenreter stated that the request was to extend an existing deck by 5 feet so that he could enclose a portion of it, which would allow him to utilize that space as part of the house. Mr. Hergenreter stated that the portion of the property where the deck was located was bounded by trees and that no other houses would be impacted by the addition.

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

Ms. Gibb moved to approve VC 99-P-175 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated January 25, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DENNIS HERGENRETER, VC 99-P-175 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 23.3 ft. from side lot line such that side yards total 38.5 ft. Located at 3300 Saddle Stone Ct. on approx. 32,241 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 46-2 ((20)) 43. 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 1, 2000; 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 very oddly shaped and surrounded by open space and is well screened.
4. The request was a modest 1.5 foot variance request.

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 September 1, 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 5-0. Mr. Ribble 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 February 9, 2000. This date shall be deemed to be the final approval date of this variance.
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Page 532 February 1, 2000, (Tape 1), Scheduled case of:

9:00 A.M. STUMP DUMP, INC., SPA 94-D-058 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 94-D-058 for zoological park to permit continuation of use and modification of conditions. Located at 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, 15C. (Concurrent with VC 99-D-176).

9:00 A.M. STUMP DUMP, INC., MACK S. AND SANDRA L. CRIPPEN, VC 99-D-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 15.6 ft. from the side lot line and 8.0 ft. high fence to remain. Located at 734 and 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, and 15C. (Concurrent with SPA 94-D-058).

Chairman DiGiulian noted that the applicant had requested a deferral of both applications to February 15, 2000.

David Tarter, Agent, stated that Mr. Crippen, the applicant, had been hospitalized and therefore could not attend the hearing; therefore, Mr. Tarter stated that a two week deferral was requested.

Mahesh Prasad, 824 Utterback Store Road, came to the podium to speak to the issue of a deferral of the applications. Mr. Prasad stated that his concern was a shared ingress/egress easement outlet road; however, had no objection to the issue of a deferral.

Mr. Hammack made a motion to defer SPA 94-D-058 and VC 99-D-176 to February 15, 2000, at 9:00 a.m. Mr. Hart 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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Page 533 February 1, 2000, (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 Pk. 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)(DEF. FROM 6/1/99 AND 6/8/99).

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 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, 6/9/98 AND 1/5/99; DEF. FROM 8/4/98; 3/23/99 and 5/25/99). (RECONSIDERATION GRANTED 6/8/99)

Grayson Hanes, Agent, Hazel & Thomas, PC, 3110 Fairview Park Drive, Falls Church, Virginia, stated that the appellant was requesting a deferral of both appeal applications. He stated that both appeals had come before the Board in June, 1999, and that the County had adopted a provision which allowed for the application as a special exception for trucks and trailers. He stated the appellants claimed to have nonconforming uses and vested rights. Mr. Hanes stated that the special exception application for Dawson's Auto Care was denied by the Board of Supervisors, and that Heritage Citgo was also pending a special exception and there was no opposition on either application, therefore requested a deferral.

William Shoup, Deputy Zoning Administrator, stated that staff objected to a deferral. He stated that the reason for the deferral from June, 1999, was to allow the appellant time to look further into the nonconforming issues that surround the applications. Mr. Shoup stated that the Dawson's Auto Care application had gone through the special exception process and was denied and therefore he said there was no reason to prolong the hearing of both appeals.

Mr. Pammel made a motion to defer A 95-M-048 to May 2, 2000 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Kelley was absent from the meeting.

Mr. Pammel made a motion to defer A 95-B-045 to May 2, 2000 at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 533 February 1, 2000, (Tape 1), After Agenda Item:

Approval of November 9, 1999 and December 7, 1999 Minutes

Mr. Pammel made a motion to approve the November 9, 1999 and December 7, 1999, Minutes. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Hart abstained from the vote. Mr. Kelley was absent from the meeting.

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Page 533 February 1, 2000, (Tape 1), After Agenda Item:

Out-of-Turn Hearing Request, VC 00-H-004, Edward Street

Mr. Pammel made a motion to deny the out-of-turn hearing request. 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 534, February 1, 2000, (Tape 1), After Agenda Item:

Approval of January 18, 2000 Resolutions

Mr. Pammel made a motion to approve the January 18, 2000, Resolutions. 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 10:27 a.m.

Minutes by: Deborah Hedrick

Approved on: April 11, 2000

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 8, 2000. The following Board Members were present: Chairman DiGiulian, Paul Hammack; James Pammel; John Ribble; and Nancy Gibb. Robert Kelley and James Hart were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the procedures of the BZA. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 535, February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. MO YAM CHAN, VC 99-Y-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 5.2 ft. from rear lot line and 1.7 ft. and 1.2 ft. from side lot lines. Located at 13515 Union Village Cir. on approx. 8,709 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 66-1 ((4)) 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. Toi Chan Pak, 21365 Hansberry Terrace, Ashburn, 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 6.1 foot high deck to be located 5.2 feet from the rear lot line and 1.7 feet from a side lot line and a brick patio to be located 1.2 feet from a side lot line. The Zoning Ordinance requires that a deck of this height be a minimum of 13 feet from a rear lot line and a minimum of 12 feet from a side lot line; therefore, a variance of 7.8 feet at the rear and 10.3 feet at the side was required for the deck. The Zoning Ordinance requires that the patio be a minimum of 7 feet from a side lot line; therefore, a variance of 5.8 feet was requested for the patio.

Mr. Hammack asked staff if the brick patio was grade level. Ms. Wilson replied that the Ordinance treated the brick as a deck; therefore, any patio less than 4 feet in height was permitted to encroach.

Ms. Pak, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. She stated that the house was situated in such a way that the deck could not be built without the variance approval.

Chairman DiGiulian called for speakers.

Pamela Sacknoff, 6201 Sandstone Way, Clifton, Virginia, came forward to speak in opposition. She stated that the Homeowners Association (HOA) had revoked the applicant's approval to construct their deck due to a delay in the construction. She said that the applicant had not re-applied for approval and asked the Board to include a condition that required the applicant to obtain approval for the deck from the HOA prior to construction.

Mr. Pammel informed Ms. Sacknoff that the Board could not condition an action upon HOA approval.

Craig Sorum, 6013 Forest Run Drive, Clifton, Virginia, came forward to speak in opposition. He stated that he resided immediately behind the applicants. He said that the patio was proposed to be located within 1.2 feet from the front of his property and the deck was proposed to be located 3 1/2 feet from his property. He informed the Board that the proposed deck was parallel to the entire length of his home. He stated that the proposed application would decrease his property value as his lot would seem very small when compared to a property with a deck of this magnitude.

Ms. Pak, in her rebuttal, stated that the reason for the delay in construction of the deck was due to the processing time of the variance application. She stated that the proposed deck was to be located to the side of the adjacent neighbor's home and would not be an intrusion.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny VC 99-Y-180 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MO YAM CHAN, VC 99-Y-180 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of a deck 5.2 ft. from rear lot line and 1.7 ft. and 1.2 ft. from side lot lines. Located at 13515 Union Village Cir. on approx. 8,709 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 66-1 ((4)) 1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 2000; and

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

1. The applicant is the owner of the land.
2. The neighbor on lot 2 has valid concerns regarding the proximity of the deck to their property, the value of their property, and their privacy.
3. The patio and deck extend 3½ feet beyond the entire width of the home.
4. The photographs submitted and the testimony of the agent do not support a reason for a patio and deck of this size.
5. The applicants could modify the plans to build a reasonably sized deck that would not require more than 1 variance and would not have any impact on their neighbor.
6. A deck of this magnitude is a convenience.

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

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that

would deprive the user of all reasonable use of the land and/or buildings involved.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0-1. Mr. Pammel moved to waive the 12-month waiting period. Mr. Hammack seconded the motion which carried by a vote of 4-0-1. Mr. Ribble abstained from the vote. Mr. Hart 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 16, 2000.

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Page 537, February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. KOREAN CALVARY BAPTIST CHURCH, SP 99-S-070 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit church and related facilities. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 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. David Hunter, P.O. Box 2344, Dale City, Virginia, replied that it was.

Pnyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit to allow two classroom trailers to remain permanently on the property. The applicants had submitted revised proposed development conditions to #8 and #11. Condition #8 dealt with the removal of a board fence barrier that separated the property in question and an adjacent vacant property where parking places came within 10 to 12 feet of the property line. Staff did not support the removal of the barrier as the property could be redeveloped at any time and the barrier would block car headlights. Condition #11 related to the skirting and landscaping of the trailers. It was staff's opinion, that as the trailers were permanent structures, they should be skirted and landscaped.

Mr. Hunter, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He stated that this application would have brought the entire property under a special permit. He stated that the church had no plans to increase their congregation, however, if they did need to expand in the future they would relocate to a different property. Mr. Hunter addressed the applicant's proposed revised development condition #8 by stating that a fence along the property line between the subject property and the adjacent property would not help to block headlight glare. He explained that because of the location of the two lots the headlights would direct toward Pohick Road and not to any new dwelling on that parcel. He addressed proposed condition #11 by stating that the trailers had been skirted and the landscaping was not needed as they were located beind the santuary and were not visible to any neighbors. He added that the applicants were of meager funds and the planting of any landscaping would be a hardship for them.

Mr. Hammack stated that he had reservations about permanent trailers on site due to the number of churches in Fairfax County that had permanent trailers in place. He suggested that a 4 year term be implemented with the renewal under the authority of the Zoning Administrator. Mr. Hunter requested a term of at least 7 years.

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

Mr. Pammel moved to approve SP 99-S-070 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KOREAN CALVARY BAPTIST CHURCH, SP 99-S-070 Appl. under Sect(s). 3-103 of the Zoning Ordinance

to permit church and related facilities. Located at 8616 Pohick Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 21. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 2000; and

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

1. The applicants are the owners of the land
2. The parcel contains 3.98 acres.
3. The church already exists and the request is to include 2 trailers.

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, Korean Calvary Baptist 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 Alexandria Surveys, Inc., dated August 26, 1999, 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 substantial 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. Seating provided in the church sanctuary shall be limited to a maximum of seventy (70) seats.

7. The number of parking spaces provided shall satisfy the requirements set forth in Article 11 of the Zoning Ordinance. All parking for this use shall be on site, as shown on the Special Permit Plat, except as qualified by Development Condition # 11 below.

8. Parking lot landscaping shall be provided to meet Ordinance requirements, to the satisfaction of the Urban Forester.

9. Transitional screening and barriers shall be modified in favor of that shown on the Special Permit Platt.

10. Lighting located on the application site shall focus onto the subject property only. If necessary,

appropriate lighting shields shall be installed to prevent 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.

11. Right-of-way and ancillary easements as necessary to complete VDOT Plan #3641-029-282-C501, for Pohick Road widening, shall be dedicated to the Board of Supervisors in fee simple when required to commence construction of the project. At that time, parking spaces along Pohick Road that will be required to be removed as a result of the widening of Pohick Road shall be relocated, at the applicant's expense, to the area north of trailer D, east of the existing parking lot, south of the "tree line" shown on the special permit plat.

12. The trailers shall be approved for a period of seven (7) years from the final approval date of this special permit and may be extended for three (3), five year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

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

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

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Hart and Mr. Kelley were absent from the meeting.

Page 539 February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM GIERY, VC 99-P-189 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit structure to remain 9.83 ft. from rear lot line. Located at 2006 Lord Fairfax Road on approx. 22,910 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((9)) 9-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. William Giery, 2006 Lord Fairfax Road, Vienna, 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 a garage, which was to be used as a temporary dwelling, to remain 9.83 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, a variance of 15.17 feet was requested.

Mr. Giery presented the variance request as outlined in the statement of justification submitted with the application. Mr. Giery reaffirmed his affidavit and said that his application met all nine of the standards required for the granting of a variance.

Mr. Ribble asked if he had read and understood the proposed development conditions. Mr. Giery replied that he had.

Chairman DiGiulian asked how long the existing garage had been in place. Mr. Giery replied that he did not know how long the garage had been on the property.

Chairman DiGiulian called for speakers.

Rod McCallister, (no address given for record), came forward to speak in opposition. He explained that all of the other buildings and dwellings in the neighborhood were located a much greater distance away from the

adjacent properties. He stated that the existing garage was an eyesore and there was noise from the property. He said that due to the encroachment problems his property value would be decreased. He requested that the applicant incorporate a garage into his home to keep in character with the neighborhood and to mitigate the current eyesore by painting and installing siding.

Mr. Giery, in his rebuttal, stated that one of the primary goals of the variance was to improve the appearance of the existing garage. He assured the Board and his neighbor that the property would be improved within the year. He said that he had a permit to replace the old wooden fence along the back of the property with a new brick fence. Mr. Pammel asked the applicant to illustrate the proposed layout of the site. Mr. Hammack asked what the plans were to improve the existing garage. Mr. Giery stated that he had planned on remodeling the garage with brick and stucco.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 99-P-189 for the reasons stated in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM GIERY, VC 99-P-189 Appl. under Sect (s). 18-401 of the Zoning Ordinance to permit structure to remain 9.83 ft. from rear lot line. Located at 2006 Lord Fairfax Road on approx. 22,910 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((9)) 9-A. 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 8, 2000; 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 required standards for the granting of a variance.
3. The overall effort will end up being a good thing for the applicant and the neighbors as well.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of the detached garage shown on the plat prepared by Dalton & Kendall, dated December, 1999, as revised through December 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 applicant shall be permitted to establish a dwelling unit within the existing detached garage until such time a Residential Use Permit (RUP) is issued for the new dwelling proposed to be constructed on the site. Within ten (10) days following issuance of a RUP for the new dwelling, the applicant shall remove the kitchen appliances from the existing detached garage and thereafter the only use shall be as an accessory structure (garage/workshop/storage shed).

4. The applicant shall plant a row of (6) six evergreen trees that will be a minimum of (6) six feet in height at the time of planting between the new brick fence and the garage.

