The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 2, 2001. 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 9:00 a.m.

Mr. Kelley nominated John DiGiulian to be the Chairman of the Board of Zoning Appeals for 2001. Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0.

Mr. Kelley nominated Paul Hammack and John Ribble to be Vice-Chairmen of the Board of Zoning Appeals. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals and called for the first scheduled case.

Page 001, January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MEAGAN C. JANS, VC 00-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line, 2.0 ft. from rear lot line and eave 1.0 ft. from rear lot line. Located at 1209 Priscilla La. on approx. 10,533 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (18) 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. Meagan Jans, 1209 Priscilla Lane, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of an accessory structure, a detached garage, to be located 5.0 feet from a side lot line and 2.0 feet from the rear lot line and an eave 1 foot from the rear lot line. A minimum side yard of 12 feet is required and a minimum rear yard of 12 feet with a permitted extension of 3 feet for the eave. Therefore, variances of 7.0 feet for the side yard and 10 feet for the rear yard and 8.0 feet for the eave were requested

Ms. Jans presented the variance request as outlined in the statement of justification submitted with the application. She said only 4 feet of the structure would be seen above the existing stockade fence. Ms. Jans stated that she had already placed screening along the fence. She said she reduced the design from a 2-car garage to a 1-car garage because it would have been too large. Ms. Jans said the garage would be the same architectural design as her house. She stated that there were similarly designed garages in the neighborhood. Ms. Jans said the garage was to be located to the side so that it would not directly impact the neighbors.

Mr. Ribble asked what was the height of the garage. Ms. Jans replied 12 feet.

Mr. Hammack asked was there any reason that the applicant could not pull the garage a little further off the rear property line. Ms. Jans said she reviewed the variance code and noted that 2 feet was the required distance that one needed to have. She said if there was a problem she would reconsider, but that there was still room for maintenance of the property and the garage.

Mr. Ribble asked if was just the eave that was coming closer to the lot line. Ms. Jans replied that was correct.

Chairman DiGiulian asked if the applicant had seen the letter in opposition from the Murrays and whether she would like to respond. Ms. Jans replied that when she had her house appraised, she was informed that a garage would enhance the property value and not detract from the neighbor's property. She said the stockade fence had been in existence for over 7 years and there would not be any blockage of the sun once the garage was built. Ms. Jans said the eaves could be moved to the other side if the neighbor was concerned about rain.

Chairman DiGiulian called for speakers.

John Massey, 1207 Priscilla Lane, came forward to speak in support of the application.

James White, 8611 Conover Place; Jim Hallenbach, 8615 Conover Place; and Kathryn Allen, 8609 Conover Place, came forward to speak in opposition of the application. They expressed concerns relating to the height of the garage, the application not satisfying the standards, the lot not being exceptionally narrow or shallow, the garage being a detriment to property values, lack of room to maintain the garage, setting a precedent, damage of trees and plants, lack of room to grow screening plants, character of the neighborhood being changed, the addition being too close to the lot line and that the proposal was in violation of the Wainwood subdivision restrictions.

Mr. Hart asked if there were sewer easements. Mr. Bernal replied that the plat did not reflect easements.

Mr. Ribble stated that there was reservation for an easement.

Ms. Jans stated in her rebuttal that the request was for a single car garage, which was 12 feet in height. She said the proposed size would cause minimal impact. Ms. Jans said there were bushes to provide screening to minimize the impact on the neighbors.

Mr. Hammack asked when the sunroom was constructed. Ms. Jans said it was started after the plat was submitted.

Mr. Hammack said it was hard to figure where the garage was with respect to the trellis.

Mr. Hart asked the applicant whether she considered attaching the garage to the house. Ms. Jans said there was a slope and the best place for the garage was to the rear.

Chairman DiGiulian closed the public hearing.

Mr. Ribble said the applicant had indicated that she was willing to make changes to the proposal to lessen the impact of the garage. He moved to defer the application. Mr. Ribble said the applicant should rethink where the garage should be located.

Mr. Kelley seconded the motion and stated that the application needed improvement to have the ability to maintain the garage.

Mr. Hart stated that he would like to read the document about the reservation of the easement.

Mr. Pammel stated that he would like to have an updated plat.

The motion carried by a vote of 7-0 and the application was deferred to February 6, 2001, at 9:00 a.m.

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Page 002 January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 60.

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., Arlington, Virginia, replied that it was.

Ms. Strobel requested a deferral to allow an opportunity to meet with the neighbors to address their concerns.

Mr. Hammack moved to defer the application to February 13, 2001 at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote 5-0. Mr. Ribble and Mr. Pammel were not present for the vote.

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9:00 A.M. MONIQUE REMY & CUONG NGUYEN, SP 00-B-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.6 ft. from side lot line such that side yards total 15.8 ft. Located at 5209 Pine Crossing La. on approx. 9,899 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((21)) 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. Eugene Kiernan, BC Consultants, 2927 Hunter's Glen Way, Fairfax, Virginia, replied that it was.

Mr. Hart asked the applicant whether Bowman Consulting was representing the applicant in the subject application because he had another case in which he was on the opposing side. Mr. Hart stated that would not impair his ability to participate in the public hearing.

Mr. Kiernan stated that Bowman Consulting did not represent the applicant.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a reduction in minimum yard requirements based on an error in building location to permit a dwelling to remain 7.6 feet from a side lot line such that side yards total 15.8 feet. A minimum 8-foot side yard and a minimum 20-foot total side yard are required; therefore, modifications of 0.4 feet and 4.2 feet, respectively, were requested for the existing dwelling.

Mr. Kiernan, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the house was staked out without noticing the 20-foot total side yard from the approved grading plan. Mr. Kiernan said it was not noticed until they applied for a permit to get the deck. He said the error was not the property owner's fault and they should not be penalized.

Mr. Pammel said there was also .4-foot error on the northeast side. Mr. Kiernan stated that the error on the northeast side was due to the builder adding a brick ledge that wrapped around the corner of the house. He said that part was staked properly, but the builder added a decorative brick edge.

Mr. Pammel said the problem could be resolved through a subdivision as well. Mr. Kiernan stated that was correct. He said Bowman Consultants did a sketch on how the builder could re-subdivide the lot. Mr. Kiernan said they would have to re-subdivide with the adjacent homeowner's association property to increase the side yard to get the property dimension.

Mr. Pammel asked had that option been explored. Mr. Kiernan replied that Mike Congleton, Zoning Permit Review Branch, informed him to apply for a special permit. He said the homeowners association would have to agree to a re-subdivision.

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

Mr. Hammack moved to approve SP 00-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

MONIQUE REMY & CUONG NGUYEN, SP 00-B-061 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.6 ft. from side lot line such that side yards total 15.8 ft. Located at 5209 Pine Crossing La. on approx. 9,899 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-3 ((21)) 7. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 2, 2001;

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 single family detached dwelling shown on the plat prepared by BC Consultants, dated October 6, 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 004 January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. VIOLETA A. PEITH - MOMMY PEITH CHILD DAY CARE, SP 00-Y-059 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6323 South Springs Ci. on approx. 10,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((4)) 379.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Violetta Peith, 6323 South Springs Circle, Clifton, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a home child care facility with a maximum of 10 children on site at any one time. The applicant currently operated a home child care facility on the site. The hours of operation proposed were 7:30 a.m. to 5:45 p.m., Monday through Friday, with a total of 1 employee in addition to the applicant. There were no land use, transportation, or environmental issues associated with this request and staff recommended approval subject to the proposed development conditions contained in the staff report.

Ms. Peith presented the request as outlined in the statement of justification submitted with the application. She said she was State licensed since 1993 and had been in business for 15 years. Ms. Peith stated that there was ample space for the children to play. She said the children did not disturb the flowerbeds built by the neighbors. Ms. Peith said the parents arrived and departed at staggered times which caused no impact on traffic. She said they had a two-car garage with a driveway for the parents to park. Ms. Peith stated that she had been selected to be a mentor for other providers and that there was a great need for childcare in Fairfax County. She said the property was kept in beautiful condition. Ms. Peith submitted photographs of the property.

Chairman DiGiulian called for speakers.

Marie Graham, Compton Road, Anita Moore, 5724 Clifton Drive, Susan Baine, 7003 Union Mill Road, and Trish Kiritz, 13532 Gardener Court, came forward to speak in support of the application. They stated that the applicant provided quality day care, the landscape was aesthetically pleasing, and the arrival and departure times were staggered.