5. The garage shall be architecturally compatible with the new dwelling.

Pursuant to Sect. 18-407 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. Hart 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 16, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 541, February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JOHN F. STARNS AND SHAWN E. WARNER, VC 99-B-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 4042 Doveville Ln. on approx. 21,809 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Beach, 417 West Broad Street, Falls Church, Virginia replied that it was.

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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 to be located 10.9 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 9.1 feet was requested.

Mr. Beach, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that Mrs. Warner had a medical condition that restricted her from climbing stairs; therefore the addition was needed and was designed to accommodate her needs. He informed the Board that due to the location of the home on the lot and steep terrain, they had no other place available to construct the addition. Mr. Beach asked for a waiver of the 8-day waiting period.

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

Ms. Gibb moved to approve VC 99-B-185 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN F. STARNS AND SHAWN E. WARNER, VC 99-B-185 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line. Located at 4042 Doveville Ln. on approx. 21,809 sq. ft. of land zoned R-1. Braddock District. Tax Map 58-4 ((5)) 26. 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 8, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have provided testimony that the addition is being located on the best place on the lot. The addition could not be located to the east because of a slope and large mature trees, and there is a swimming pool in the backyard.
3. The applicant has made an attempt to locate the addition as well as possible without infringing on the neighbor to the west.
4. The medical condition of the applicant requires that she have a garage and as much of her house on one floor as possible.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 William E. Ramsey, dated May 9, 1996, as revised by Robert E. Beach dated, November 24, 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 5-0. Ms. Gibb moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hart 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 543 February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JAMES SHUMAKER, SP 99-Y-073 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for R-C lots to permit construction of addition 19.2 ft. from one side lot line, 14.0 ft. from other side lot line and 29.0 ft. from front lot line. Located at 15331 Blueridge View Dr. on approx. 10,739 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Shumaker, 15331 Blueridge View Drive, Centreville, 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 modifications to minimum yard requirements to allow the construction of a living room addition to be located 29 feet from the front lot line and 14 feet from a side lot line, a porch addition to be located 19.2 feet from a side lot line and a two-story garage with a master bedroom addition to be located 14.0 feet from a side lot line. The Zoning Ordinance requires a minimum front yard of 40 feet and a side yard of 20 feet; therefore, the following yard modifications were requested; 11 feet from the front lot line and 6 feet from a side lot line for the living room addition 8 feet from a side lot line for the porch and 6 feet from a side lot line for the two-story master bedroom addition.

Mr. Shumaker presented the special permit request as outlined in the statement of justification submitted with the application. He explained the layout of the proposed additions and said that the additions and renovation would increase the property value of his home and the surrounding homes.

Mr. Hammack asked if the applicant had proposed the construction of a garage. He stated that he had and illustrated where the garage was proposed to be located.

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

Mr. Hammack moved to approve SP 99-Y-013 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES SHUMAKER, SP 99-Y-073 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for R-C lots to permit construction of addition 19.2 ft. from one side lot line, 14.0 ft. from other side lot line and 29.0 ft. from front lot line. Located at 15331 Blueridge View Dr. on approx. 10,739 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((3)) 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 8, 2000; 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.
6. The applicant has met the required 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 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 location of the additions shown on the plat prepared by Kenneth W. White, Land Surveyor, dated August 6, 1997, revised by James K. Shumaker dated November 29, 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 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. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hart 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 16, 2000.

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Page 545 February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. GLORIA FUENTES, SP 99-P-050 Appl. under Sect (s). 3-103 of the Zoning Ordinance to permit a child care center. Located at 8615 Hilltop Road on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A.

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 Kelsey, 4041 Autumn Court, 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 allow the operation of a childcare center with the maximum daily enrollment of 25 children. The proposed hours of operation were 7:00 a.m. to 6:30 p.m. and proposed play area of approximately 3,500 square feet was to be located in the rear yard. A two-car driveway and a semi-circular driveway with 3 spaces were proposed along Hilltop Road. It was staff's opinion that the request did not meet all of the required standards of the Zoning Ordinance for the granting of a special permit and the proposed use was in conflict with the land use goals of the Comprehensive Plan and the intent of the R-1 District. The proposed conversion of a single family dwelling to a childcare center was too intense of a use for an established, residential neighborhood. Staff believed that the proposed use would give the subject property a commercial appearance and the transitional screening and barriers were insufficient to buffer the proposed use from the adjacent residents. The property location and the proposed design for the parking lot did not provide an adequate turn around or pick-up and drop-off area for the children. Staff recommended denial of the application; however, if it was the Board's intention to approve the application staff recommended that such approval be made subject to the Development Conditions contained in Appendix I of the staff report.

Ms. Kelsey, agent for the applicant, presented the special permit request as outlined in the statement of justification. She stated that the application had been amended to reduce the number of children to 25 to address the parking issues related to the maximum daily enrollment and reduced the ages of the children from infants to age 3 to address the neighbors; concerns regarding noise in the play area. She said the plat had been amended in an attempt to address circulation problems with an effort to retain the site in its current configuration. She stated that the application could meet the standards for special permit uses. Ms. Kelsey informed the Board that the children currently attending the applicant's home childcare center would attend the proposed childcare center. She said that the arrival and departure times would be staggered and that six of the children were brothers and sisters and another 6 would arrive in 3 cars; therefore, decreasing the number of cars entering and departing the application site. She illustrated, by overhead, a sketch of the proposed parking area that allowed for adequate screening between the subject property and the adjacent properties. Ms. Kelsey stated that she met with Sharon Mahler, the most affected neighbor that shared the adjoining driveway with the applicant. Ms. Kelsey stated that there were numerous childcare centers of the same size and larger, located in and adjacent to residential areas. She submitted photographs and plats of these centers to the Board. She stated that the applicant would work to satisfy all of the reasonable

concerns of the neighbors.

Ms. Gibb asked whether the home was vacant at the present time. Ms. Kelsey replied that renters currently occupied the home. Ms. Gibb asked for what purpose the circular drive was constructed. Ms. Kelsey stated that the applicant had the circular drive constructed to address her neighbor's objection to sharing a driveway.

Chairman DiGiulian called for speakers.

Eva Freund, 2801 Towney View Court, Vienna, Virginia, came forward to speak in opposition. She stated that she was the President of the Willowmere Farms Homeowners' Association. Ms. Freund submitted a petition in opposition of the application. She stated that the increased amount of traffic on Hilltop Road would exacerbate the traffic congestion problems that already existed. She said the neighbors were concerned that the granting of the application would cause a precedent for other commercial uses in the neighborhood.

Michael McHugh, 2000 N. 14th Street, Ste. 210, Arlington, Virginia, came forward to speak in opposition, on behalf of Joseph and Carrie Lynch, 8701 Hilltop Road, Vienna, Virginia. He illustrated the location of an additional driveway on the property that was not shown on the plat. He stated that the proposed use was far too intense for a residential area.

Sharon Maher, 8613 Hilltop Road, Vienna, Virginia came forward to speak in opposition. She stated that she was the most affected neighbor to the application site. The following were her objections to the application: the potential decrease of her property value; the increase in traffic on Hilltop Road; the annoyance of cars pulling in and out of the driveway; the violation of her privacy and the potential noise from the cars and children. She said she was concerned that visitors and delivery personnel would utilize the private driveway instead of the circular driveway. She said that though she was concerned about the need for daycare in Fairfax County, the proposed use was overwhelming for the neighborhood. Ms. Maher stated that it was written in her title that the two properties owned the joint driveway.

Ms. Kelsey stated, in her rebuttal, that she had researched the land records for each property and had not found any reference to a formal shared driveway or any easements. She informed the Board that a complete title search had not been instigated. She said that the applicant, to address her neighbors concerns, had proposed to fill in the second driveway with plantings and enclose the carport. Ms. Kelsey requested a deferral to allow time for a title search and to submit a revised plat illustrating the applicant's proposed changes.

Chairman DiGiulian closed the public hearing.

Mr. Pammel requested that staff report to the Board the present operation of the applicant's current childcare center; whether it met all of the standards and criteria; if there had ever been any complaints with respect to the operation of the facility; and, asked to see the current operating license for the facility.

Mr. Pammel moved to defer decision for SP 99-P-050 until March 7, 2000, at 9:00 a.m. Ms. Gibb moved to amend the motion to add that a complete title search be administered. Mr. Hammack seconded the motion which carried by a vote of 4-1. Mr. Ribble voted nay. Mr. Kelley and Mr. Hart were absent from the meeting.

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Page 546 February 8, 2000, (Tape 1) Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities and child care center. Located approx. 1100 Ft. East of Bull Run Post Office Rd. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Def. from 1/18/00 for decision only)

Susan Langdon, Chief, Special Permit and Variance Branch stated that the applicant had requested 1 further week to work with the Virginia Department of Transportation and the adjacent property owners regarding the entrance issues.

Mr. Hammack moved to defer decision regarding SP 99-Y-065 until February 15, 2000 at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Hart were absent from the meeting.

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Page 547, February 8, 2000, (Tape 1) Scheduled case of:

9:30 A.M. OLD SALEM VILLAGE, LTD. AND OHIO, LTD., A 1999-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination that the provision of a drive aaisle as depicted on Site Plan #7377-SP-02 for the proposed Eckerd Drug Store does not constitute the establishment of a drive-through pharmacy, is not precluded by the Zoning Ordinance and, therefore, does not preclude the approval of the site plan. Located at 6053 Glen Carlyn Dr. on approx. 63,351 sq. ft. of land zoned C-6 and SC. Mason District. Tax Map 61-2 ((12)) 4 and 4A.

Chairman DiGiulian recused himself from the hearing due to a conflict of interest.

Jayne Collins, Zoning Administration Division, made staff's presentation as contained in the staff report. The basis of the appeal was the determination of the Zoning Administrator that the provision of a segregated drive aisle for the proposed Ekerd Drug store did not constitute the establishment of a drive-through pharmacy; was not precluded by the Zoning Ordinance and therefore; did not preclude approval of the site plan. Under Zoning Ordinance provisions, drive-through pharmacies were permitted by-right in the C-5 through C-9 Districts with certain limitations and by special exception when those limitations could not be met. Pharmacies that did not have a drive-through window were considered to be retail sales establishments that were permitted by-right in the C-5 through C-9 Districts. Since the proposed Ekerd property abutted the residentially zoned Olde Salem Village property, it could not satisfy the criteria to establish a drive-through pharmacy as a permitted by-right use. Special exception approval was sought for an automobile oriented use and was denied in January of 1999, and because special exception approval of a drive-through pharmacy was not obtained, Ekerd was proceeding with the plans to establish the drug-store without the drive-through window as a permitted retail stales establishment. The drive aisle, which was the subject of the appeal, was located on the same side of the building as the drive-through window, which was proposed with the special exception. The question in the appeal was whether or not the drive-aisle could be constructed as part of the by-right retail sales establishment development. The key criteria of the drive-through pharmacy definition required that there was a drop-off and pick-up service for prescriptions and related medical items to persons within a motor vehicle. Although the subject drive aisle would be a feature of the Ekerd Drug Store site, it did not accommodate a drop off or pick up service to persons in a motor vehicle since no drive-though window was being provided. The drive-aisle was an additional drive lane for vehicular traffic providing access from one area of the lot to another. It was not uncommon for the site design of commercial developments to include drive aisles that were physically separated from parking areas and although that was not the original intent of the subject drive aisle it did serve that purpose. It was staff's position that the subject drive aisle served the principle retail sales establishment use which was permitted on the property. Consequently the drive aisle itself did not constitute the establishment of a drive-through pharmacy and it was therefore; not precluded by the Zoning Ordinance and it was proper to allow the site plan to be approved with the drive aisle as shown.

John Farrell, agent for the appellant, stated that the Zoning Administrator's decision made several errors of law and those errors of law required the Board of Zoning Appeals to reverse that decision. He explained that the Ordinance did not state an authorization for a segregated drive aisle; however, it did state that accessory structures could be authorized when it was customarily found in association with its principle use. He said that the principle use of the site in question was for a pharmacy and that there were no pharmacies in the Country that had a segregated drive aisle. He stated that the request for the segregated drive aisle was a way to work towards getting a drive-through window approved by the Board of Supervisors. He said the owners of Olde Salem Village wanted to remove the segregated drive aisle to establish the transitional screening area to its normal depth in order to isolate the use from the multi-family homes that were adjacent to the site. He said that another reason to remove the drive aisle was to be able to relocate the loading dock to a more accessible location in the building. He explained that the way the loading dock was proposed to be located forced half of the tractor-trailer delivery trucks to be out into the street blocking traffic. Mr. Farrell reiterated his opinion that the elimination of the segregated drive aisle was required under the Zoning

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Ordinance.

Chairman Ribble called for speakers.

The following citizens came forward to speak in opposition:

Robert Schreiber, 3410 Mansfield Road, Falls Church, Virginia; John Medrano, (no address given for record); Steve Yaffe, 3430 Pinetree terrace, Falls Church, Virginia; Vivian Silverman, (no address given for the record); Tina Johnson, (no address given for the record); Bonnie Kendrick, 4135 Teton Place, Alexandria, Virginia; Tony Beltron, (no address given for record); Tulia Beltron, (no address given for record).

The following were their concerns regarding the appeal application:

The citizens group named "Save the Playing Field", had intentions to buy the proposed application site property from Zimmer Development Corporation. The segregated drive aisle was a way to make it easier to get approval for a drive-through window; the increased traffic from the proposed segregated drive aisle posed a significant danger to the children in the neighborhood; the construction of a pharmacy would result in higher volumes of crime throughout the area; and, the neighborhood park and gathering place for children would be eliminated with the construction of the pharmacy.

David Houston, 8280 Greensboro Drive, Ste. 900, McLean, Virginia, came forward to speak on behalf of Zimmer Development He reiterated that there was no intent to construct a drive-through window in the pharmacy. He stated that although the members of "Save the Playing Field" stated that they were going to buy the property, their had never been a written offer to Zimmer Development. Mr. Houston stated that the goal of Zimmer Development was to bring a pharmacy to an area that needed one.

Ms. Collins stated that although much of the testimony centered around the impact of traffic from the drug store use itself, it was not relevent to the narrow issue of whether or not the drive aisle was allowed. She said the drive aisle was just an additional drive lane that was an accessory to the pharmacy, and not accessory to a drive-through window and it met all of the standards in the Public Facilities Manual and the Zoning Ordinance. She said that any future applications for a drive-through pharmacy would be judged on their own merits with the special exception standards. She said to be a drive-through pharmacy, services would have to be rendered to persons within a vehicle and the drive aisle did not do that. Ms. Collins reiterated that the site plan was for a retail sales establishment which was a permitted by-right use on the site.

Mr. Farrell, in his rebuttal, stated that though most of the comments that had been made did not address the merit of the appeal, they reflected the strong feelings that the development had generated in the community. He stated that the testimony of both staff and Mr. Houston did not address the fact that the Zoning Ordinance did not give authorization for a segregated drive aisle.

Mr. Pammel asked if the "structure" Mr. Farrell was speaking about was the drive aisle. Mr. Farrell replied that the drive aisle fit the Zoning Ordinance criteria for a structure.

Ms. Gibb asked staff to address the issue that Mr. Farrell had raise regarding the drive aisle having to be specifically allowed under the Zoning Ordinance criteria.

Mr. Shoup replied that the Zoning Ordinance permitted a retail sales establishment and that was what was being built. He said the drive aisle fell under the site design for the establishment and it met the minimum standards. He said the drive aisle did not conflict with the Ordinance and there was nothing in the Public Facilities Manual that would preclude this type of drive aisle. Mr. Shoup said that staff had no discretion to deny the drive aisle.

Ms. Gibb asked if staff had the right to deny a drive aisle if it was constructed under the circumstance that a drive-through window would be requested in the future. Mr. Shoup stated that staff did not have the authority to deny the drive aisle because of something that might be proposed in the future.
He said the final approval of a drive-through window would be judged on its own merits.

Ms. Gibb asked staff's opinion of the screening issue that Mr. Farrell mentioned. Mr. Shoup replied that staff

had not studied the screening issue but there may have been a waiver that was provided for under the Zoning Ordinance to get the site plan approved; however the screening issue was something that was dealt with at the time of site plan review.

Chairman Ribble closed the public hearing.

Ms. Gibb stated that it was a narrow issue and she knew the area and that there was a great need for a playing field, but that was not the issue of the appeal. She explained that the property had already been planned for commerical use and the Board of Zoning Appeals could not alter that. She stated that the issue was whether or not the drive aisle was alllowed to be constructed as part of a by-right retail sales establishment development. Ms. Gibb stated that she agreed with the Zoning Administrator and the motives of the developer were not something that the Board could base their motion on.

Mr. Pammel said that this was a very narrow issue but he agreed with Mr. Farrell. He said that he worked with Zoning Ordinances every day and his reading of Ordinances were very clear. He said that he felt it was an accessory and subordinate use to anything that the owners were going to use the property for in the future because what they were proposing to do was to have a drive-through at some time in the future. He said that it was within staff's ability to make the determination and reject the proposal from the site plan.

Ms. Gibb moved to uphold the decision of the Zoning Administrator. Mr. Hammack seconded the motion which carried by a vote of 3-1. Mr. Pammel voted nay and Chairman DiGiulian was not present for the vote. Mr. Kelley and Mr. Hart were absent from the meeting.

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Page 549, February 8, 2000, (Tape 1) After Agenda Item:

Consideration of Acceptance
Application for Appeal Filed on behalf of Mobil Oil Corporation

William E. Shoup, Deputy Zoning Administrator, informed the Board that Mobil had filed two additional appeal applications and one of them had been accepted and it was scheduled for April 4, 2000. He stated that the issue at hand was the December 9, 1999, filing of an appeal of the decision of the Planning Commission. He explained staff's position that the appeal in question was not considered proper and it did not satisfy the criteria of the Zoning Ordinance. He said the basis of the appeal was not a determination of the Zoning Administrator or any other administrative officer and there was no basis, as suggested by the appellant, that the Planning Commission in rendering the decision had acted as the agent for the Zoning Administrator. Mr. Shoup requested that the Board not accept the December 9th appeal for public hearing.

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Page 549, February 8, 2000, (Tape 1), After Agenda Item, continued from page

Mr. Shoup said that David Stoner, County Attorney's Office, was present to answer any of the Board's questions.

There was discussion between the Board and David Stoner, Assistant County Attorney regarding a decision that had been made by the then Deputy County Executive with respect to the Mobil Appeal of the Planning Commission's decision which Mobil filed with the Board of Supervisors. Mr. Stoner indicated that staff was no considering presenting the issue to the Board of Supervisors for their determination as to whether the matter was under their jurisdiction.

Mr. Hammack moved to defer the After Agenda Item until April 11, 2000, to allow time for the Board of Supervisors to make a decision regarding the recent appeal application. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Hart were absent from the meeting.

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Approval of February 1, 2000 Resolutions

Mr. Hammack moved to approve the Resolutions. There was no second and the motion carried by a vote of 5-0. Mr. Kelley and Mr. Hart 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 11:54 a.m.

Minutes by: Lori M. Mallam

Approved on: May 9, 2000

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 15, 2000. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel; and, John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 551, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, VCA 98-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 0.1 ft. from rear lot line and 0.6 ft. from side lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 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. Kenton Miller and Diane Gronkiewicz Miller, 3201 History Drive, Oakton, 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 a deck to be constructed 0.1 from the rear lot line and 0.6 from a side lot line. A minimum rear yard of 25 feet is required with a 12.0 foot permitted extension; therefore, a variance of 12.9 feet was requested for the rear yard portion of the deck. A minimum side yard of 20 feet is required; therefore, a variance of 19.4 feet was requested for the side yard portion of the deck. Staff noted that this was an amendment to a previously approved application which requested variances to permit construction of an addition to be located 14.5 feet from the rear lot line and a deck to also be located 9.9 feet from the rear lot line.

Ms. Miller presented the variance request as outlined in the statement of justification submitted with the application. She said the deck was complete but because of its size, it was unusable. Ms. Miller stated that there was no other location for the deck.

Mr. Hammack asked how high off the ground the deck would be and if people could walk under it. Ms. Miller replied that people would have to walk around it.

Mr. Hammack said he couldn't support the deck if people had to walk on someone else's property to get around it. He said the applicant needs to be able to maintain their property on their propety.
Mr. Hammack asked if the deck could be pulled in enough not to have to utilize the adjacent parkland.

Mr. Miller noted that they maintained the landscaping of some of the parkland adjacent to their lot.

Mr. Hammack said he would like to defer the application and see a plat depicting the deck being pulled in. He would be willing to make that motion.

Mr. Miller stated that the process had already been quite lengthy and they would prefer a decision at the current public hearing.

Mr. Hammack moved to defer the application for 2 weeks. Mr. Pammel seconded the motion.

Mr. Hart stated that he had concerns about not being able to walk under the deck.

Mr. Hammack said a building inspector informed them that screening the deck with lattice or something similar was a County requirement.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that she did not know if that was true, but that staff would investigate.

The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The application was scheduled for February 29, 2000 at 9:00 a.m.

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9:00 A.M. ALEXANDER A. ASMAR, VC 99-B-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 8413 Georgian Wy. on approx. 10,638 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 263.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alexander Asmar, 8413 Georgina Way, 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 construction of an addition 19 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6 feet was requested.

Mr. Asmar presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was shallow and if the addition was any smaller it would not offer any livable space.

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

Mr. Pammel moved to approve VC 99-B-183 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALEXANDER A. ASMAR, VC 99-B-183 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 8413 Georgian Wy. on approx. 10,638 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((16)) 263. 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 15, 2000; 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 criteria for the granting of a variance.
3. The lot is shallow in nature
4. The location of the residence is to the rear portion of that lot, providing no area within the standards of the present Zoning Ordinance to permit an addition without a variance.

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

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

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Brian W. Smith dated, October 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.

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. Kelley and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 553, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JENNIFER GRAFTON-GORE, VC 99-V-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.0 ft. from side lot line, 6.2 ft. from other side lot line and 26.2 ft. from front lot line. Located at 6034 Woodmont Rd. on approx. 7,215 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(3) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jennifer Grafton-Gore, 6034 Woodmont Road, Alexandria, 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 construction of three (3) additions to include a rear addition, 35 feet in height, 4.0 feet from a side lot line; a second story over an existing garage 6.2 feet from the other side lot line; and a

porch 26.2 feet from the front lot line and 4 feet from a side lot line. A minimum side yard of 10 feet is required; therefore, variances of 6 feet and 3.8 feet were requested respectively, for the rear addition and the second story addition. A minimum front yard of 30 feet is required; therefore a variance of 3.8 feet was requested for the porch. A minimum side yard of 10 feet is required; therefore a variance of 6 feet was requested for the porch.

Mr. Grafton-Gore presented the variance requests as outlined in the statement of justification submitted with the application. He said the house was built in the 1920s prior to the Zoning Ordinance and was originally 4 feet from the lot line. Mr. Grafton-Gore said the house was non-conforming with the other houses in the neighborhood. He said currently the house only had one bathroom and they would like to build an addition over the 1st floor and a front porch.

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

Mr. Ribble moved to approve VC 99-V-179 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JENNIFER GRAFTON-GORE, VC 99-V-179 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 4.0 ft. from side lot line, 6.2 ft. from other side lot line and 26.2 ft. from front lot line. Located at 6034 Woodmont Rd. on approx. 7,215 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14))(3) 2. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 2000; 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 topography on the lot and the fact that the lot has 2 front yards causes the need for the variance.
4. The original house was built in the 1920s.

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

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

Page 555 February 15, 2000, (Tape 1), JENNIFER GRAFTON-GORE, VC 99-V-179, continued from Page 554

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 rear addition, the second story garage addition and the front porch shown on the plat prepared by SDE, Inc., dated October 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.

Pursuant to Sect. 18-407 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 555, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN F. JESSEY AND KATHRYN BUCHER, VC 99-D-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.7 ft. from side lot line. Located at 1551 Dominion Hill Ct. on approx. 25,044 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-4 ((50)) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stephen Jessy and Kathryn Bucher, 1551 Dominion Hill Court, McLean, 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 deck 3.7 feet from the side lot line. A minimum side yard of 10 feet is required; therefore, a variance of 6.3 feet was requested.

Ms. Bucher presented the variance request as outlined in the statement of justification submitted with the application. She said that the lot was oddly shaped with 12 sides. Ms. Bucher said only a corner of the deck required the variance.

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

Ms. Gibb moved to approve VC 99-D-182 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN F. JESSEY AND KATHRYN BUCHER, VC 99-D-182 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.7 ft. from side lot line. Located at 1551 Dominion Hill Ct. on approx. 25,044 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-4 ((50)) 11. 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 15, 2000; 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 with 12 sides.
3. At its closest point, the deck will only be 3.7 feet to the lot line
4. Because of the slant of the yard, the deck becomes farther away from the lot line.

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

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

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

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

deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location of the deck shown on the plat prepared by BC Consultants, dated November 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.

Pursuant to Sect. 18-407 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 February 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 557, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. STUMP DUMP, INC., SPA 94-D-058 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 94-D-058 for zoological park to permit continuation of use and modification of conditions. Located at 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, 15C. (Concurrent with VC 99-D-176). (Def. From 2/1/00)

9:00 A.M. STUMP DUMP, INC., MACK S. AND SANDRA L. CRIPPEN, VC 99-D-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 15.6 ft. from the side lot line and 8.0 ft. high fence to remain. Located at 734 and 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, and 15C. (Concurrent with SPA 94-D-058). (Def. From 2/1/00)

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 Bettius, Attorney for the applicant, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of an amendment to Special Permit Application SP 94-D-058 for a zoological park to permit modifications of the development conditions. This included deletion of development condition #20, which stated that the special permit would expire five years from the date of approval. The permit was due to expire on March 8, 2000. Proposed revisions to the plat included depiction of two existing detached dwellings, occupied by caretakers of the zoological park

The applicant requested a variance to permit an existing structure to remain 15.6 feet from a side lot line, and an 8-foot high fence to remain on the property. A minimum side yard of 20 feet is required; therefore, a variance of 4.4 feet was requested for the structure. The maximum height allowed for a fence is 7 feet; therefore, a variance of 1 foot was requested. Staff recommended approval of the subject application with the implementation of the proposed development conditions dated February 14, 2000.

Mr. Hammack asked why there was a restriction on the time the park was open. Ms. Wilson replied that there was concern from the neighbors about the zoological park opening totally to the public. She said under the zoological park definition, there had to be some public use element and the applicant was trying to meet that requirement and the needs and concerns of the neighbors.

Mr. Hart asked if animals escaping had been a problem previously and if so, does it relate to the fence. Ms. Wilson said there were State requirements relating to zoological parks and the height of the fence. She said the State animal authorities required an 8-foot high fence. Ms. Wilson said the applicant could supply more information regarding the animals escaping.

Mr. Bettius, the applicant's agent, presented the requests as outlined in the statement of justification submitted with the application. He said the 66-acre site was previously operated as a debris landfill and the property was subject to a great deal of regulations because of the closure plan. Mr. Bettius said the subject site was completely manicured and tended. He stated that Mr. Crippen never wanted a zoological park, but only wanted to keep pets. Mr. Bettius said that the reason the property came under regulation was because there was a point in time when the applicant was told he had to become a zoological park to keep his pets.

Mr. Bettius addressed the development conditions, stating that the applicant had a problem with the requirement of planting trees because there was already a stable cap in place. The applicant was not prepared to offer dedication of any of the road along Utterback Store Road. Mr. Bettius stated that neither the Great Falls Citizen Association nor any of the neighbors wanted that dedication made.

Mr. Hammack asked in what ways do the development conditions requiring transitional screening conflict with the State regulations. He asked Mr. Bettius to explain specifically what the closure of the State law requires in this regard.