Gail and Dale Ellis, 6412 Stonehaven Court and Rosetta Whiting, 6325 South Spring Circle, came forward to speak in opposition. They expressed concerns relating to noise of the children, that permission for more than seven children should be denied, the need for a privacy fence, buffering, traffic, and not being able to enjoy their property.

Mr. Pammel asked how long Ms. Ellis had resided at her residence. Ms. Ellis stated from 1995. He asked whether the day care center was in operation at that time. Ms. Ellis stated that they were not aware of that when they purchased the property.

Mr. Hart asked Ms. Ellis whether screening or a fence would mitigate some of the noise. She replied yes.

Ms. Peith stated in her rebuttal that she had been state licensed for 9 and 12 children. She said she was not aware that the County had different laws. Ms. Peith stated that she was registered with the Office for Children and the Food and Drug Administration. She said the children stayed within the property and that she complied with the homeowners' regulations. Ms. Peith said the children played mostly on the deck. She presented a petition signed by the neighbors in support of the application.

Mr. Kelley asked how long had there been an employee. Ms. Peith said since 1993.

Mr. Hart asked the applicant whether she would be able to construct a fence. Ms. Peith replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said this was a difficult decision. He said there were several sides of the application. Mr. Pammel said the activity had been ongoing for a period of time since 1993 when she was licensed. He said that preceded the arrival of the adjoining residents. Mr. Pammel said it did not make it proper. He said even though the activity existed, it did not comply with the County requirements. Mr. Pammel said this was not an uncommon occurrence. He said many business people in daycare operating in the County, were not aware that permits were required from the County as well as the State. Mr. Pammel commended Ms. Peith for the fact that she did obtain the appropriate licensing from the State. He said she had been supported by people who utilized her services and she was a talented caregiver. Mr. Pammel said the basic problem was that it was a community with relatively small lots and any activity on any given property would impact the other

properties. He said the response from the neighbors was to leave the number of children to 7. Mr. Pammel said the neighbors had expressed that this problem had been there for a period of time and they didn't want any more activity. He said an increase in 3 children did not sound like a lot, but when you looked at the size and scope of the activity, it would be a 40% increase in the intensity of the activity for the site. He said he was aware that there was serious shortage of daycare facilities in the County, though the Board had to consider where the activity was taking place and what impact it had upon the neighbors. Mr. Pammel moved to deny the application.

Mr. Hammack seconded the motion.

Ms. Gibb said she felt it was a close case, but that she would not support the motion. She said the Board could fashion some conditions that would mitigate the 3 extra children. Ms. Gibb said she would have the children come in through the front door, add fencing and screening. She said she did not know what the people in the County were going to do because the wives had to work to live here. Ms. Gibb said she knew the anguish that mothers suffered. She said the Board could help the neighbors and mitigate the problems.

Mr. Kelley stated that he agreed with Ms. Gibb. He said he felt the applicant should be given the chance to make a better application with a fence and anything else that would be required. Mr. Kelley said the applicant seemed to be an excellent child care provider.

Mr. Kelley moved to defer the application to February 27, 2001. Mr. Hart seconded the motion.

Mr. Hart said that he was struggling with the impact of the outdoor play area which was not sufficiently addressed. He said that he disagreed with the neighbors and he thought they would be better off with 10 children and physical barriers and landscaping then they would be with 7 and the yelling and the kids running in the yard.

Mr. Hammack said he supported Mr. Pammel's motion because the lot was small and the reason the Board had these types of hearings were to try to look at the land use issues. He said Ms. Peith pushed the play areas to the end of the property where it impacted the greatest on the neighbors. Mr. Hammack said there were a lot of negatives on the use of the property. He said there was a 10 foot storm drainage easement down one side of the property that could possibly cause a constraint on the fence. Mr. Hammack said the back yard was shallow which magnified the noise. He said they had to balance the impact of this kind of a use on the neighbors. Mr. Hammack said there were a lot of constraints on the lot and even if the Board wanted to address them, they would not be addressed satisfactorily. He said he did not think the Board would be able to eliminate impact on the neighbors. Mr. Hammack said the State license always says that the applicant has to comply with the local Ordinances. He said he felt the Board should deny the application.

Mr. Ribble said everyone had made good points but he would support the deferral request.

The motion to defer carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted against the motion. The application was deferred to February 27, 2001.

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Page 006 January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KENDALL K. ROSE, SP 00-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 dwelling to remain 4.5 ft. from side lot line. Located at 3136 Holmes Run Rd. on approx. 38,552 sq. ft. of land zoned R-1. Mason District. Tax Map 50-4 ((21)) 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. Kendall Rose, 3136 Holmes Run Road, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow a dwelling with an attached garage to remain 7.5 feet from the side lot line based on an error in building location. Staff reviewed aerial photographs, which revealed that there was

no garage attached to the dwelling in 1953 but by 1968 the garage was constructed and appeared to be the same size as the structure visible in recent aerial photographs.

The applicant was issued a building permit on July 17, 2000, for an addition to the rear of the property, with a basement and a second story for the dwelling. She said when construction commenced, a complaint was filed with the Building Code Enforcement Branch and an inspection revealed that no building code violations had occurred. However, the applicant was advised to seek a special permit for an error in building location, after review of the building permit plat indicated that the building permit plat and the Board of Zoning Appeals application plat from 1954 did not match.

Mr. Hart asked if there was anything besides the minutes that dealt with the height of the structure. Ms. Stanfield replied that there was no further information regarding the height of structure.

Mr. Hart asked if part of it was taller than the 1954 structure. Ms. Stanfield stated that there were no records with regard to the height.

Ms. Rose presented the request as outlined in the statement of justification submitted with the application. She said in July 2000, plans to renovate the home were submitted to Fairfax County and approved. Ms. Rose stated that a new garage roof was built that went from front to back, rather than side to side to help alleviate the water accumulation between the garage and the house. She submitted photographs to the Board reflecting the work that had been done to the property. Ms. Rose said they went to all the neighbors and explained the project and there was no negative feedback.

Mr. Hammack asked were there any plans for another garage or additional parking. Ms. Rose said that was not part of the plans, but they were putting in a horse-shoe driveway.

Mr. Hart asked whether the additional extension was essential to the addition. Ms. Rose said, as shown in the photographs, the overhang for the addition would not be different from what had previously been there.

Mr. Hart asked whether the addition would be taller with the new roof. Ms. Rose replied no.

Chairman DiGiulian called for speakers.

Mary Hollander, 3140 Holmes Run Road, came forward to speak in opposition. She said the applicant was not acting in good faith and the original request did not include the garage. Ms. Hollander stated that the hardship was self-induced and she was concerned about her property value. Ms. Hollander stated that the height was being increased which would set a precedent in the neighborhood. She said there was ample space to build.

Mr. Hammack asked Ms. Hollander how far was her house located from the subject property. Ms. Hollander replied 30 feet.

Ms. Rose stated in her rebuttal that she had kept the neighbors informed verbally.

Ken White, Project Manager, stated that the overall height of the structure would be approximately the same.

Mr. Hart asked whether the original plan was submitted before obtaining the building permit. Mr. White replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 00-M-066 for the reasons noted in the Resolution. He said the plat in 1954 which was the subject of the original variance, was wrong. Mr. Hart stated that the garage had been there for over 40 years. Mr. Hart said it caused a hardship on the applicant to have to change the house. He said the impact of the structure as a bedroom would be significantly different from what it was previously as a garage.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KENDALL K. ROSE, SP 00-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 dwelling to remain 4.5 ft. from side lot line. Located at 3136 Holmes Run Rd. on approx. 38,552 sq. ft. of land zoned R-1. Mason District. Tax Map 50-4 ((21)) 26. 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 2, 2001; 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 David M. Furstenau, dated July 10, 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.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 009 January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. LAWRENCE A. & JUDITH A. OUFIERO, SP 00-S-060 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11051 Sandy Manor Dr. on approx. 5.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((14)) 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. Lawrence Oufiero, 11051 Sandy Manor Drive, Fairfax Station, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the construction of a 1,868 square foot accessory dwelling to be located south and east of the existing 7,318 square foot dwelling. Staff recommended approval of the application subject to the proposed development conditions dated December 26, 2000.

Mr. Lawrence presented the request as outlined in the statement of justification submitted with the application. He said the accessory dwelling was for his widowed mother. He said the structure would be level with the house.

Ms. Gibb asked the applicant if he had read and agreed with the proposed conditions. Mr. Oufiero replied yes.