Mr. Bettius said they posted a $30,000 escrow for conservation. He said with respect to closure, the planting of trees on a cap is not a very good idea. He stated that erosion on the slopes were minimal and maintained on a constant basis. Mr. Bettius stated that the existing vegetation along the property had been satisfactory for a number of years.

Mr. Hammack asked why was planting trees on the cap in violation of the State. Mr. Bettius said they tried to get a stable cap over top of the landfill. He said they didn't want to penetrate the cap because the cap seals methane and maintenance of the cap was one of the key elements of closure.

Mr. Hammack said he thought there were vents to help some of that methane escape so it wouldn't build up. Mr. Bettius said the methane was constantly collected and ventilated in appropriate ways through methane control, and that system was in place out there.

Mr. Pammel asked if Mr. Crippen would regain control of the Pet-A-Farm at Hunter Mill Road and if he would continue to operate that as a Pet-A-Farm. Mr. Bettius replied yes.

Mr. Hart asked Mr. Bettius to address Development Condition #9 about a problem in the past with animals escaping. Mr. Bettius stated that he didn't think there had been a pressing problem, but understood that there had been a kangaroo at large that had to be contained. He said that was the only one that he knew of.

Mr. Hart asked about the language in the staff's development condition #11 pertaining to reestablishing a buffer area along the stream channel to aid in the natural filtration of run-off and would that cause violation of the cap. Mr. Bettius responded that he couldn't represent that, but one of the main concerns of Great Falls Civic Association was the potential for run-off into the stream. He said the applicant had to present a plan, within six months, that was satisfactory and dealt with the issue of preventing that kind of thing from STUMP happening on the site. He said it was the primary focus of the conservation plan on the site and appropriate disposal of animal waste.

Mr. Hart asked how much of the applicant's property was being taken with respect to the right of way width on Utterback Store Road. Mr. Bettius stated 30 feet.

Mr. Pammel asked staff if they sought a recommendation from the Department of Public Works and Environmental Services with respect to the issue of the cap. Ms. Wilson stated that staff was aware that there were limitations to planting on the cap, which was why they added the language in the development condition in several places that stated, "any planting was subject to the relevant limitations on planting within a landfill area." She said when the application goes for further site plan review, at that time the experts in DPWES would determine what could be planted.

Mr. Bettius said he was concerned about the issue of site plan because this was an agricultural use and there was a specific exemption within the site plan ordinance for agricultural uses.

Mr. Pammel said he would have been much more comfortable if staff had deferred this to the public works. He said they had the expertise and could address the issue and the Board would be in a better position rather than having disagreements between staff and the applicant.

Ms. Langdon stated that most of the conditions were followed through from the last time and the applicant agreed to them at that point. She said the Department of Public Works, the State Agencies, and the people who are involved in the closure system were involved in the review. The first time through, this went through quite a detailed review by all the agencies and these conditions did come as a result of that review and suggestions from those agencies. Ms. Langdon said staff, in almost all cases, carry the conditions forward with some minor changes in language.

Ms. Wilson stated that when the application was received, it was taken to DPWES to find out if there were any outstanding issues as far as the Stump closure was concerned. She said staff asked for suggestions as to how to handle the conditions that were brought forward. She said they suggested the language that was included. Ms. Wilson added that staff asked for a landscaping plan, which didn't necessarily mean trees, but stabilization, which was what staff was looking for.

Mr. Pammel said the other issue dealt with dedication and the letter from Great Falls Citizen Association which indicated that there were previous issues dealing with additional dedication that went before the Board of Supervisors. He said the Board accepted the position of the association and did not require dedication, so he would say that the precedence was established with respect to the right of way.

Mr. Hammack asked about development condition number 9 which stated an annual fee of $900 should be paid. He asked if the fee requirement was contained in the Ordinance. Ms. Wilson said it was a condition that was carried forward from the previous approval and staff believed it was in the Animal Control Code.

Chairman DiGiulian called for speakers.

John Ulfelder, Great Falls Civic Association, came forward to speak in support of the application. He stated that the citizens were concerned with the potential problem of runoff from manure or possible erosion down in the stream valley. He said the condition was originally imposed with the original permit and there still hadn't been a plan, but the development condition stated that it would be an enforceable plan through the zoning enforcement process. Mr. Ulfelder stated that with that development condition, it moved the process along and that approach made sense.

The other issue was the taking of 45 feet from centerline for future improvement of Utterback Store Road. He said the citizens of Great Falls would have something to say about future improvement to Utterback Store Road or widening. It was a low density residential area and the residents would fight hard to maintain that characteristic of the community. Mr. Ulfelder stated that there had been no outpouring sentiment from the neighbors one way or the other regarding this application.

Mr. Hammack asked if the Great Falls Citizens Association would have any objection to having more than 6 school bus tours of the property per year.

Mr. Ulfelder responded that some of the neighbors were concerned about the potential for increased traffic if there was a further relaxation of that particular condition, but there was an understanding that to meet the zoological park requirement, it had to be open to the public.

Chairman DiGiulian closed the public hearing.

Mr. Kelley said he has known the applicant for about 30 years. He said he felt Mr. Crippen and his operation had been a credit to the County and he had always lived up to what he said.

Mr. Kelley moved to approve VC 99-D-176 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STUMP DUMP, INC., MACK S. AND SANDRA L. CRIPPEN, VC 99-D-176 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to remain 15.6 ft. from the side lot line and 8.0 ft. high fence to remain. Located at 734 and 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, and 15C. (Concurrent with SPA 94-D-058). (Def. From 2/1/00) 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 15, 2000; 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 the dwelling shown on the plat, prepared by Jarrett Surveys Inc., dated August 16, 1999, as revised through February 8, 2000, submitted with this application and is not transferable to other land.

2. This variance is approved for the location of a fence measuring eight (8) feet at it maximum height, in the location shown on the plat prepared by Jarrett Surveys Inc., dated August 16, 1999, as revised through February 8, 2000, 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 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 February 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to approve SPA 94-D-058 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STUMP DUMP, INC., SPA 94-D-058 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 94-D-058 for zoological park to permit continuation of use and modification of conditions. Located at 820 Utterback Store Rd. on approx. 66.64 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((1)) 1, 8, 15A, 15C. (Concurrent with VC 99-D-176). (Def. From 2/1/00) 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 15, 2000; 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). 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, Stump Dump, 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 Jarrett Surveys Inc, dated August 16, 1995, as revised through February 8, 2000, and approved with this application, as qualified by these development conditions.

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

4. The maximum number of animals on site at any one time shall be 200. Of that number, the maximum number of herbivores (or grazing) animals on the property, not including fowl or birds, herbivores under the age of six (6) months, or the miniature varieties of animals which are kept in the barn, shall be 100. If, at the time of an inspection, the Department of Animal Control determines that, based on available grazing area or the health of the animals, the number should be further reduced, the applicant shall comply with the recommendations of that department.

5. There shall be no carnivorous animals, as determined by the Fairfax County Department of Animal Control, on the subject property.

6. The zoological park shall not be open to the general public except that the applicant shall permit up to six (6) school tours per year, consisting of no more than two (2) buses each, between the hours of 9:30 a.m. and 3:30 p.m. Monday through Friday (no weekends or holiday school hours permitted)

7. The applicant shall contract with a licensed veterinarian specializing in the care of wild and exotic animals for the care of sick animals. The veterinarian shall make an annual inspection of the property and shall make the findings available to the Fairfax County Department of Animal Control upon request.

8. The Department of Animal Control shall be permitted to conduct quarterly inspections of the property, as well as have additional access to the property on an "as needed" basis. An annual fee of $500.00 dollars shall be paid to the Fairfax County Department of Animal Control at the time of the first inspection of the year. A fee of $50.00 shall be paid to the Fairfax County Department of Animal Control for each inspection made when an animal has escaped.

9. Within six (6) months after the date of approval, a Soil and Water Conservation Plan shall be developed in coordination with the Northern Virginia Soil and Water Conservation District which addresses the storage and spreading of manure on the property, water quality protection measures and landscaping measures to reduce the potential for erosion. The recommendations of the Soil and Water Conservation District, as outlined in the Plan, shall be followed.

10. The transitional screening and barrier requirements shall be modified along all lot lines in favor of allowing the existing vegetation within 25 feet of all lot lines which will create a visual year-around screening to separate the barn/modular home compound and the fence along the outlet road from residential properties located to the south. This supplemental screening is shown on the Landscape Exhibit prepared by Walter L. Phillips dated February 9, 2000. Efforts will be made to provide screening of the fence to the satisfaction of the adjacent neighbor, owner of Lot 16 and this planting will be accomplished by June 2000. All on the property plantings shall be subject to any relevant State limitations for planting within a landfill area and shall comply with the State's Landfill Closure Plan.

11. The fencing shall be inspected by the Department of Animal Control and increased in height and/or relocated in the areas determined necessary by the Department of Animal Control to keep the animals from escaping. The fence may be electrified with wire(s) placed no lower than 5 feet off of the ground. The voltage running through the wire(s) shall be no higher than the equivalent of a 12-volt battery. A sign shall be installed on the fence at each lot that abuts the property (a total of 19 signs) which says "Electric Fence" and which contain a graphic indicating electric current or voltage. The fence shall be maintained in good repair and gates shall remain closed at all times except for entry and exit.

12. The shelters/sheds may be moved on the property in response to the needs of the animals but shall not be closer than fifty (50) feet to any lot line. Dens may be installed under ground provided their installation and placement is approved by the Department of Public Works and Environmental Management (DPWES).

13. The antenna located near the barn shall be removed.

14. The northernmost entrance shall be approved by the Virginia Department of Transportation (VDOT).

15. The outlet road shall not be used for vehicles associated with the special permit use other than the applicant's vehicles and as may be required by legal authority or court order.

16. Roads on the property, which are currently dirt, may be paved.

17. No more than one dwelling shall be permitted on site. The dwelling shall be provided for caretaker use only.

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, six (6) 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 and Mr. Pammel seconded the motion which carried by a vote of 5-1-1. Mr. Hammack voted against the motion and Mr. Hart abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 563, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. DAVID C. LACEY, VC 99-M-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 6444 Lily Dhu Ln. on approx. 21,782 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((9)) 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 Lacey, 6444 Lily Dhu Lane, Alexandria, 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 an accessory structure, a carport, in the front yard of a lot containing less than 36,000 square feet.

Mr. Lacey presented the variance request as outlined in the statement of justification submitted with the application. He said the carport was needed because the driveway sloped upward. Mr. Lacey said the carport was also requested to shield cars from the elements.

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

Ms. Gibb moved to approve VC 99-M-178 for the reasons noted in the Resolution.

Mr. Pammel noted that there was nothing in the staff report indicating that the structure was 4.1 feet from the property line. Ms. Schilling replied that was permissible for the district.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID C. LACEY, VC 99-M-178 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing less than 36,000 sq. ft. Located at 6444 Lily Dhu Ln. on approx. 21,782 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((9)) 38. 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 15, 2000; and

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

1. The applicant is the owner of the land.
2. Because of the terrain, the proposed location is the most reasonable place for the carport.
3. The lot is narrow.
4. 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 detached carport shown on the plat prepared by Harold A Logan, Land Surveyor, dated August 30, 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 detached 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. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 565, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL O. AND REBECCA J. MINTON, VC 99-V-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.0 ft. from the rear lot line. Located at 8321 Fran Ct. on approx. 8,516 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 99-4 ((5)) 117.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jim Gardener, Patio Enclosures, 6826 Hill Park Drive, Lorton, 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 an addition 13 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 12 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 unusually shaped and was exceptionally shallow.

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

Mr. Pammel moved to approve VC 99-V-186 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL O. AND REBECCA J. MINTON, VC 99-V-186 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 13.0 ft. from the rear lot line. Located at 8321 Fran Ct. on approx. 8,516 sq. ft. of land zoned R-5. Mt. Vernon District. Tax Map 99-4 ((5)) 117. 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 15, 2000; 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 shallow.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 John A. Kephart, dated June 23, 1999, as revised through November 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 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.

Page 567, February 15, 2000, (Tape 1), MICHAEL O. AND REBECCA J. MINTON, VC 99-V-186, continued from Page 566

Mr. Hart 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 23, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 567, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JIAN LIU AND LIMIN CHENG, SP 99-D-071 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from rear lot line and 0.4 ft. from side lot line. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with VC 99-D-184).

9:00 A.M. JIAN LIU AND LIMIN CHENG, VC 99-D-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.4 ft. from the front lot line of a corner lot. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with SP 99-D-071).

Chairman DiGiulian noted that the subject applications had been administratively moved to February 29, 2000.

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Page 567, February 15, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities and child care center. Located approx. 1100 Ft. East of Bull Run Post Office Rd. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Def. from 1/18/00 and 2/8/00 for decision only)

Julie Schilling, Senior Staff Coordinator, stated that the subject application was heard on January 18, 2000. The application was deferred for decision only in order to allow the applicant time to meet with the adjacent property owner to the west of the subject property and with VDOT to resolve issues pertaining to the proposed closure of a median break that now serves the adjacent property. The applicant submitted a revised plat on February 14, 2000. Ms. Schilling said the applicant met with the Virginia Department of Transportation (VDOT). The applicant suggested closure of the median break going out of the church and the existing median break to make the egress right-out only. She said the applicant had made significant progress but needed additional time to meet with the adjacent property owner and address further questions from VDOT. Ms. Schilling said the applicant requested a 1-week deferral to February 22, 2000.

Mr. Hart asked how closing the median break would affect Parcel 9. Ms. Schilling said the median breaks were too close together and didn't meet VDOT standards.

John McBride, Agent for the applicant, came forward and stated that they agreed with the deferral request.

Mr. Hart moved to defer SP 99-Y-065 to February 22, 2000, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 567, February 15, 2000, (Tape 1), After Agenda Item:

Out of Turn Hearing Request
Mary C. Nelms, SP 99-Y-010

Mr. Pammel moved 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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Approval of February 8, 2000 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Hart abstained from the vote.

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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: Regina Thorn

Approved on: May 9, 2000

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 22, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

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

Page 569, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. EARL E. KLIOZE, SP 99-B-067 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with VC 99-B-170)(Moved from 2/1/00).

9:00 A.M. EARL E. KLIOZE, VC 99-B-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 23.5 ft. from front lot line and parking to remain 3.7 ft. from front lot line. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with SP 99-B-067) Moved from 2/1/00).

Robert Lawrence, Agent, Hazel & Thomas, PC, 3110 Fairview Park Drive, Falls Church, Virginia, asked the Board for a one week deferral so that amendments could be made to the plat.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff concurred with the deferral request to move the applications to February 29, 2000, at 9:00 a.m.

Ms. Gibb made a motion to defer the applications to February 29, 2000, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Ribble were not present for the vote.

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Page 569, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. LINDA L. POLAK AND HENRY W. BOYD, VC 99-D-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of pool in the rear yard to exceed more than 30 percent of the minimum rear yard coverage. Located at 6919 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (R) 28 and 29.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda Polak, 6919 Chelsea 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 variance to permit a pool to be located in the rear yard. The request exceeded the 30% minimum coverage requirement to 43.5%; therefore, a variance of 13.5% was requested.

Ms. Polak presented the variance request as outlined in the statement of justification submitted with the application. Ms. Polak stated that the rear yard had a severe slope which rendered the yard unusable. She stated that the pool company would terrace the yard to level it and put it into steps or risers. Ms. Polak stated that the length of the pool request was necessary due to the terracing of the yard. She stated that the pool was not visually intrusive and would not disrupt the community. She stated that the grading plan, soils test, Chesapeake Bay materials and a statement of no negative impact had all been approved by the County. Ms. Polak stated that there were two pools existing in the community which also covered more than 30% of the rear yard; however, she stated that they did not have the slope issue. Ms. Polak stated that all adjacent property owners supported the request and asked for the Board's approval of the application. Ms. Polak asked for a waiver of the eight day waiting period.

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

Mr. Pammel moved to approve VC 99-D-187 for the reasons noted in the Resolution subject to the

Development Conditions contained in the staff report dated February 15, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA L. POLAK AND HENRY W. BOYD, VC 99-D-187 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of pool in the rear yard to exceed more than 30 percent of the minimum rear yard coverage. Located at 6919 Chelsea Rd. on approx. 6,250 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4)) (R) 28 and 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 February 22, 2000; 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. The small size of the lot as well as topographical considerations, make the variance request necessary.

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

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

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

Page 571, February 22, 2000, (Tape 1), LINDA L. POLAK AND HENRY W. BOYD, VC 99-D-187, continued from Page 570

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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) as shown on the plat prepared by Harold A. Logan dated, November 2, 1999, revised through November 17, 1999, submitted with this application and is not transferable to other land.

2. All applicable permits 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. Pammel made a motion to waive the eight-day waiting period. Ms. Gibb 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 22, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 571, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY M. AND DEBORAH J. WISOFF, SP 99-P-072 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8806 Delfield Ln. on approx. 15,050 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 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. Jeffrey and Deborah Wisoff, 8806 Delfield 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 allow six dogs to remain on a lot containing less than 26,000 square feet.

Mr. Hart asked if there was research done of other applications of as to how many dogs had been on a lot of this size. Mr. Bernal stated that the information could be provided; however, was not available at this time.

Ms. Gibb asked if the violation was from a neighbor's complaint. Mr. Bernal stated that it was a neighbor's complaint through the local County Supervisors office.

Ms. Wisoff stated that the complaint was filed anonymously. She stated that once she was informed of the complaint, she contacted her three closest neighbors, of which they had no knowledge of the complaint. Ms. Wisoff stated that she had received letters and calls from neighbors and the homeowners association stating that they did not oppose the dogs on the property.

Mr. Wisoff submitted a letter of support from an adjacent homeowner as well as copies of the County registration for all six dogs. Mr. Wisoff presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Wisoff stated that all of the dogs were stray dogs and that they did not know they were in violation of the Ordinance. He stated that all of the dogs were spade or

neutered and were up-to-date on all shots. Mr. Wisoff stated that all of the dogs were indoor, house dogs and that one of the dogs was very old and in bad health. Mr. Wisoff asked for the Board's approval of the application and also requested a waiver of the eight day waiting period.

Mr. Hart asked if the applicant was in agreement with the development conditions. Mr. Wisoff stated that they were, including the provision to reduce the amount of dogs; however, stated that it was an issue of attrition.

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

Mr. Hammack moved to approve SP 99-P-072 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 15, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY M. AND DEBORAH J. WISOFF, SP 99-P-072 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 8806 Delfield Ln. on approx. 15,050 sq. ft. of land zoned R-2. Providence District. Tax Map 48-2 ((18)) 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 22, 2000; and

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

1. The applicants are the owners of the land.
2. The Ordinance clearly allows special permits to be granted in situations such as this and, with the development conditions in place, the lot size will support the size of animals in this application.
3. The applicants have presented testimony indicating compliance with the general 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). 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, 8806 Delfield Lane (15,050 square feet), shown on the plat prepared by Albert R. Kurz, dated April 15, 1985, revised by Jeffery Wisoff, dated November 23, 1999, 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 four 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 daily and shall be disposed of in a method approved by the Health Department.

5. The dogs shall be supervised at all times while in the yard.

This approval, 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. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0. Mr. Hammack moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 22, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 573, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. MARY LOU PARKER, VC 99-L-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from side lot line. Located at 5930 Atteentee Rd. on approx. 10,800 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (64) 24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Lou Parker, 5930 Atteentee Road, 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 Julie Schilling. The applicant requested a variance to permit the enclosure of an existing carport 10.6 feet from a side lot line. A minimum 12 foot side yard is required; therefore, a variance of 1.4 feet was requested.

Ms. Parker presented the variance request as outlined in the statement of justification submitted with the application. Ms. Parker stated that she had been the sole owner and resident for 41 years on the property and stated that the carport was currently under roof and would not encroach on the adjacent property owner. She stated that she had support from her neighbors and that the enclosure of the carport was the only feasible way to enlarge the house and asked for the Board's approval. Ms. Parker requested a waiver of the eight day waiting period.

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

Mr. Hart moved to approve VC 99-L-188 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 15, 2000.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY LOU PARKER, VC 99-L-188 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from side lot line. Located at 5930 Atteentee Rd. on approx. 10,800 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (64) 24. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 2000; and

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

1. The applicant is the owner of the land.
2. The narrowness of the lot and the topography of the rear yard make this the only effective way to expand the existing house.
3. The carport is already existing with a roof.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Kenneth W. White, dated November 30, 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. Mr. Ribble made a motion to waive the eight-day waiting period. Mr. Hart 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 February 22, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 575, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR W. BEVERLY, VC 99-Y-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from one side lot line and 8.0 ft. from other side lot line. Located at 7100 Ordway Rd. on approx. 12,188 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76-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. Arthur Beverly, 10457 Red Granite Terrace, Oakton, 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 demolition of an existing structure and the construction of a new dwelling 9.0 feet from one side lot line and 8.0 feet from the other side lot line. A minimum side yard of 20.0 feet is required; therefore, variances of 11.0 and 12.0 feet were requested. Ms. Langdon stated that during routine background research, it was discovered that the application property was not a legally created lot. She stated that the subject property was originally part of a larger 10 acre parcel and that the existing dwelling was constructed in 1915. She stated that in 1978, the 10 acre parcel was divided; however, no subdivision plat was submitted or approved; therefore, the lot was considered an illegally created lot and building permits could not be approved for the construction of the new dwelling. Ms. Langdon stated that as it was in 1978, it could not have been approved as they showed the parcels divided.

Mr. Pammel asked if a building permit would not be issued for a new structure, could the applicant receive a building permit for renovations of the existing structure. Ms. Langdon stated that the outside of the property could not be changed; however, the interior of the dwelling could be renovated.

The Board discussed, in length, the history of the 10 acre parcel and how the parcels were created without an approved subdivision plan.

Mr. Hammack stated that a Deed of Partition had been recorded in Land Records and questioned if there was anything showing that it was a properly prepared deed and was approved by Zoning officials. Ms. Langdon stated that she was unsure if that information appeared in research.

Mr. Hammack asked if the property had been taxed as five separate lots since 1978. Ms. Langdon replied stated that it had been taxed and stated that Tax Administration received their information from the courthouse. She stated that they would not; however, research to ensure that there was an approved subdivision plat.

Mr. Beverly presented the variance request as outlined in the statement of justification submitted with the application. Mr. Beverly stated that the property was deeded to him from his mother. He stated that the property was divided between family members and was recorded by the Deed of Partition. Mr. Beverly stated that the existing house did not meet any of the County Code requirements and therefore, would need to be entirely demolished and reconstructed. He stated that he had support from adjacent property owners and that with the Deed in place, and taxes being paid on the lot since 1978, that the lot should be considered a legal lot and requested the Board's approval of the application.

Ms. Langdon stated that meetings had been held with the applicant suggesting a deferral of the application until a letter could be written to the applicant from the Zoning Administrator and then a decision could be made on how to proceed.

Ms. Gibb stated that even if the variance was granted, the lot was still considered a non-buildable lot. Mr.

Beverly stated that he was told that there would not be a problem with either remodeling or demolishing down to the basement and rebuilding of the home. He stated that he was told that the only requirement would be the side lot variance; therefore, that was why he decided to proceed with the application.

Ms. Langdon stated that the Department of Public Works and Environmental Management had informed the applicant that a building permit would not be issued based on the current proposal. She stated a building permit may not be required to build on the same existing foundation permit; however, the variance request was for a new dwelling, of which a building permit could not be issued.

Mr. Hammack asked when a letter would be prepared for Mr. Beverly from the Zoning Administrator. Ms. Langdon stated that a letter was in the process of being prepared, as well as for the other owners on the 10 acre parcel, because they were also non-conforming lots.

Mr. Beverly requested that with the taxes being paid on the lot and with the recorded Deed, the Board approve the request.

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

Mr. Ribble moved to approve VC 99-Y-181 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 15, 2000.

Mr. Hammack recommended a brief deferral in order for staff to provide more information to the Board.

Mr. Pammel stated that the Board should have all research from the staff coordinator, Julie Schilling, before a decision could be made.

Chairman DiGiulian stated that it would only be appropriate if the request was an appeal and stated that he supported the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR W. BEVERLY, VC 99-Y-181 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from one side lot line and 8.0 ft. from other side lot line. Located at 7100 Ordway Rd. on approx. 12,188 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 65-3 ((1)) 76-A. 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 22, 2000; 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 applicant has an extraordinary situation and condition on the property.
4. The applicant has to understand that the granting of this variance may not work out if the lot is not considered a legal lot.
5. The situation is unusual in that the applicant has paid the County taxes for over 22 years thinking that the lot was legally buildable.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 William C. Putman, P.E., dated November 10, 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 4-3. Mr. Hammack, Mr. Hart 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 March 1, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 577, February 22, 2000, (Tape 1), Scheduled case of:

9:00 A.M. CENTREVILLE PRESBYTERIAN CHURCH, SP 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities and child care center. Located

approx. 1100 Ft. East of Bull Run Post Office Rd. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Def. from 1/18/00, 2/8/00 and 2/15/00 decision only).

Susan Langdon noted that the application had been deferred in order to receive information from the Virginia Department of Transportation (VDOT) concerning the applicant's revised plat dated February 18, 2000. Ms. Langdon noted that the memorandum was included in the addendum dated February 22, 2000, as well as revised development conditions. Ms. Langdon stated that the median break, opposite Lot 6, which was the Filmdex property, would remain open as depicted on the plat. She stated that the existing median break, opposite the church property, would be closed, and the driveway opposite that median break would be a right-out only. Ms. Langdon stated that a new median break would be allowed at the eastern end of the property which would allow both right and left turns in and out of the property. Ms. Langdon stated that Lot 9 was a vacant lot.

John J. Bellaschi, McGuire, Woods, Battle & Boothe, 1750 Tysons Boulevard, Suite 1800, McLean, spoke representing the Slattery family who operate the Filmdex family business. Mr. Bellaschi stated that the VDOT memorandum resolved the issues; however, the memo should be incorporated into development condition 12. Mr. Bellaschi provided the Board with amended language for this condition.

John McBride, Agent, representing Centreville Presbyterian Church, stated that the Slattery family was asking for an unreasonable condition because the issue concerned an off-site median break. He said that the issue would be addressed at site plan review if VDOT agreed with the median break at that time, and a specific condition could change that approval, making it necessary for a permit amendment to amend the development condition; therefore, Mr. McBride stated that the concerns were adequately addressed by the VDOT memorandum and the Slattery family was protected. Mr. McBride recommended changes to development conditions 12, 14, 15 and 18, as incorporated in the resolution.

Caryn Slattery, owner of the Filmdex property, requested the proposed addition of the development condition to ensure keeping the median break open.

Ms. Gibb moved to approve SP 99-Y-065 for the reasons noted in the Resolution subject to the Development Conditions contained in the addendum dated February 22, 2000, as revised.

Mr. Hammack made a motion to amend condition 5 to allow 435 parking spaces, as shown on the plat. Mr. Hart seconded the motion to amend the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE PRESBYTERIAN CHURCH, SP 99-Y-065 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities and child care center. Located approx. 1100 Ft. East of Bull Run Post Office Rd. on approx. 20.38 ac. of land zoned R-C and WS. Sully District. Tax Map 64-1 ((1)) 7. (Def. from 1/18/00, 2/8/00 and 2/15/00 decision only). 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 22, 2000; and

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

1. The applicants are the owners of the land.
2. The applicants have presented testimony indicating compliance with the general 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-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, (20.38 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 M. Robson dated September 13, 1999, as revised through February 18, 2000, 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 seats within the main area of worship shall not exceed 400 at the completion of Phase I with 158 parking spaces, 500 at the completion of Phase II with 190 parking spaces, 650 at the completion of Phase III with 250 parking spaces, and 1200 seats at the completion of Phase IV with 435 parking spaces, as shown on the special permit plat.