Ms. Gibb moved to approve SP 00-S-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

LAWRENCE A. & JUDITH A. OUFIERO, SP 00-S-060 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11051 Sandy Manor Dr. on approx. 5.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-3 ((14)) 10. 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 2, 2001; and

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

1. The applicants are the owners of the land.
2. The land is zone R-C and WS.
3. The lot is approximately 5 acres.
4. The applicant presented testimony indicating compliance with the required standards.

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

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

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

limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 11051 Sandy Manor Drive (5.00 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 Paul B. Johnson & Associates, Inc., dated August 29, 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 occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

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

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

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

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

9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance.

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

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

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. 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 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 010, January 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARGARET J. DUBOIS, VC 00-P-143 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 2921 Fairhill Rd. on approx. 24,013 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John DaPogney, 8700 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit construction of 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.

Mr. DaPogney, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the subject lot was vacant but surrounded by existing dwellings. Mr. DaPogney stated that the lot was exceptionally narrow lot and that most of the houses were built in the 1950s and were within the 20 foot required side yard setback. He said variances had been granted for the newer dwellings that were under construction. Mr. DaPogney said one of neighbors submitted a letter in support of the application. He said some of the other neighbors were concerned that a house 9 feet from the property line would affect neighboring properties during construction and would affect drainage. Mr. DaPogney stated that a grading plan would be done and submitted to the County for approval which would ensure that no damage would be done to the adjacent lot. He said the overhead utility might have to be relocated.

Mr. Hart asked about the design of the house. Mr. DaPogney stated that the house had not been designed yet. He said they wanted to obtain the variance first.

Chairman DiGiulian called for speakers.

William Vetter, 2923 Fairhill Road, came forward to speak in opposition. He expressed concerns relating to the resale of his property, the removal of aged trees in the front and rear yard, and that the house would not be compatible with other homes in the neighborhood.

Mr. Pammel asked the speaker whether he had considered purchasing the lot. Mr. Better stated that he could not afford to purchase the lot.

Mr. DaPogney stated in his rebuttal that there were a number of new house being built in the neighborhood. He said there were other neighbors that supported the request.

Mr. Ribble asked whether the house could be located somewhere else on the property. Mr. DaPogney stated that he was trying to keep the house as far back as possible.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 00-P-143 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET J. DUBOIS, VC 00-P-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from both side lot lines. **(THE BOARD APPROVED 12.0 FEET FROM BOTH SIDE LOT LINES)** Located at 2921 Fairhill Rd. on approx. 24,013 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 23. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 2, 2001; 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.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 new dwelling 12 feet from each lot line shown on the plat prepared by Larry J. Ratliff, dated October 3, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 10, 2001. This date shall be deemed to be the final approval date of this variance. //

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. (Def. From 8/1/00 for decision only)

Chairman DiGiulian recused himself from the public hearing because he had worked on the appellant's site plan.

William Shoup, Deputy Zoning Administrator, indicated that the appellants requested a deferral.

Jane Kelsey, Jane Kelsey and Associates, Inc., came forward stating that she did not represent the appellant but that she was assisting the appellant in trying to resolve the site plan issue. She said after reviewing all the information pertaining to the appeal, she believed the appellant needed some assistance because they had not provided the Board with all the information they shared with her. Ms. Kelsey stated that the issue of the appeal was the decision of the Director of the Department of Public Works and Environmental Services (DPWES) requiring certain things under the Zoning Ordinance. She said in her review of the staff report, that was never addressed at all and neither was the issue of nexus, which is what the appellant's problem was with the site plan. She said the appellant was having difficulties because he had been in the hospital on January 1, 2001. Ms. Kelsey said the appellant asked that she speak for him to request the deferral and the opportunity to provide additional information.

Mr. Ribble asked how much of a deferral would be necessary. Ms. Kelsey stated that the appellant would like a deferral of 4 months.

Mr. Hammack recused himself from participating in the discussion because he had done some legal work with Ms. Kelsey's family.

Ms. Gibb asked about the stormwater pond. Ms. Kelsey stated that it was not required.

Mr. Hart asked what difference a deferral would make. Ms. Kelsey replied that if the appeal was heard and denied the appellants would have to close the business.

Mr. Shoup stated that the appeal was from a 1999 Notice of Violation and not having a Non-Residential Use Permit (non-RUP) for their business operation. He said this was not an appeal of any decision made by DPWES on the site plan issues. Mr. Shoup said that issue arose in the appellants' efforts to try to come into compliance. He said the way to resolve the violation was to obtain site plan approval. Mr. Shoup said the appellants met with DPWES staff to discuss the various site plan issues and options were cited regarding the stormwater management issue. He said one was a fan filter, that they could record a conservation easement and the rain garden approach. Mr. Shoup said the appellants had been well aware of what was required of them and the appeal had been deferred several times to allow them to resolve the issues. He said staff would not support another deferral.

Mr. Kelley stated that as long as the appellant was making some progress he would support a deferral. He moved to defer the appeal for six months.

Mr. Shoup stated that the appellant had been operating without a site plan for 8 years.

Mr. Kelley stated that the appellant could not sell the property without site plan and non-RUP approval and there had been problems because of the split zoning.

Mr. Pammel asked when the house was built. Ms. Kelsey replied 100 years ago and the property had been rezoned from rural to business.

Ms. Gibb seconded the motion. The motion carried by a vote of 3-2. Mr. Hart and Mr. Pammel voted against the motion. Mr. Hammack and Chairman DiGiulian were not present for the vote.

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Page 014, January 2, 2001, (Tape 1), After Agenda Item:

Request for Additional Time
Holy Spirit Lutheran Church
SP 95-S-050

Mr. Hart moved to approve the additional time request. Ms. Gibb seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Hammack were not present for the vote. The new expiration date is April 10, 2003.

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Page 014, January 2, 2001, (Tape 1), After Agenda Item:

Approval of December 19, 2000 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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As there was no other business to come before the Board, the meeting was adjourned at 12:06 p.m.

Minutes by: Regina Thorn Corbett

Approved on: May 8, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 9, 2001. The following Board Members were present: Chairman John DiGiulian; John Ribble; Paul Hammack; Robert Kelley; James Pammel; James Hart; and Nancy Gibb.

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.

9:00 A.M. RICHARD STARK, VC 00-P-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 5.5 ft. in height to remain in front yard of a corner lot and permit accessory structure in front yard of lot containing 36,000 sq. ft. or less. Located at 3001 Strathmeade St. on approx. 11,120 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((17)) 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Stark, 3001 Strathmeade Street, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit a fence, 5.5 feet in height and an above ground pool to remain in the front yards of a corner lot that contains 36,000 square feet or less. The Zoning Ordinance permits a maximum fence height of 4.0 feet in the front yard; therefore, a variance of 1.5 feet for the fence height was requested.

Mr. Stark presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had contacted Fairfax County and was told that the minimum fence height was 4.0 feet. He explained that he installed a fence of 5.5 feet in height to provide additional safety and privacy for his family when utilizing the backyard. He stated that Paul McAdam, Zoning Inspector, visited his home upon an anonymous complaint shortly after the installation of the pool and the fence. He said that Mr. McAdam informed him that his property was subject to a double front yard requirement; therefore, the pool and the fence were considered to be located in a front yard. Mr. Stark contended that there were several fences of a similar size in the neighborhood and that the fence did not cause any sight distance problems. He stated that he had talked to the surrounding neighbors and they were in full support of the application.

Chairman DiGiulian called for speakers.

James Hoskins, 3002 Strathmeade Street, came forward to speak in support of the application. He stated that he lived across the street from the subject property. He said that the fence did not contribute to any sight distance issues and he was in support of the application.

Mr. Hart stated that the fence bisected a yard inlet and asked if it interfered with any type of storm drainage. Mr. Bernal answered that it did not.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 00-P-142 for the reasons stated in the Resolution.

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Page 015 January 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JAMES BRIAN OVERSTREET, VC 00-L-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 6454 Windham Ave. on approx. 35,905 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((3)) 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. James Brian Overstreet, 6454 Windham Avenue, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The

applicant requested a variance to permit the construction of a two-story garage addition with additional bedroom space on the second floor, to be located 9.7 feet from the east side lot line. The Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 10.3 feet was requested.

Mr. Overstreet presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that he had a family of five and the addition was needed to provide additional living space for his growing family. He stated that building towards the back of the home would take away the only available play area for his children and the addition could not be constructed in any other area on the property. He stated that he had met with an architect to design the best possible design for the addition.