6. The total maximum daily enrollment for the child care center shall not exceed 60 children for Phases I and II, and 99 children for Phases III and IV.

7. Hours of operation for the child care center shall not exceed 6:30 a.m. to 7:00 p.m., Monday through Friday.

8. The total height of all structures on the site, including the steeple, shall not exceed 45 feet.

9. Any outdoor lighting of the site shall be in accordance with the following:

   - The combined height of the light standards and fixtures shall not exceed 12 feet,

   - The lights shall be focused downward directly on the subject property,

   - Full cutoff fixtures with shields shall be installed to prevent the light from projecting beyond the property,

   - The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use, and

   - Up-lighting of buildings or signs shall not be permitted on the site except at the recessed entrances to the building.

10. At the time of either site plan submission or grading plan submission, whichever occurs first for each phase of development, a tree preservation plan shall be provided for review and approval by the

Urban Forestry Branch. The tree preservation plan shall include a tree survey which describes the location, species, size, accurate dripline, and condition of all trees 12 inches in diameter and greater 25 feet on either side of the limits of clearing and grading. The condition analysis shall be prepared by a certified arborist using the most current edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be reflected in the tree preservation plans, including methods to be implemented to ensure preservation. The plan shall be developed with the intention of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the special permit in undisturbed open space, and to preserve additional trees near these limits where such preservation is determined to be both feasible and desirable by the Urban Forestry Branch.

The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, and there shall be no fertilizing or mowing of weeds or grass within the open space areas.

11. Transitional screening shall be as shown on the special permit plat along the northern, eastern and western property boundaries and shall consist of natural vegetation, supplemented with landscaping as shown along the western property boundary, subject to the review and approval of the Urban Forestry Branch of DPWES. A 3 foot high landscaped area 25 feet wide with a berm shall be provided along the southern property boundary, and a landscaped area between the eastern parking lot and the TRANSCO easement shall be planted using a combination of deciduous and evergreen trees, and understory plant materials to soften the view of the building. The size, number, and type of plant materials shall be subject to the review and approval of the Urban Forestry Branch of DPWES. The barrier requirement along all property boundaries shall be waived.

12. The distance of the church's proposed median break from the existing median break in front of Parcel 6 shall meet the Virginia Department of Transportation's minimum crossover spacing standards.

13. Prior to approval of any plans for the first phase of construction of the church, the application shall provide documentation for the review and approval of DPWES in conjunction with the Department of Planning And Zoning (DPZ), that the Virginia Department of Conservation of Recreation, Division of Natural Heritage Resources (DNH) has surveyed the site for the presence of rare plant species within the TRANSCO Pipeline easement. If rare plant species are identified on the site within the areas of the proposed gravel maintenance road and/ or conveyance of drainage, into the stormwater management facility to the east of the easement, these facilities shall be relocated or redesigned to preserve these rare plants and to minimize disturbance, subject to the review and approval of DPWES, DPZ and DNH.

14. To the maximum extent feasible, as determined by DPWES, all stormwater runoff from impervious surfaces shall be conveyed to BMP facilities. If feasible, each stormwater management facility shown on the Special Permit plat shall be designed as a BMP facility, as determined by DPWES. The facility to the south of the parking lot may be provided as a bioretention facility, subject to the approval of DPWES.

15. The limits of clearing and grading shown on the special permit plat shall be strictly adhered to. For each phase of development, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements planned for that phase shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading for each phase of construction shall be the minimum amount feasible for that phase as determined by DPWES. Prior to any land disturbing activities for each phase of construction, a pre-construction conference shall be held between the DPWES, including the Urban Forester, and representatives of the applicant to include the construction site superintendent responsible for the on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation, and the erosion and sedimentation control plan to be implemented during construction. In no event shall any area on the site be left denuded for a period longer than 14 days except for that portion of the site in which work will be continuous beyond 14 days. Notwithstanding the limits of clearing and grading shown on the plat, the TRANSCO Pipeline easement shall not be cleared, except for the minimum amount of clearing needed to provide the

stormwater management pond access road as qualified by Condition 13.

16. Construction of the church shall be in general conformance with the architectural elevation contained in Attachment A, as determined by DPWES.

17. All signs shall be in conformance with Article 12 of the Zoning Ordinance.

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

19. Four parking spaces located adjacent to the building containing the child care center shall be reserved for the pick up and drop off of children only, during the hours of operation of the child care center.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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. Kelley 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 March 1, 2000. This date shall be deemed to be the final approval date of this special permit.

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Page 581, February 22, 2000, (Tapes 1, 2 and 3), Scheduled case of:

9:00 A.M. CAPITAL BAPTIST CHURCH, SPA 76-M-268-02 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-M-268 for church and related facilities to permit building addition and site modifications. Located at 3435 Aston St. on approx. 5.95 ac. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 52 and 55. (MOVED FROM 1/4/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pastor David Hunter, Agent, Spiritual House Church Planning, P.O. Box 2344, Dale City, 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 building additions and site modifications. She stated that the building construction would be in three phases with a final square footage of 31,367 with an FAR of 0.12. Ms. Wilson distributed revised conditions dated February 22, 2000, and stated that staff recommended approval, subject to the revised development conditions.

Mr. Hammack made a motion to limit speakers to one minute as opposed to three minutes and encouraged speakers not to repeat the same material and to only speak on land use issues. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Pastor Hunter presented the special permit amendment request as outlined in the statement of justification submitted with the application. Pastor Hunter stated that meetings had been held with the County Supervisor and with citizens to review and discuss the application. Pastor Hunter submitted a line of sight drawing to the Board for their review. He stated that the construction would be in three phases. Phase I

continued from Page 581

would include a gymnasium portion of the fellowship hall, construction of a full movement entrance on Gallows Road, per the request of the Virginia Department of Transportation (VDOT); Phase II would be meeting rooms; and, Phase III would be a sanctuary addition to include 253 seats to raise the total seating capacity to 750 seats. He stated that an expanded parking lot would be constructed in Phase I to incorporate 235 parking spaces, which was the maximum on sight. He stated that none of the improvements would be seen largely from either Gallows Road or Aston Street. Pastor Hunter stated that the applicant agreed with all conditions; however, requested that the hours of operation be changed for condition 16. He stated that development condition 20 was incorporated by the applicant to address neighborhood concerns. Pastor Hunter addressed the issue of Aston Street becoming a cut-through from Gallows Road, which was a concern of the neighbors. He stated that VDOT had stated that Aston Street should not be gated because it would provide a second means of vehicular access to the church for emergency vehicles.

The Board discussed the issue of parking spaces as they appeared on the special permit plat; the expansion and use of the gymnasium; height of the building additions; cut-through traffic from Gallows Road to Aston Street; fencing of the stormwater management pond; overflow for church services; and, use of the basement. The Board requested a floor plan showing usage of all areas of the application.

Chairman DiGiulian called for speakers in support of the application.

The following citizens came to the podium to speak in support of the application.
Bill Wheaton, 7802 Rebel Drive, Annandale, Virginia; Demmon Canner, 3272 Hollyberry Court, Falls Church; Don Harmon, 3720 Mt. Airey Lane, Annandale, Virginia; Mike Magill, 9706 Stipp Street, Burke, Virginia; Bob Zook, 9314 Mill Branch Place, Fairfax, Virginia; Roy Nielson, 7825 Rebel Drive, Annandale, Virginia; Thomas Bevis, 7710 Thor Drive, Annandale, Virginia; David McKeon, 7506 Cullum Street, Lorton, Virginia; Mike McCormack, no address given for the record; Will Hagen, 6009 Netherton Street, Centreville, Virginia; Andy Romano, 3496 Pence Court, Annandale, Virginia; Debbie Reynolds, no address given for the record:

The following were their reasons for support: The plan provided for current space needs; the nursery school did not currently have space; you could not see the church from Gallows Road; there were adequate tree buffers; the church played a positive roll in the community; the gymnasium would not be used for sporting events, dances or a bingo hall; the church was a good neighbor; Sunday school classes currently shared space with the sanctuary hall because of inadequate spacing; there had never been a complaint against the church by the homeowners association; expansion was a good revitalization effort for Annandale; the proposed plan met the County Code requirements; traffic concerns were existing as a cut-through on Aston Street and would not be created by the church; Gallows Road entrance should alleviate traffic for the Aston community.

Chairman DiGiulian called for speakers in opposition of the application.

The following citizens came to the podium to speak in opposition of the application:
Mark Westerfield, 7802 Rebel Drive, Annandale, Virginia; Pete Vollmer, 7804 Wendy Ridge Lane, Annandale, Virginia; Ronald Cowan, 3456 Gallows Road, Annandale, Virginia; Robert Livingston, 7814 Ridgewood Drive, Annandale, Virginia; Paul Klingenberg, 7810 Ridgewood Drive, Annandale, Virginia; Peter Gibbons, 7813 Thor Drive, Annandale, Virginia; Janice Thomas, 3415 Aston Street, Annandale, Virginia; Kathryn Johnston, Homes Run Acres Civic Association, Annandale, Virginia; Don Anderson, 7808 Rebel Drive, Annandale, Virginia; Steven Sternlieb, 7812 Wendy Ridge Lane, Annandale, Virginia; Dan Mollaney, Co-President Northwest Annandale Civic Association; Mona Gibbons, 7816 Ridgewood Drive, Annandale, Virginia; Victor Hannen, 7714 Thor Drive, Annandale, Virginia; Raymond Thomas, 3415 Aston Street, Annandale, Virginia; Kiernan Gannon, 3900 Lynda Lane, Annandale, Virginia; Barbara Gibson, 7866 Thor Drive, Annandale, Virginia; Lisa Westerfield, 7802 Rebel Drive, Annandale, Virginia; Annette Dubs, 7844 Thor Drive, Annandale, Virginia; George Heller, 3507 Gallows Road, Falls Church, Virginia; Donna Dixon, 7813 Ridgewood Drive, Annandale, Virginia; Vicky Burman, 3708 Mary Mack Trail, Annandale, Virginia; Zack Miller, 3433 Aston Street, Annandale, Virginia; Robert Clark, 7807 Rebel Drive, Annandale, Virginia; Pam Miller, 3433 Aston Street, Annandale, Virginia; Paul Miller, 3433 Aston Street, Annandale, Virginia; John Capolla, 7819 Ridgewood Drive, Annandale, Virginia.

The following were their reasons for opposition:
The tripling of the size of the church with its proposed construction; the height of the church was above tree height; the use of the gymnasium; the permanent closure of Aston Street; the increase in vegetation and

buffering should be required; lighting concerns; the community did not want speed bumps on Aston Street; no studies had been conducted on safety issues of the adjacent neighborhoods regarding traffic; the hours of use of the outdoor basketball hoop; activities should end sooner than 10:00 or 11:00 p.m.; the importance of a buffer zone between the adjacent homeowners and the church; the hours of operation in general; the expansion would change the character of the neighborhood; there would be loss of real estate values; there are no proposed traffic lights for communities to move onto Gallows Road; the 85 foot steeple would be a visual eyesore; the major evening events; the water runoff from the creek located on the church property; bus stops on Aston Street pose risks to children; roads were built in the 1930s and are too narrow for additional traffic; no sidewalks on Aston Street; gating concerns on Aston Street; the use of the church was currently full time day and night, therefore, gating Aston Street would serve no purpose; noise concerns; 17,000 square feet of cellar has not been accounted for on the plat; the major social increases in a residential neighborhood; the church should limit the types of activities to prohibit receptions, the use of the gymnasium by outside vendors including play rehearsals; tree removal concerns; the current congregation had outgrown the neighborhood; car lights from church property into adjacent residential homes; church's refusal for further dialogue with community members; and, there is a conflict of interest to have a church member provide a traffic study.

Pastor Hunter came to the podium to rebut the opposition. He stated that the church had never denied to meet with the citizens. He stated that the closure of Aston Street was discussed, stating that the entrance could be closed if the County and VDOT supported that closure, of which VDOT did not. Pastor Hunter stated that the applicant had gone above and beyond to meet with the citizens. He stated that the cellar concerns, of which 7,000 square feet was existing, was to take care of existing needs by the church. Pastor Hunter expressed his concern with the Board limiting the activities of the church and stated that all activities were church related. He addressed the height of the steeple, stating that it could be addressed within the conditions.

Mr. Hammack and Pastor Hunter discussed the hours of operations and the issue of limiting church related activities.

Mr. Hammack asked staff to address existing zoning violations. Ms. Wilson stated that some of the old development conditions had not been adhered to. With the incorporation of the new development conditions in this amendment, those zoning violations were addressed.

The Board discussed the use of school buses and their maintenance; a development condition regarding the gymnasium; and, water runoff on adjacent properties from the church property.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that it was not unusual for churches not to be in conformance with all of the conditions imposed. He stated that outstanding issues such as water runoff, barrier requirements, the gymnasium and traffic concerns could be better addressed.

Mr. Hart made a motion to defer the application for a period of time to address concerns. Mr. Hammack seconded the motion.

Mr. Hart requested additional information from staff regarding flooding issues; the status of zoning violations; eastern side buffer concerns; evaluation of traffic calming devices in the context of the parking lot to minimize the temptation of people using it between Gallows Road and Aston Street; development condition 14 concerns regarding the fence issue; and, evaluation of the hours of operation for all activities performed by the church.

Mr. Pammel stated that a 60 day deferral would be appropriate in order for the community to meet with the applicant. Ms. Gibb requested that the applicant explain all of the current activities for the Board's review.

Mr. Hammack made a motion to defer the application to April 18, 2000, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 584, February 22, 2000, (Tape 3), After Agenda Item:

Letter from Jane Kelsey, dated February 17, 2000,
regarding an incorrect date for the special permit plat of
SPA 94-D-058, Stump Dump, Inc.

Mr. Pammel made a motion to correct the date on the plat for SPA 94-D-058. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 584, February 22, 2000, (Tape 3), After Agenda Item:

Approval of February 15, 2000 Resolutions

Mr. Pammel made a motion to approve the February 15, 2000 Resolutions. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Minutes by: Deborah Hedrick

Approved on: April 11, 2000

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 29, 2000. The following Board Members were present: Chairman DiGiulian, Nancy Gibb, Paul Hammack, James Hart, Robert Kelley and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

Page 585, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. SILVIA L. BORGES, VC 99-D-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of additions 26.6 ft., 10.8 ft. and 19.4 ft. from front lot lines of a corner lot. Located at 1540 6th Pl. on approx. 19,148 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((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. Silvia Borges, 1540 6th Place, 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 carport and room addition to be located 26.6 feet from a front lot line of 6th Place and 10.8 feet from the other front lot line of a corner lot. The applicant also requested a variance for a deck with a hot tub to be located 19.4 feet from the front lot line of Old Dominion Drive. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, variances of 3.4 feet from 6th Place and 19.2 feet from Old Dominion Drive for the carport and room addition and a variance of 10.6 feet for the deck and hot tub were requested.

Ms. Borges presented the variance request as outlined in the statement of justification submitted with the application. She explained that the home was very small and the additions would provide her with adequate living space.

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

Mr. Pammel moved to approve VC 99-D-195 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SILVIA L. BORGES, VC 99-D-195 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of additions 26.6 ft., 10.8 ft. and 19.4 ft. from front lot lines of a corner lot. Located at 1540 6th Pl. on approx. 19,148 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((1)) 10. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 29, 2000; and

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

1. The applicant is the owner of the land.
2. The lot is irregularly shaped and it has frontage on three streets.
3. It would be difficult to construct any additions to the property without a variance due to the triangular shape of the property.

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

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

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

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

1. This variance is approved for the location of a carport/room addition and deck with hot tub as shown on the plat prepared by Guy H. Briggs dated, November 8, 1999, through December 2, 1999, submitted with this application and is not transferable to other land.

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

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. Hart seconded the motion which carried by a vote of 5-0-1. Mr. Hammack abstained from the vote 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 581, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. DANIEL BROUSSARD, SP 99-P-068 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 10.1 ft. from side lot line. Located at 2223 Benedictine Ct. on approx. 28,826 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((36)) 9. (Moved from 1/25/00 due to weather).

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that the applicant requested a deferral of 60 days to address several issues with the Department of Public Works. She suggested a hearing date of May 2, 2000, at 9:00 a.m. Mr. Pammel moved to defer SP 99-P-068 until May 2, 2000, at 9:00 a.m. 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 581, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, VCA 98-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 0.1 ft. from rear lot line and 0.6 ft. from side lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 21. (Deferred from 2/15/00 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. Kenton R. Miller, Jr. and Diane Gronkiewicz Miller, 3201 History Drive, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. On February 15, 2000, the Board requested that the applicants move the deck back at least 2 feet from the side lot line and the application was deferred for decision only to allow the applicants time to submit a revised plat reflecting the requested change. The applicants submitted revised plats showing the deck to be located 2.0 feet from the rear lot line and 2.0 feet from a side lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet with a 12 foot permitted extension and a minimum side yard of 20 feet; therefore, a variance of 11 feet was requested for the rear yard portion of the deck and a variance of 18 feet was requested for the side yard portion of the deck.

Mr. and Mrs. Miller presented the variance amendment request as outlined in the statement of justification submitted with the application. Mr. Miller stated that there was a 2½ foot overhang between the deck and the columns and there was a distance of 4½ feet from the columns to the edge of the property line. Ms. Miller stated that the exterior perimeter of the deck was 2 feet from all property lines.

Mr. Hart asked staff if the under portion of the deck had to be enclosed. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff had discussed that issue with the permits department and it was determined that there was no requirement that the under portion of the deck had to be enclosed.

Mr. Hart asked how high the deck was off of the ground. Mr. Miller replied that the distance at the front of the home was 8½ feet and it increased toward the back of the home.

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

Mr. Hart moved to approve VCA 98-Y-053 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENTON RANDOLPH MILLER, JR. AND DIANE GRONKIEWICZ MILLER, VCA 98-Y-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 2.0 ft. from rear lot line and 2.0 ft. from side lot line. Located at 3201 History Dr. on approx. 21,041 sq. ft. of land zoned R-1 (Cluster). Sully

District. Tax Map 46-2 ((19)) 21. (def from 2/15/00) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 2000; 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 prescribed criteria for the granting of a variance.
3. Because of the unusual placement of the house on the lot, it would be difficult to put the deck anywhere else than where it is.
4. The applicants, by their revision, resolved the issue of widening the area between the deck and the 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 deck as shown on the plat prepared by R.C. Fields, dated October 27, 1999, as revised through February 15, 2000, submitted with this application and is

not transferable to other land.

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

Pursuant to Sect. 18-407 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 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 589, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. EARL E. KLIOZE, SP 99-B-067 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with VC 99-B-170)(Moved from 2/1/00)(Def. From 2/22/00).

9:00 A.M. EARL E. KLIOZE, VC 99-B-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 23.5 ft. from front lot line and parking to remain 3.7 ft. from front lot line. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with SP 99-B-067) Moved from 2/1/00) (Def. From 2/22/00).

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

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. A Non-Residential Use Permit (Non-RUP) was issued for a home professional office in 1976. In 1976, a special permit was not required for the use. At that time the property consisted of the entire Lot 23, 1.87 acres. Associated with this special permit is a rezoning application, which was approved by the Board of Supervisors on February 7, 2000. Because the applicant proposed to subdivide Lot 23 to include a portion of it in the rezoning application, approval of a special permit was required to continue the home professional office use. RZ 1999-BR-058 approved the development of a subdivision of 20 single family detached dwellings on property rezoned from R-1 to R-3.

The applicant requested approval of a special permit for the continuation of a Home Professional Office of dentistry. The dental office consisted of two full-time general dentists and three additional employees. Approximately 150 customers per week were anticipated. The proposed hours of operation would be 7:00 a.m. to 5:30 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturdays, with emergency hours as needed. A parking area with 10 parking spaces was provided.

The applicant also requested variances to permit the dwelling to remain 23.5 feet from the front lot line and the parking area to remain 3.7 feet from the front lot line. For the R-3 District, the minimum required front yard is 30 feet for the dwelling and 10 feet for the parking area; therefore, variances of 6.5 feet for the dwelling and 6.3 feet for the parking area were requested.

On Friday, February 18, 2000, staff was notified by the applicant that the plat that had been submitted with the application was incorrect. Subsequently, a revised plat was submitted on February 23, 2000, which revised the sizes of both the office and dwelling portions of the home. The revised plat noted that the office

portion consisted of 2,145 square feet and the dwelling portion consisted of 1,392 square feet. Given that this use was proposed in a residential district, in which an office use was not otherwise permitted, the Zoning Administrator determined that the office portion of a home professional office use should be subordinate to the residential use and should be less than half the size of the residential portion of the use. Staff could not support the application as revised and recommended denial. Staff noted that for other home professional offices approved by the BZA, the office portions of the uses ranged in size from 4% to 30%.

Mr. Hammack asked whether the use had been implemented before the determination of the Zoning Administrator. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff did not know when the determination was made; however, the determination was recently reaffirmed to ensure that staff had interpreted it correctly.

Mr. Lawrence, agent for the applicant, presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the property had been used as a Dental Office since 1976, and that the applicant was only seeking to continue the use as previously approved. He said the approval of the special permit would not increase the size of the already existing use. He explained that the applicant had proposed to convey a portion of the rear property, which was involved in a recent rezoning case; therefore, the reduction in the size of the lot caused the need for a special permit. Mr. Lawrence clarified that the previous plat was in error because it did not incorporate a storage area and an office that were not included in the public use; therefore, the actual size of the existing use was 2,145 feet. He stated that there was no Ordinance requirement that justified staff's position that this ratio of business square footage to residential square footage negated the ability to obtain a special permit. He said that the application met all of the standards required for the granting of a special permit. He informed the Board that the additional storage-room and office space was not visible to the public outside of the building. Mr. Lawrence stated that, due to the rezoning, the property was subjected to a proffer that stipulated, upon the construction of a new dwelling on the lot, access for the property would be altered from Braddock Road to the new subdivision that was being constructed on the adjacent property. He informed the Board that the application had the support of the Board of Supervisors. Mr. Lawrence stated that the variance requests were a result of the widening of Braddock Road.

Mr. Pammel asked if the size of the residential office had changed since the original special permit was issued in 1976. Mr. Lawrence stated that there had been no change.

Ms. Gibb asked for an explanation of the ratio of business square footage to residential square footage. Ms. Langdon explained that the Zoning Administrator made the determination that an office was not allowed by-right in a residential district except if it was included in a home professional office. She said the determination stipulated that the main use of the structure should be a home consisting of at least 50 percent of the dwelling and the office use should be less than that percentage.

Mr. Hammack asked if the interpretation was a written statement. Ms. Langdon said there was no written copy of the interpretation available; however, it had been in effect since before 1992.

Mr. Hart said if there were other factors, other than size, would that determine whether the office was subordinate to the home. Ms. Langdon stated that size was the only factor. She informed the Board that many determinations of the Zoning Administrator were made based on questions from staff, citizens and agents, and they were not written unless someone submitted a formal written request.

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

Ms. Gibb moved to approve SP 99-B-067 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL E. KLIOZE, SP 99-B-067 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 9425 Braddock Rd. on approx. 32,701 sq. ft. of land zoned R-3. Braddock

District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with VC 99-B-170)(Moved from 2/1/00)(Def. From 2/22/00). 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 29, 2000; and

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

1. The applicant is the owner of the land.
2. The current use has existed and not increased since 1976, and has in the past, and continues to meet the standards that are set forth in the Zoning Ordinance for a special permit and a home office use.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 Special Permit 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, 9425 Braddock Road, 32,701 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 certified by Paul B. Johnson dated, November 2, 1999, as revised through February 22, 2000, 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 five (5), including the applicant.

6. The maximum number of patients permitted on-site at any one time shall be six (6).

7. The hours of operation shall be limited to 7:00 a.m. to 5:30 p.m., Monday through Friday and Saturdays 8:00 a.m. to 1:00 p.m. However these hours of operation shall not preclude bona fide emergency visits by patients who are in severe pain or discomfort.

8. The structure shall be the domicile of the principal practitioner.

9. Ten (10) parking spaces shall be provided on-site for the employees and patients with one (1) accessible parking space being relocated as shown on Attachment 1.

10. The area utilized for the home professional office shall not exceed 2,145 square feet.

11. All signage shall comply with the provisions of Article 12, Signs, of the Zoning Ordinance.

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

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

Mr. 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 8, 2000. 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-B-150 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EARL E. KLIOZE, VC 99-B-170 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 23.5 ft. from front lot line and parking to remain 3.7 ft. from front lot line. Located at 9425 Braddock Rd.on approx. 32,701 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-3 ((1)) 23 pt. (Concurrent with SP 99-B-067) (Moved from 2/1/00) (Def. From 2/22/00). 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 29, 2000; 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 that the small variance request is only necessary because of the recently approved rezoning of the adjacent property.
3. 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 **APPPROVED** with the following limitations:

1. This Variance is approved for the location of the dwelling and parking lot shown on the plat certified by Paul B. Johnson dated, November 2, 1999, as through February 22, 2000, 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. 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 593, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. JOHN M. AND ELIZABETH G. DYE, VC 99-Y-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 9.0 ft. from side lot line and deck 4.5 ft. from side lot line. Located at 3208 History Dr. on approx. 23,667 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 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. John M. Dye, 3208 History Drive, Oakton, 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 9.0 feet from a side lot line and a deck 4.5 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3 feet was required for the porch addition and a variance of 7.5 feet was required for the deck.

Mr. Dye presented the variance request as outlined in the statement of justification submitted with the application. He said the house was uniquely situated in the corner of an irregularly shaped lot located on a pipe-stem; therefore, it was not possible to construct the deck and porch in any other location.

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

Mr. Kelley moved to approve VC 99-Y-196 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN M. AND ELIZABETH G. DYE, VC 99-Y-196 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 9.0 ft. from side lot line and deck 4.5 ft. from side lot line. Located at 3208 History Dr. on approx. 23,667 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 46-2 ((19)) 26. 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 29, 2000; 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 unusually shaped.
4. The applicants had a well-written letter of justification.

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

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

Page 595, February 29, 2000, (Tape 1), JOHN M. AND ELIZABETH G. DYE, VC 99-Y-196, continued from Page 594

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 (screened porch) and the deck shown on the plat prepared by Sikes Surveys, P.C., dated December 14, 1999, submitted with this application and is not transferable to other land.

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

Pursuant to Sect. 18-407 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 5-0. Mr. Hammack was not present for the vote 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 595, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. GEORGE W. DETRAZ & SHARON M. WEEKLEY, VC 99-M-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure in a front yard of a lot containing less than 36,000 sq. ft. Located at 7417 Annanwood Ct. on approx. 11,008 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 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. Michael McHugh, 2000 N. 14th Street, Arlington, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit an accessory structure, which was an attached garage, in the front yard of a lot containing less than 36,000 square feet. Approval of the application required a variance from Paragraph 12C of Section 10-104 of the Zoning Ordinance.

Mr. McHugh, agent for the applicant, presented the variance request as outlined in the statement of justification. He submitted photographs illustrating the layout of the garage. He stated that the lot was unusually shaped and had exceptional topographic conditions. He said the neighbors were in support of the application. Mr. McHugh requested a waiver of the 8-day waiting period.