Mr. Hammack asked if the architect had suggested reversing the long sides of the addition to extend more toward the rear of the property; therefore, minimizing the variance. Mr. Overstreet stated that he had not discussed that option.

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

Mr. Pammel moved to approve VC 00-L-144 for the reasons stated in the Resolution.

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Page 016 January 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. RICHARD J. MEAGHER, JR., SP 00-L-062 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.4 ft. and eave 0.9 ft. from side lot line. Located at 8421 Rosemont Ci. on approx. 23,138 sq. ft. of land zoned R-2. Lee District. Tax Map 101-3 ((17)) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Meagher, Jr. 8421, Rosemont Circle, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested approval of a special permit for a reduction in minimum yard requirements based on an error in building location to permit a detached garage to remain 2.4 feet and the associated eve to remain 0.9 feet from the south side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, modifications of 12.6 feet and 14.1 feet were requested for the existing garage and eve respectively.

Mr. Hart asked if there were any clearer aerial photographs illustrating the chronology of the expansion of the structure, if staff had any information as to whether the structure had been expanded at some point and that the expansion implicated the side yard and minimum side yard requirements. Ms. Josiah explained that originally there had been a detached garage with a structure located behind the garage and sometime between 1990 and 1994 those structures were connected. She submitted the original aerial photographs of the property to the Board. Mr. Hart asked if the expansion was within the minimum yard set back. Ms. Josiah stated that the entire structure was located within the minimum required yard set back.

Mr. Meagher presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the garage existed in the set back area at the time of his purchase of the property. He stated that in 1993 and 1994, he incorporated the garage with the shed that was located behind the garage and re-sided and re-roofed the structure. He stated that there were many properties with similar structures and that only seven of them had requested variances.

Chairman DiGiulian asked for clarification that the shed located to the rear of the garage was already attached upon his purchase of the property. Mr. Meagher stated that the shed was located on the same concrete slab as the garage and he simply incorporated them together. He mentioned several letters from the surrounding neighbors that were contained in the staff report, which provided testimony that the structure was on the property prior to his purchase.

Mr. Hammack asked the applicant if he had installed electricity to the structure. Mr. Meagher stated that he had not. He said that the electricity had already been connected upon his purchase of the property.

Mr. Hart asked if the new structure was closer to the back property line than the shed. Mr. Meagher stated that it was closer; however, it was not in the set back on the rear of the property. Mr. Hart asked the applicant if he had obtained a building permit for the structure. Mr. Meagher replied that he had not.

Mr. Hart asked staff if the south side of the garage structure was within the minimum side yard requirement. Ms. Josiah explained that the shed may have met the side yard requirements before it was incorporated with the garage; however, as one structure it did not.

Mr. Hammack asked the applicant if he had called the County for any guidance when he incorporated the structures. Mr. Meagher replied that he had contacted the County with issues pertaining to re-siding the structure and replacing the roof and he was told that he did not need a permit for that type of maintenance.

Mr. Hart asked if a building permit was required when incorporating a garage. Ms. Josiah replied that that it did require the issuance a building permit.

Chairman DiGiulian called for speakers in support of the application.

Shannon Meagher, 8421 Rosemont Circle, Virginia came forward to speak in support of the application. She informed the Board that they had informed the neighbor that was the most affected by the structure of their plans for the garage and she had no opposition. She stated that they had tried to make the building aesthetically pleasing. She informed the Board that there were many similar structures in the neighborhood and only seven of those structures had requested a variance. She said that the structure was not detrimental to the use and enjoyment of the adjacent properties.
She stated that the removal of the structure would be a significant financial hardship for them.
Mr. Hammack asked what the structure was used for. Ms. Meagher answered that it was used for the housing of vehicles and storage.

Chairman DiGiulian called for speakers in opposition of the application.

Tracy Fox, 8421 Leaf Road, came forward to speak in opposition of the application. He stated that prior to the applicant's purchase of the property the shed was 12 X18 and it was now 18X40.

Mr. Hart asked if there was a building permit for the original garage on file illustrating its dimensions. Ms. Josiah replied that there was not.

Mr. Meagher, in his rebuttal, stated that there were several zoning violations in his neighborhood and that he objected to complaints being filed only on certain citizens instead of looking at the neighborhood as a whole.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the case was difficult to determine with the chronology of the structure. He stated that the applicant presented testimony, indicating compliance with the standards with respect to the garage. He said that, although the improvements were of a greater scale than the applicant had contended, the standards had been satisfied. He said that the structure did not prove to be detrimental to any of the adjacent properties.

Mr. Hart moved to approve SP 00-L-062 for the reasons stated in the Resolution.

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Page 017 January 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHARLES J. & NATALIE M. GIVANS, VC 00-D-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 14.9 ft. from side lot line. Located at 250 Carrwood Rd. on approx. 2.94 ac. of land zoned R-E. Dranesville District. Tax Map 8-1 ((7)) 24A1.

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 Givans, 250 Carrwood Road, Great Falls, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a garage to be located in the front and side yards, 14.9 feet from a side lot line and 49.2 feet from a front lot line. The Zoning Ordinance requires a minimum side yard of 20 feet and a minimum front yard of 50 feet; therefore, a variance of 5.1 feet was requested for the side yard and a variance of 8 feet was requested for the front yard.

Mr. Givans presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had a family of five and the garage was needed for additional storage needs. He said he had a 2.9 acre lot and the existing house was situated near the front and the right side of the lot, with the garage toward the short side of the lot. He stated that because the grade of the lot was very steep, the only feasible place to construct the garage was where was requested. He added that the neighbor's lot line extended across the road and expanded in the shape of a triangle into his lot. Mr. Givans said that the garage would be in character with the neighborhood.

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

Mr. Ribble moved to approve VC 00-D-146 for the reasons stated in the Resolution.

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Page 018, January 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SUE ELLEN NELSON, SP 00-D-064 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals. Located at 6814 Dillon Ave. on approx. 12,144 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-4 ((17)) 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. Sue Ellen Nelson, 6814 Dillon Avenue, McLean, Virginia, replied that it was.

Ms. Gibb disclosed that the applicant had trained her dog 8 years prior but it would not affect her ability to participate in the hearing.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit for a modification to the limitation of the keeping of animals. The applicant requested to keep four dogs on a lot less than the required 12,500 square feet. The applicant owned four Italian Greyhounds, which ranged in height from 13 to 15 inches and weighed 8 to 12 pounds. The Zoning Ordinance requires that dogs were permitted in accordance to the minimum lot size. The subject property was 356 square feet less than the 12,500 square feet minimum lot size for the keeping of four dogs. The applicant requested that upon approval, Condition #3, which specified that the special permit shall only apply to the applicants four dogs be deleted.

Ms. Nelson presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she had the dogs for many years and they were very small dogs, which weighed between 10 and 15 pounds. She said that they were considered toys among dogs. She explained that her yard was totally fenced in with 6-foot stockade fencing and that the dogs were only out when supervised and were not left out during the day. She said they were her constant companions. Ms. Nelson stated that she had spoken with the neighbors that had placed the complaint and that they regretted making the complaint and tried to retract the complaint; however, it was too late. She said that one of the persons who made the complaint worked at night and slept during the day and the complaint generated from the noises of the neighborhood. She said that some neighbors also believed that the allowance of her four dogs would give all of the neighbors the privilege to have four dogs no matter what the size of their lots were. She said that she explained that her approval would not set that precedent and the neighbors seemed satisfied. Ms. Nelson explained that her dogs were de-barked; therefore, they did not make a lot of noise when they

were outside. She said that de-barking did not eliminate the total voice of the dog but it toned it down. Ms. Nelson reiterated her request to delete Development Condition #3 upon the Board's approval of the special permit.

Mr. Kelley moved to approve SP 00-D- 064 with the deletion of Development Condition #3 and for the reasons stated in the Resolution.

Mr. Hart amended the motion to amend Development Condition #1 stating that the approval was for four Italian Greyhound dogs.

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Page 019, January 9, 2001, (Tape 1) Scheduled case of:

9:30 A.M. DELANO CONTAINER SERVICES, INC., A 2000-LE-020 Appl. under Sect(s). 18 -301 of the Zoning Ordinance. Appeal of determination that appellant is operating a mixed waste reclamation facility in the I-5 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5520 Vine St. on approx. 18,703 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 10. (moved from 10/31/00)

William E. Shoup, Deputy Zoning Administrator, stated that the appellants had changed the nature of the business; therefore, they had requested withdrawal of their appeal.

Mr. Ribble moved to withdraw A 2000-LE-020. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 019 January 9, 2001, (Tape 1) After Agenda Items:

Request for Additional Time
Montessori School of Fairfax, Inc.
SP 98-Y-025

Mr. Ribble moved to approve the request for additional time. Ms. Gibb seconded the motion which carried by a vote of 7-0. The new expiration date is February 25, 2002.

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Page 019, January 9, 2001, (Tape 1) After Agenda Items:

Request for Additional Time
Yong Saeng Korean Presbyterian Church Trustees
SPA 80-S-070

Mr. Hart moved to approve the request for additional time. Mr. Ribble seconded the motion which carried by a vote of 7-0. The new expiration date is June 9, 2002.

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Page 019 January 9, 2001, (Tape 1) After Agenda Items:

Deferral Request
Burcin Kalendar
A 2000-LE-032

Ms. Gibb moved to defer A 2000-LE-032 until May 15, 2001, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.
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Request for Reconsideration
Margaret J. DuBois
VC 00-P-143

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board approved the subject application in part to allow the structure to be 12 feet from each lot line rather than 9 requested on the plat; however, on the plat it showed a building envelope. She explained that the building envelope needed to be increased in length in order to move the house 12 feet from each lot line and that was the reason for the reconsideration request. She stated that the house would need to be much longer than what was shown on the approved plat.

There was discussion between the Board and Ms. Langdon as to the need for another hearing due to the change in the building envelope. It was decided that since the plat needed to be amended due to the change in the layout of the structure, there needed to be a new hearing and a re-advertisement of the case.

Mr. Kelley stated that he assumed the variance approval had made the side lot line 12 feet in length. Ms. Langdon stated that was correct. Mr. Kelley stated, for example, that if the applicant came back and asked for something that was longer but in that envelope there was no need for any further action from the Board. Ms. Langdon stated that because the entire footprint of the house increased, including the portion that was closest to the side lot line, and the bulk and the mass of the structure was increased, a new plat needed to be approved by the Board. Mr. Kelley asked, for example, whether another variance was needed if a property was sold and the new owner wanted to increase the building envelope. Ms. Langdon stated that they would not if they intended to keep the home 12 feet from the lot line and 70 feet deep or less. Ms. Langdon stated that a building permit for a larger depth would not be granted because it did not meet what was approved under the variance. Mr. Kelley contended that the length was not a part of the variance. Ms. Langdon said that it was the Boards obligation to take into consideration the mass and bulk of the structure upon the approval of a variance.

Mr. Pammel moved to approve the request for reconsideration regarding VC 00-P-143. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new public hearing date is February 27, 2001 at 9:00 a.m.

Mr. Kelley noted for the record that he did not agree with staff's position regarding the reconsideration request.

Mr. Pammel explained that the Board had used the issue in granting a variance of the bulk and depth of a building in many instances and there were many that were much too great to have approved within a certain number of feet to a property line. He said that was staff's basis for the need for a new hearing, even though the Board granted the variance for 12 feet from the side lot line, the footprint that was given on the plat reflected the structure that was going to be built. He said that now the applicant had requested a change in the layout and structure; therefore, a new hearing was needed.

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Approval of January 2, 2001 Resolutions

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

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Page 021, January 9, 2001, (Tape 1), continued from Page 020

As there was no other business to come before the Board, the meeting was adjourned at 10:36 a.m.

Minutes by: Lori M. Mallam

Approved on: May 1, 2001

Regina Thorn Corbett

Regina Thorn Corbett, 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 16, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 023 January 16, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KENNETH T. HENCH, JR. & LARRY E. OGDEN, VC 00-S-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 6222 Capella Ave. on approx. 8,808 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 228.

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 Hench, 6222 Capella Avenue, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 15.1 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 9.9 feet was requested.

Mr. Hench presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to cover an existing patio with a deck to be level with the dining room door at the rear of the house. Mr. Hench stated that part of the deck would be an enclosed screened porch.

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

Mr. Pammel moved to approve VC 00-S-147 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KENNETH T. HENCH, JR. & LARRY E. OGDEN, VC 00-S-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.1 ft. from rear lot line. Located at 6222 Capella Ave. on approx. 8,808 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-3 ((5)) 228. 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 16, 2001; 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 and unusually shaped.

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition (screened porch) shown on the plat prepared by Harold A. Logan, dated July 26, 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.

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 6-0. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 024 January 16, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN RUSNAK, VC 00-L-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 5612 Shade Tree La. on approx. 14,099 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((4)) 45A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kevin Rusnak, 5612 Shade Tree Lane, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story garage addition to the dwelling, to be located 8 feet from the north side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4 feet was requested.

Mr. Rusnak presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was diamond shaped and the best place for the addition was in the proposed location. Mr. Rusnak stated that the existing trees would remain.

Ms. Gibb asked how far was the house on Lot 504 from the subject application's property line. Susan Langdon, Chief, Special Permit and Variance Branch, stated that it was 33 feet from the lot line.

Ms. Gibb asked if the house on the adjacent property would face the proposed addition. Mr. Rusnak replied yes.

Mr. Hammack asked if there was a reason that the garage could not be smaller than what was proposed. Mr. Rusnak said the architect placed the stairwell inside of the garage, which lead from the garage up to the ground level and also from the ground level up to the loft area in the back.

Mr. Hammack if the garage doors were opening facing the adjacent lot. Mr. Rusnak said no.

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

Ms. Gibb moved to approve VC 00-L-145 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEVIN RUSNAK, VC 00-L-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 5612 Shade Tree La. on approx. 14,099 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((4)) 45A. 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 16, 2001; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,099 square feet.
4. The applicant presented testimony indicating compliance with required standards for a variance.
5. The house is located in such a way on a diamond shaped lot that it makes it difficult to locate the garage in any other location.
6. An effort is being made to save mature trees.
7. The property is well landscaped from adjoining properties and is on a dead end street.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Additions, Inc. dated August 28, 2000 from a plat prepared by Laura Lee Scott Surveys, Inc., dated June 1, 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.

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 24, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MR. & MRS. CHRISTOPHER IDE, VC 00-V-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line such that side yards total 19.6 ft. Located at 3716 Carriage House Ct. on approx. 22,384 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-4 ((5)) 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. Jim Roberts, Roberts Construction Company, 1723 Cherry Hill Road, Arlington, Virginia, replied that it was.

Jennifer Josiah, 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 the dwelling, to be located 8.8 feet from the south side lot line such that side yards total 19.6 feet. The Ordinance requires a minimum total side yard of 24 feet; therefore, a variance of 4.4 feet was requested.

Mr. Roberts, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to have a garage converted to living space. He said the lot was pie shaped.

Mr. Pammel asked whether a building permit had been obtained to convert the garage to living space. Mr. Roberts replied yes.

Mr. Hammack asked was there just one corner of the lot that required the variance. Mr. Roberts replied yes.

Chairman DiGiulian called for speakers.

John Guttenberg, owner of Lot 26, came forward to speak in opposition of the application. He said he was opposed because the addition would be a breach of aesthetic symmetry. He said the addition would appear to be close to the adjacent property. Mr. Guttenberg stated that the opinions from the neighbors were not obtained.

Mr. Roberts stated, in his rebuttal, that the homeowner's association approved the request before the variance was sought.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 00-V-149 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MR. & MRS. CHRISTOPHER IDE, VC 00-V-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.8 ft. from side lot line such that side yards total 19.6 ft. Located at 3716 Carriage House Ct. on approx. 22,384 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-4 ((5)) 2. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 2001; 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 shape of the lot is unusual.
4. Only one corner of the addition is in need of the variance.

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

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

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

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

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

1. This variance is approved for the location of the garage addition shown on the plat prepared by Schiller & Associates, P.C., dated August 21, 2000, signed October 26, 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.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SPRINGFIELD GOLF & COUNTRY CLUB, SPA 76-S-182-6 Appl. under Sect(s). 3-303 and 4-503 of the Zoning Ordinance to amend SP 76-S-182 previously approved for a country club to permit construction of accessory structures and site modifications. Located at 8301 Old Keene Mill Rd. on approx. 157.60 ac. of land zoned R-3, C-5 and HC. Springfield District. Tax Map 89-1 ((1)) 9.

Mr. Hart and Mr. Kelley gave disclosures to the Board on the application; however, stated that it would not affect their ability to participate in the hearing.

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, Reed, Smith, Hazel & Thomas, 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 construct two additional accessory structures on site, a maintenance building, and a storage building as well as to relocate an above ground fuel storage tank underground. He said the maintenance building would contain 3,825 square feet and the storage building would contain 2,550 square feet. The two accessory structures were proposed to be located within the existing maintenance facility area along the south central portion of the subject property. Mr. Bernal stated that the two existing buildings, a chemical storage, and a maintenance storage building were proposed to remain. The existing wooden fence would be relocated to encompass the maintenance facility. The northeastern perimeter was proposed to be landscaped with evergreen trees to screen the maintenance facility from the distant yet adjacent residences. Approximately 15,000 square feet of asphalt was proposed within the maintenance area. The asphalt was proposed to allow maintenance vehicles to access the new buildings. No other changes were proposed with this application. Staff recommended approval subject to the development conditions dated January 9, 2001.

Mr. Kelley asked about Condition #16 which provides for an easement from Rolling Road, but it was not included in the previously approved development conditions even though it was marked with an asterisk. Mr. Bernal replied that this condition was previously recommended by staff but subsequently deleted by the Board.

Mr. Kelley said the parking entrance had not changed in 30 years, and asked why was it recommended to be changed. Mr. Bernal stated that the Department of Transportation was concerned with the traffic pattern.

Mr. Lawrence, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said this was a minor change to the existing golf course which was a change to the maintenance facility which already existed to add a couple small buildings. Mr. Lawrence said the location of the maintenance building was in the center of the property which caused no impacts on the community. He said the application met the standards of the Ordinance.
Mr. Lawrence said that the applicant was concerned with Condition #6 relating to evergreen plantings. He asked that the last sentence of that condition be deleted.

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

Mr. Kelley moved to approve SPA 76-S-182-6 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SPRINGFIELD GOLF & COUNTRY CLUB, SPA 76-S-182-6 Appl. under Sect(s). 3-303 and 4-503 of the Zoning Ordinance to amend SP 76-S-182 previously approved for a country club to permit construction of accessory structures and site modifications. Located at 8301 Old Keene Mill Rd. on approx. 157.60 ac. of land zoned R-3, C-5 and HC. Springfield District. Tax Map 89-1 ((1)) 9. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 16, 2001; 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 and 4-503 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, Springfield Golf and Country Club, and is not transferable without further action of this Board, and is for the location indicated on the application, 8301 Old Keene Mill Road, consisting of 157.6 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by William H. Gordon Associates, dated October 17, 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. Two hundred and eight (208) parking spaces shall be provided as shown on the special permit plat. All parking for the use shall be on site. If not completed, prior to issuance of a Non-Residential Use Permit for the use, existing parking spaces that are presently located within the turn-around adjacent to the driving range which do not meet Public Facilities Manual (PFM) requirements shall be painted over; in effect, eliminating the parking spaces but not the asphalt.

6. Transitional screening shall be maintained as shown on the special permit plat. In addition, Transitional Screening 1 shall be provided and maintained without modification along the lot line south of the tennis courts and swimming pool to completely screen the uses from the Rhygate subdivision, except adjacent to Lots 36-42 where the lot owners have submitted a letter requesting less plant material as per condition number 6 of SPA 76-S-182-4. The existing vegetation east of the tennis courts shall be maintained with evergreen plantings, the amount and type of plantings that were determined by the Urban Forester, to ensure that screening in this area is equivalent to Transitional Screening 1. Landscaping and screening shall be maintained around the restroom facility as determined by the Urban Forester, to effectively reduce the visual impact to adjacent residences.

   Evergreen plantings shall be provided as shown on the special permit amendment plat adjacent to the two new proposed maintenance buildings.

7. The maximum number of family membership shall be seven hundred (700).

8. The maximum hours of operation for the swimming pool shall be 11:00 AM to 9:00 PM, daily.

9. After hours parties for the swimming pool shall be governed by the following:

- Limited to 6 (six) per season
- Limited to Friday, Saturday and pre-holiday evenings
- Shall not extend beyond 12:00 Midnight
- Shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity
- Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party

10. The maximum hours of operation for the tennis courts shall be 8:00 AM to 10:00 PM except that the use of the tennis courts enclosed within the bubble shall be permitted between 6:00 AM and 12 midnight.

11. Any existing outdoor lighting used in conjunction with all on-site tennis courts shall be shielded and directed toward the application property in a manner that would prevent light form projecting beyond the lot lines.

12. All necessary permits shall be obtained prior to any construction.

13. If not already documented, prior to approval of a site plan, the applicant shall provide documentation from the U.S. Army Corps of Engineers (USACOE) and the Virginia Department of Environmental Quality (DEQ) demonstrating that all permits required from the USACOE and/or DEQ have been obtained with respect to the subject property, as shown on the approved plat and as qualified by these conditions of approval. If required permits have not been obtained, the site plan shall not be approved.

14. If not already prepared, the applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides, which shall be submitted for review to the Director, DPWES, and approval prior to the issuance of a Non-Residential Use Permit for this use. The IPM Plan shall be developed in accordance with the Virginia Cooperative Extension Pest Management Guide (PMG) and shall be designed to manage the application of fertilizer, herbicides and other chemicals to protect water quality in the watershed. The IPM Plan shall include an on-going monitoring and reporting method that will document the progress of the plan. The monitoring and reporting method for the IPM shall be used to document the intent and success of the IPM program and shall be made available if required by the Director, DPZ.

15. If not already demonstrated, prior to site plan approval, the applicant shall demonstrate that rip-rap channels already constructed within the 100-year flood plain have not or will not create or aggravate drainage or streambank erosion problems downstream from the subject property, as determined by the DPWES. The applicant shall submit information to DPWES regarding the design of the streambank stabilization measures established on the property to enable DPWES to determine if those measures conform with the design practices of DPWES for streambank stabilization. If DPWES determines that the existing rip-rap channels do not meet the above referenced design practices, the rip-rap shall be modified or removed, to the satisfaction of DPWES.

The 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 pursued. The Board of Zoning Appeals may grant additional time to establish the use or 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 January 24, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. ZOROASTRIAN CENTER AND DARB-E-MEHR OF METROPOLITAN WASHINGTON D.C., SP 00-H-026 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a place of worship, child care center and nursery school. Located at 2347 Hunter Mill Rd. on approx. 6.81 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26. (MOVED FROM 7/25/00, 8/1/00, and 9/12/00). (Deferred for decision only from 10/17/00 and 12/12/00)

Mr. Hart noted that this application had been deferred for decision only. He moved to approve SP 00-H-026. Mr. Hart stated that this was a difficult application. He said the Board had received a great deal of input from speakers, phone calls, emails and correspondence. He said there had been modifications to the application since it was originally filed in response to some of the questions from the Board and some of the issues raised by the community. Mr. Hart said with the deletion of the day care center, the principal concern he had about the intensity of the use had been addressed. He said based on the information in the staff report and the transportation analysis and trip generation analysis, the principal traffic load would be on the weekends. He said that a place of worship limited to 120 seats with an FAR of a little more than half of what is allowed under the Ordinance in the RE District, satisfied the conditions. Mr. Hart said that all of the parking had to be on site and they could not have special festivals or activities, which would bring in more vehicles than the parking lot could hold. He said the entrance was not ideal, but with the limitations on the intensity of the use and the resolution of the joint entrance, Condition # 4 had been satisfied. He said the transitional screening issue was an issue for the engineers to sort out at site plan. Mr. Hart said he believed that the applicant had done what the Board had asked.

Ms. Gibb seconded the motion.

Mr. Pammel said that he had reviewed all of the material that was provided to the Board and after reading it he concluded that the application was not addressed from the standpoint of being part place of worship and part social center. He said it appeared that the social center had an equal footing to the place of worship because they carried on a number of activities. Mr. Pammel said he went through the 7th Congress report and it kept referring to social events, social functions, which from the beginning to the end continued to expand. He said he thought the community was correct about the use being above and beyond the normal accepted place of worship. Mr. Pammel said he realized that federal law precluded the Board from limiting the activities unless there was a compelling need of the government to require denial. He said he did not think that was present. Mr. Pammel said there were aspects of the application that he was uncomfortable with and suggested a couple of modifications to the conditions. He suggested limiting the time of the outdoor activities not to extend beyond 9:00 p.m. on weekdays and weekends. Mr. Pammel suggested a new condition 16 limiting the times for the use to 8 a.m. to 10 p.m. with the exceptions of the 4 enumerated events that were indicated in the supplementary submission of material to the Board. He suggested that those event hours would not extend past midnight. Mr. Pammel suggested that the turn off time of the building and site lighting be changed from 10:30 p.m. to 10:00 p.m. He suggested adding a new condition that stated that there should be no alcoholic beverages available or consumed on site.

Mr. Kelley seconded the amendments to the motion, for purposes of discussion.

Ms. Gibb asked staff how late could the church next door have people outside. Susan Langdon, Chief, Special Permit and Variance Branch stated that there was no limitation noted in their conditions.

Ms. Gibb asked how common was the restriction on alcohol. Ms. Langdon stated that she did not remember

it on a place of worship application.

Ms. Gibb asked whether staff's analysis for a community center would be similar to a church analysis. Ms. Langdon replied that staff would review a community center under the applicable Zoning Ordinance provisions and would review the applications individually on what they were requesting.

Mr. Kelley questioned the prohibition about no alcoholic beverages and asked whether ceremonial wine would be included. Mr. Pammel said ceremonial wine should be allowed; however, he was concerned about having alcoholic beverages available at social activities.

Mr. Kelley moved to amend the amendment removing the prohibition of alcoholic beverages. Ms. Gibb seconded the motion.

Mr. Hart asked staff whether there were other churches that had limitations on the number of functions and the hours of operations. Ms. Langdon stated that she would need to research the files to give an exact answer, but there was a Buddhist Temple that was limited by having to conduct large festivals off site.

Ms. Travesky stated that the limitations would be setting a dangerous precedent.

Mr. Hammack said he shared some of the reservations as Mr. Pammel about the use of the facility as a community center. He said he did not think those issues had been addressed very well as part of the hearing. Mr. Hammack said he was concerned about the size of the building; although the applicant had reduced the application twice, they had not done anything to change the footprint of the building or reduce the space in the building. He said even though the applicant had scaled back their application, it appeared that there would be no plans for expansion. Mr. Hammack said he was concerned that some the proposed development conditions might be inconsistent with religious practices. He said that without more testimony on what was actually used, or the religious uses that would be placed on the site, he felt that the development conditions were not necessarily appropriate.

Ms. Gibb asked staff about the suggestions that there was not enough analysis done on the community center aspect of it. Ms. Langdon replied that the applicant did not apply for a community center; therefore, staff did not analyze it based on that. She said staff took their word on what they were proposing and reviewed the application based on that information. Ms. Langdon stated that the application was for a place of worship and related facilities and there were certain related uses that generally had been associated with churches.

Ms. Gibb stated that she did not want to treat this application any differently than any other church application since that was how the application was made and some denominations of churches had a lot more social activities than others. She said she would prefer to have the application approved as it was before it was amended.

Mr. Pammel said that sometimes applicants intentionally did not provide information for the simple reason of getting their foot in the door. He said there had to be a limitation on the activities.

Mr. Hart said whatever was going on with the use that Condition #16 limited the boundaries of the other activities. He said he did not think the Board wanted to get into the micro managing of bingo night for a church, or the spaghetti supper. Mr. Hart said if the Board had defined perimeters and it was consistent with the ministry objectives and other limitations, then they had met the applicable standards.

Mr. Pammel seconded Mr. Hammack's motion to defer.

Mr. Ribble stated that he would support the motion to defer because he had difficulty with the entrance to the lot. He said the interparcel access was too close to the entrance.

Ms. Gibb said she would not support the motion to defer. She said that it was very hard to refute a million allegations because of the way that information can be obtained off the internet and made to seem applicable when it might very well not be. Ms. Gibb said it put an impossible burden on the applicant.

Mr. Kelley said the Board had given this application much more scrutiny than any application in his tenure on

the Board. He said the site was perfect for some kind of a church application. He opposed the motion to defer.

The motion failed for a lack of 4 votes. Chairman DiGiulian, Mr. Hart, Ms. Gibb and Mr. Kelley voted against the motion.

Mr. Kelley's amendment to Mr. Pammel's amendment carried by a vote of 4-3. Mr. Ribble, Mr. Pammel, and Mr. Hammack voted against the motion.

The original motion by Mr. Hart carried by a vote of 4-2-1. Mr. Ribble and Mr. Pammel voted against the motion. Mr. Hammack abstained from the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ZOROASTRIAN CENTER AND DARB-E-MEHR OF METROPOLITAN WASHINGTON D.C., SP 00-H-026 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a place of worship, child care center and nursery school. **(THE APPLICANT WITHDREW THE REQUEST FOR THE CHILD CARE CENTER AND NURSERY SCHOOL).** Located at 2347 Hunter Mill Rd. on approx. 6.81 ac. of land zoned R-E. Hunter Mill District. Tax Map 37-2 ((1)) 26. (MOVED FROM 7/25/00, 8/1/00, and 9/12/00). (Deferred for decision only from 10/17/00 and 12/12/00) 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 January 16, 2001; 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-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, 2347 Hunter Mill Road (6.8 acres) and is not transferable to other land.

2. This Special Permit is granted only for a place of worship as indicated on the special permit plat prepared by Walter L. Phillips, dated March 20, 2000, as revised through January 8, 2001, and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan

submitted pursuant to this special permit shall be in substantial conformance with the approved Special Permit plat and these development conditions. Minor modifications to the approved special permit may permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. The maximum number of seats in the church shall be 120.

6. Sixty-seven (67) parking spaces shall be provided. All parking shall be on site within the designated parking area as shown on the special permit plat. No parking shall be permitted off-site.

7. Existing vegetation shall be used to satisfy the Transitional Screening I requirement along the eastern lot line. Vegetation along the western lot line shall be supplemented as shown on the special permit to meet the transitional screening requirements as determined by the Urban Forestry Branch. The entire northern lot line shall be supplemented as needed with evergreen plantings to obtain the effectiveness of Transitional Screening I as determined by the Urban Forestry Branch. Berms shall also be provided along Hunter Mill Road to enhance the effectiveness of Transitional Screening I. The size, type and location of all berms and vegetation shall be as 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 for all lot lines.

8. The limits of clearing and grading shall be as shown on the special permit plat. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for 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. 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. 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 of that feature shall become part of the perpetually undisturbed open space.

9. A conservation easement shall be recorded over the western portion of Angelico Branch as shown on the special permit plat to match that provided by the Good Shepherd United Methodist Church. The applicant shall record a conservation easement to the benefit of Fairfax County, in the form approved by the Department of Public Works and Environmental Services (DPWES), over the areas located within Environmental Quality Corridors (EQCs), as shown on the submitted special permit plat. The conservation easement shall ensure that areas within the EQC remain in undisturbed open space, and shall prohibit the construction of any structures. The easement shall be approved by the Office of the County Attorney and further specify that undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass.

10. At the time of either site plan submission or grading plan submission, whichever occurs first, 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. Tree preservation shall be implemented

pursuant to the study as approved by the Urban Forestry Branch.

11. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the DPWES. Foundation plantings around the church building shall be provided for the purpose of softening the visual impact of the 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 with particular emphasis along the northern lot line.

12. Stormwater Management/ Best Management Practices shall be provided in accordance with the Public Facilities Manual standards for developments in the Water Supply Protection Overlay District as approved by DPWES.

13. Right of way of 45 feet from centerline of Hunter Mill Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first. Frontage improvements, including turn lanes as depicted on the plat, shall be constructed consisting of 35 feet of pavement from centerline to face of curb subject to review and approval of VDOT and DPWES. Frontage improvements shall be constructed to VDOT and PFM standards. The additional pavement shall be striped to provide an interim left turn lane into the site.

14. A fifty (50) foot wide Public Access and ingress and egress easement over the portion of the entrance as shown on the revised plat that serves both churches shall be recorded.

15. Evening outdoor activities on the site shall not extend beyond 9:30 p.m. during the weekdays and 10:00 p.m. on the weekends.

16. Church facilities shall only be made available for use by groups or activities, which are sponsored by the church and consistent with its ministry objectives. Large events or festivals, which generate more vehicles than the parking lot can accommodate, shall not be held on the site.

17. 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 buildings. Except for necessary low level security lighting, site and building lighting shall be turned off by 10:30 p.m.

18. The existing dwelling may be used to house a member of the clergy or a caretaker and the garage shall be used for storage only.

19. Irrespective of that shown on the special permit plat, the height of the main portion of the building shall not exceed 26.6 feet and shall be in substantial conformance with the submitted architectural elevations included in Attachment 1 of the development conditions.

20. The use of loudspeakers, music amplification systems, or bull horns shall not be permitted outside the building.

21. 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.

22. Irrespective of that shown and noted (#17) on the special permit plat regarding the proposed location of the septic field, the applicant shall obtain approval from the Fairfax County Health Department for the location of the septic field. Should approval not be obtained for the proposed location of the septic field(s) in substantial conformance with that shown on the special permit plat, this special permit shall become null and void.

23. The architectural design elements shall be in substantial conformance to the submitted conceptual elevations by AFA Architecture PC, dated June 14, 2000, included as Attachment 1 of the development conditions and shall be of neutral colors.

24. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance. If lighting is permitted for the sign, it shall only be as backlighting.

25. There shall be no outdoor open/bon fires on site.

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

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

Ms. Gibb seconded the motion which carried by a vote of 4-2-1. Mr. Pammel and Mr. Ribble voted against the motion. Mr. Hammack abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 24, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 037, January 16, 2001, (Tape 1), After Agenda Item:

Approval of October 31, 2000, November 7, 2000,
and November 28, 2000 Minutes.

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

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Page 037, January 16, 2001, (Tape 1), After Agenda Item:

Approval of January 9, 2001 Resolutions.

Mr. Pammel moved to approve the Resolutions. Mr. Hart 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 10:30 a.m.

Minutes by: Regina Thorn Corbett

Approved on: May 8, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, January 23, 2001. 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. 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 039 January 23, 2001, (Tape 1) Scheduled case of:

9:00 A.M. PAUL & LESLIE GRABOWSKI, VC 00-L-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 3522 Memorial St. on approx. 11,475 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((7)) 5 and 6. (Administratively moved from 12/19 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. Paul Grabowski, 3522 Memorial Street, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of an addition to be located 6.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, a variance of 4.0 feet was requested.

Mr. Grabowski presented the variance request as outlined in the statement of justification submitted with the application. He stated that the addition was needed to provide his family with additional kitchen space. He said that the home was offset on the property; therefore, a variance was needed to add onto the kitchen.

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

Mr. Hart moved to approve VC 00-L-137 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAUL & LESLIE GRABOWSKI, VC 00-L-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 3522 Memorial St. on approx. 11,475 sq. ft. of land zoned R-4. Lee District. Tax Map 92-2 ((7)) 5 and 6. (Administratively moved from 12/19 for notices). 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 23, 2001; 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 applicable standards for the granting of a variance.
3. The house is not centered on the lot but located to the right side of the property.
4. The only way the kitchen could be expanded is to build towards the right side of the property.
5. The neighbor most affected by the addition is in favor of 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 addition shown on the plat prepared by clg enterprises, dated September 20, 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.

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 4-0. Mr. Hammack, Mr. Pammel 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 January 31, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. EDWARD J. & JEANNE L. MELLA, SP 00-D-065 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 11260 Inglish Mill Dr. on approx. 1.40 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((4)) 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. Edward James Mella, 11260 Inglish Mill Drive, Great Falls, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a special permit to construct a one-story attached accessory dwelling unit to be located north and west of the existing dwelling. Staff recommended approval of the application.

Mr. Mella presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the dwelling was to be an in-law suite for his parents.

Ms. Gibb asked if the applicant was in agreement with the development conditions. Mr. Mella stated that he was.

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

Ms. Gibb moved to approve SP 00-D-065 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

EDWARD J. & JEANNE L. MELLA, SP 00-D-065 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit accessory dwelling unit. Located at 11260 Inglish Mill Dr. on approx. 1.40 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((4)) 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 23, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' presentation and staff's recommendation for approval indicated that they met all of the requirements for an accessory dwelling unit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-918 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, 11260 Inglish Mill Drive (1.40 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 CAD-CON Consulting, Incorporated, dated October 17, 2000, revised through October 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. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

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

6. There shall be three (3) garage parking spaces provided on the site as shown on the special permit plat.

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

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

9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure incorporated as part of the main dwelling unit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 January 31, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 042, January 23, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAVID S. REEVES, VC 00-Y-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence greater than 4.0 ft. in height to remain in the front yards of a corner lot. Located at 14518 Flagstaff Ct. on approx. 25,921 sq. ft. of land zoned PDH-12 and WS. Sully District. Tax Map 65-1 ((5)) 9. (Continued from 8/8/00. Reconsideration Granted 10/3/00.) (Deferred from 11/28/00 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. David Reeves, 14518 Flagstaff Court, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The case was approved for reconsideration on August 28, 2000, for the date of November 28, 2000, and was then deferred until January 23, 2001, because the notices were not in order. The applicant requested a variance to permit a fence 6.0 feet in height to remain in the front yards of a corner lot.

Mr. Reeves presented the variance request as outlined in the statement of justification submitted with the application. He stated that the roads around and behind the home did not exist upon his purchase of the home, but had been built up around them over the years. He informed the Board that during the development of the road surrounding his home a developer removed over 200 trees and re-graded his property without any easement rights. He stated that Fairfax County discovered the infraction and stopped the developer immediately; however, the removal of the trees caused severe erosion his in backyard. He explained that he constructed the existing retaining wall to prevent any further erosion. Mr. Reeves stated that he had approval from his homeowners association to construct the fence on top of the retaining wall. He explained that, as two busy thoroughfares surrounded his property and a large athletic field was located directly across the street that did not contain adequate parking spaces, the fence was needed to provide safety and privacy for his family. He contended that he had successfully addressed the sight line and Virginia Department of Transportation (VDOT) funding issues that were cited by the Board at the previous hearing. He submitted a letter from the Deputy Director of VDOT stating that after an aerial and visual inspection of the area, there were no sight line problems at the intersection in question and the fence should be allowed to remain with no alterations.

Mr. Hart asked if the applicant was requesting the variance on the original plat or the revised plat, which illustrated alterations to the front two corners of the fence. Mr. Reeves replied that he did not want to make any alterations to the fence at all; however, he was prepared to make the changes suggested in the revised plat if it pleased the Board.

Mr. Hart stated that his problems with the fence were the front two corners of the fence and the issue of the height of the fence being 6.0 feet on top of a 3.5 foot masonry wall for a total mass of 9.5 feet.
Mr. Hart stated that the Board had requested, at the first BZA hearing, that the fence be staggered back from the masonry wall.

Ms. Gibb asked if the retaining wall reflected the original grade and its purpose was to prevent erosion. Mr. Reeve replied that was correct.

Chairman DiGiulian called for speakers.

Robert M. Reeves, 110 Hallover Circle, Montrose, Virginia came forward to speak in support of the application. He contended that the fence was attractive and it should remain intact. He submitted pictures illustrating the layout of the fence with relation to the backyard. He informed the Board that the applicants had been robbed several times before the construction of the fence and the fence was needed to provide safety for the children while they played in the backyard.

Chairman DiGiulian closed the public hearing.

Mr. Pammel suggested a change to development condition #2 to read that the fence and the wall shall remain graffiti free.

Mr. Pammel moved to approve VC 00-Y-063 along with the amended plat submitted in the staff report dated November 24, 2001. Mr. Hart seconded the motion which carried by a vote of 7-0.

Mr. Pammel stated that the applicant needed to submit a revised plat within 30 days illustrating the changes approved by the Board.

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9:00 A.M. SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SP 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities and child care center with an enrollment of less than 100 children daily. Located at 10501 New Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18.

Mr. Kelley suggested a deferral of the application due to the removal of the day care center and because the Board had received a tremendous volume of letters regarding the case. He said that a deferral would allow the Board time to study the new request and read the letters.

Mr. Kelley moved to defer the public hearing for SP 00-S-063 until February 27, 2001, at 9:00 a.m.

Mr. Hart seconded the motion.

Chairman DiGiulian asked for speakers to the issue of deferral.

Larry Bowen, (no address given for the record), came forward to speak to the issue of deferral. He informed the Board that there were many citizens who wished to give testimony and he asked that they be allowed to speak.

Mark Mittereder, agent for the applicant, stated that the applicant was surprised at the number of concerns from the community and responded to those concerns by withdrawing the request for the child care center. He stated that the applicant was in favor of a deferral to allow time to revise the plat and meet with the community to address their concerns.

Jeff Curso, (no address given for the record) came forward to speak to the issue of deferral. He suggested that the Board defer the application to a date after February 22, 2001, because that date would be after the next Homeowner Association meeting and it would give the community time to