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

Mr. Pammel moved to approve VC 99-M-197 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE W. DETRAZ & SHARON M. WEEKLEY, VC 99-M-197 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an accessory structure in a front yard of a lot containing less than 36,000 sq. ft. Located at 7417 Annanwood Ct. on approx. 11,008 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 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 February 29, 2000; 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 unusually configured.
4. There is a carport that already exists and the new structure would replace it.
5. Technically the structure was in the front yard although it did not appear to be.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 accessory structure (garage) shown on the plat prepared by GJB Engineering, Inc., dated November 14, 1999, as revised through December 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 approval of final inspections shall be obtained.

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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Hammack 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 February 29, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 597, February 29, 2000, (Tape 1) Scheduled case of:

9:00 A.M. PHILIP & CHING CHAO, VC 99-D-174 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the construction of addition 5.8 ft. from side lot line and 15.1 ft. from rear lot line. Located at 6678 Avignon Blvd. on approx. 5,174 sq. ft. of land zoned PDH-4. Dranesville District. Tax Map 40-2 ((45)) 4. (Moved from 1/25/00 due to weather).

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 Gremillion, 3629 Kaverton Road, Forestville, Maryland, 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, which consisted of a patio room on a deck, to be located 5.8 feet from the east side lot line and 15.1 feet from the rear lot line. The Zoning Ordinance requires a minimum 8 foot side yard and a minimum 25 foot rear yard; therefore, a variance of 2.2 feet from the side yard and 9.9 feet from the rear yard were requested.

Mr. Gremillion, agent for the applicant, presented the variance request as outlined in the statement of justification. He stated that the house was designed to have a deck off the back and a variance was needed due to the location of the home on the lot. He informed the Board that the applicant had amended his application to construct the deck only, and omitted the request for the patio room because of opposition from the neighborhood Architectural Review Board regarding the proposed building materials.

Ms. Gibb asked if the proposed deck was similar in size and appearance to the other decks in the neighborhood. Mr. Gremillion confirmed that the deck would be equal in proportion and character to the other decks in the area.

Mr. Hammack asked whether or not the deck, without the patio room, required a variance. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the deck portion would not require a variance.

Mr. Hart asked if the Architectural Review Board was aware and in support of the current application. Mr. Gremillion stated that the applicant had received verbal approval to construct the deck.

Mr. Hammack stated that the plat did not indicate any structural reason for the deck to extend as far along the home that it was proposed. He informed Mr. Gremillion that a variance would not be needed if the applicants agreed to construct the deck 8.0 feet from the side lot line. Mr. Gremillion stated that the applicants would have to make the decision to redesign the deck or continue with the current variance

request.

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

Mr. Hammack moved to defer decision for VC 99-D-174 until March 14, 2000, at 9:00 a.m., to allow the applicants time to submit a new plat that reflected the omission of the patio room and the dimensions of the deck. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 598, February 29, 2000, (Tape 1 &2) Scheduled case of:

9:00 A.M. MARJA AND ADNAN BCHARA, SP 99-M-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 deck to remain 27.8 ft. from front lot line and 4.3 ft. from side lot line. Located at 6404 Recreation Ln. on approx. 19,251 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((18)) 6. (Admin. Moved from 1/25/00).

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 Bchara, 6404 Recreation Lane, Falls Church, Virginia, replied that it was.

Phyllis Wilson, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval of a special permit for reduction to minimum yard requirements based on an error in building location to permit a deck to remain 27.8 feet from the front lot line and 4.3 feet from a side lot line. The Zoning Ordinance requires a minimum front yard of 45 feet; therefore, the amount of the error was 7.2 feet or 21 percent. The minimum required side yard is 15 feet; therefore, the amount of error was 10.7 feet or 71 percent.

Mr. Bchara and Edward Welker, agent for the applicant, presented the special permit request as outlined in the statement of justification. He stated that the deck was constructed 2 ½ feet into an easement.

Mr. Hammack asked if the applicants submitted the building plans to Fairfax County and whether the deck was shown on the building plans. Mr. Bchara stated that the County had reviewed the plans including the original proposal for a deck.

Mr. Hart asked if the applicant had obtained the building permit for the deck. Mr. Welker explained that, since Mr. Bchara had changed so many things about the house, he decided to revise the plans and resubmit them to the County. At that time the error in building location was discovered and the County suggested that the applicant pursue a separate building permit for the deck. Mr. Welker informed the Board that the permit was currently being held up in Zoning; therefore, a permit for the deck had never been issued.

Mr. Hart asked if the home was completed and if it was occupied. Mr. Bchara stated that it had been completed but it was vacant.

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

Mr. Hart moved to approve SP 99-M-066 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARJA AND ADNAN BCHARA, SP 99-M-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 deck to remain 27.8 ft. from front lot line and 4.3 ft. from side lot line. Located at 6404 Recreation Ln. on approx. 19,251 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((18)) 6. (Admin. Moved from 1/25/00). Mr. Hart

moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 29, 2000; 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 deck shown on the plat prepared by Cook and Miller, LTD., dated November, 13, 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. Hammack 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 8, 2000. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. FELIX S. TANTOCO, ROCIO O. TANTOCO, GEORGINA P. TANTOCO AND CHRISTOPHER P. JAMES, VC 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed lot 17B having a lot width of 11.9 ft. Located at 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17. (DEFERRED FROM 11/9/99 and 1/4/00 for decision only.) (Moved from 1/25/00 due to weather).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to permit the subdivision of 1 lot into 2 lots with proposed lot 17B having a lot width of 11.9 feet. The case was deferred on January 4, 2000, in order for staff to research the circumstances that lead to the expiration of a previous variance, and to provide the Board with the results of any litigation that had been filed in the past pertaining to previous variance requests on the application property. The previous variance, VC 82-P-116 was approved with an 18-month expiration date and it was for the subdivision of 1 lot into 4 lots. The variance was approved in the early 1980's. One lot that had been shown on the variance plat was recorded and after that the variance expired. An additional variance, VC 84-C-143 was filed after the expiration of the original variance and it was denied. At that time the applicants, who were not the current applicants, appealed the decision by filing for a petition for a Writ with the Circuit Court. However, the Writ was non-suited when the Board of Zoning Appeals (BZA) granted a waiver of the 1-year waiting period in order to file for a third variance application. The third variance, VC 85-P-052 was heard by the BZA in October of 1985 and it was also denied. That decision was appealed and the Circuit Court upheld the determination of the BZA.

Ms. Strobel, agent for the applicants, presented the variance request as outlined in the statement of justification. She stated that the variance request was new and for the subdivision of 1 lot into 2 lots that would be substantially larger than the lots in the surrounding area. She said the lot was unusually shaped and the current property owners purchased the land in good faith. She reiterated that the application met all of the standards for the granting of a variance.

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

Mr. Hart stated that he would be abstaining from the vote as he was not present for the first public hearing. Mr. Pammel stated that the property had a very interesting history and he had trouble with how the end result came about. He stated the request was reasonable and within the density range as set forth in the Comprehensive Plan and the lot was of a very unusual configuration.

Mr. Pammel moved to approve VC 99-P-101 for the reasons stated in the Resolution subject to the applicant's revised Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FELIX S. TANTOCO, ROCIO O. TANTOCO, GEORGINA P. TANTOCO AND CHRISTOPHER P. JAMES, VC 99-P-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of one lot into two lots with proposed lot 17B having a lot width of 11.9 ft. Located at 2740 Hunter Mill Rd. on approx. 5.45 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 17. (DEFERRED FROM 11/9/99 and 1/4/00 for decision only.) (Moved from 1/25/00 due to weather). 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 29, 2000; and

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

1. The applicants are the owners of the land.
2. The variance was a reasonable request and within the density range as set forth in the Comprehensive Plan.
3. The lot is very unusually configured.
4. There was a previous application in the past that did allow the division of four lots on the property however, that was not implemented, and now the request has been narrowed down to two lots.

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

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

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 lot 17 as shown on the plat prepared by Land Design Consultants (John L. Marshall, Land Surveyor) dated June 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. Right-of-way measuring fifty six (56) feet from the centerline of Hunter Mill Road shall be dedicated to the Board of Supervisors, in fee simple, at the time of subdivision plat approval or upon demand, whichever occurs first. All ancillary easements along the frontage of the site shall be conveyed to the Board of Supervisors at the time of dedication.

3. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Any existing trees designated by the Urban Forester, or their agent, to be preserved, shall be

protected from damage by construction activity, as prescribed by and to the satisfaction of the Urban Forester.

4. The home constructed on lot 17B shall be a maximum of 2,500 square feet. The home shall have a maximum of three (3) bedrooms and not exceed one story.

5. All utilities required to serve the home on proposed lot 17B shall be installed with a connection to Hunter Mill Road and not Marbury Road.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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 4-1-1. Mr. Hammack voted nay, Mr. Hart abstained from the vote 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 602, February 29, 2000, (Tape 2) Scheduled case of:

9:00 A.M. JIAN LIU AND LIMIN CHENG, SP 99-D-071 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from rear lot line and 0.4 ft. from side lot line. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with VC 99-D-184). (Admin moved from 2/15/00)

9:00 A.M. JIAN LIU AND LIMIN CHENG, VC 99-D-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.4 ft. from the front lot line of a corner lot. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with SP 99-D-071) (Admin moved from 2/15/00)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jian Liu, 6740 Churchill Road, McLean, Virginia, replied that it was.

Julie Schilling, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for reduction to the minimum yard requirements based on error in building location to allow an existing deck to remain 1.3 feet from the side lot line and 0.4 feet from the rear lot line. The applicants also requested a variance to allow the construction of a two-story addition 24.4 feet from the front lot line of a corner lot. The Zoning Ordinance requires a minimum side yard and minimum rear yard of 12 feet; therefore, the amount of the error was 5.7 feet and 4.6 feet. A minimum front yard of 30 feet was required; therefore, a variance of 5.6 feet was requested.

Dwayne Varney, 705 Grandview Drive, Alexandria, agent for the applicant, presented the special permit and variance requests as outlined in the statements of justification. He stated that the deck was constructed prior to the applicants' purchase of the property and they were unaware of the error in building location until they were informed at the time of the variance request. He said the existing garage was approximately 6 to 8 feet below the current grade; therefore, the driveway and the garage were virtually unusable. The applicants proposed to construct a functional two-story garage.

Mr. Hammack stated that there were several letters in opposition and asked why the applicant could not

construct the addition in a way that would not require a variance. Mr. Varney stated that the current garage did not have enough depth to park a car due to the location of the home on the lot; therefore, a variance was needed to make the garage functional.
There were no speakers and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 99-D-071 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JIAN LIU AND LIMIN CHENG, SP 99-D-071 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 1.3 ft. from side lot line and 0.4 ft. from rear lot line. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with VC 99-D-184). (Admin moved from 2/15/00) 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 29, 2000; 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 Thomas G. Gilbert, Land Surveyor, dated through November 22, 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. 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 8, 2000. This date shall be deemed to be the final approval date of this special permit.

Ms. Gibb moved to approve VC 99-D-184 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JIAN LIU AND LIMIN CHENG, VC 99-D-184 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 24.4 ft. from the front lot line of a corner lot. Located at 6740 Churchhill Rd. on approx. 9,834 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((4))(C) 21 and 22. (Concurrent with SP 99-D-071) (Admin moved from 2/15/00) 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 29, 2000; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance request is moderate when you consider that part of the request is for the over-hang of the roof.
3. The lot is unusually shaped.
4. Because the lot is a corner lot, this location is the most logical place to locate the addition to have the least amount of impact possible.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general

regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Thomas G. Gilbert, Land Surveyor, dated through November 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 approval of final inspections shall be obtained.

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 and Mr. Kelley 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 8, 2000. This date shall be deemed to be the final approval date of this variance.

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Page 605, February 29, 2000, (Tape 2) Scheduled case of:

9:30 A.M. ASSOCIATED BUILDERS, INC., A 1999-DR-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of the Zoning Administrator's determination that, in accordance with Sect. 8-003 of the Zoning Ordinance, the Board of Zoning Appeals has no jurisdiction to vary, modify or waive any of the regulations or standards established by the Board of Supervisors for Special Permits and, therefore, the appellant's variance application was accepted in error. Located at 1212 Spring Hill Rd. on approx 1.22 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((16)) 3. (DEFERRED FROM 12/14/99. Moved from 1/25/00 due to weather.)

Robert Lawrence, 3110 Fairview Park Dr., Falls Church, Virginia, agent for the appellant, requested

Page 606, February 29, 2000, (Tape 2), ASSOCIATED BUILDERS, INC., A 1999-DR-030, continued from Page 605

withdrawal of the appeal.

Mr. Hammack moved to approve withdrawal of A 1999-DR-030. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 606, February 29, 2000, (Tape 2), After Agenda Item:

Additional Time Request
Cub Run Primitive Baptist Church
SP 97-Y-029

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is February 12, 2002.

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Page 606, February 29, 2000, (Tape 2), After Agenda Item:

Additional Time Request
Greenbriar Civic Association,
Agape Christian Fellowship Church and
Pleasant Valley Preschool
SPA 78-P-192-2

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is February 13, 2001.

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Page 606, February 29, 2000, (Tape 2), After Agenda Item:

Additional Time Request
Chantilly Bible Church
SP 97-Y-022

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is February 12, 2001.

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Page 606, February 29, 2000, (Tape 2), After Agenda Item:

Additional Time Request
Douglas and Carol Hertel
VC 92-B-100

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The new expiration date is December 16, 2001.

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Page 607, February 29, 2000, (Tape 2), After Agenda Item:

Approval of February 22, 2000 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 607, February 29, 2000, (Tape 2), After Agenda Item:

Out-of-Turn Hearing Request
J. Thomas & Judith Hines
VC 00-P-018

Mr. Pammel moved to approve the Out-of-Turn Hearing Request. The Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The public hearing was scheduled for April 25, 2000, at 9:00 a.m.

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As there was no other business to come before the Board, the meeting was adjourned at 10:53 a.m.

Minutes by: Lori M. Mallam

Approved on: April 18, 2000

Regina Thorn, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals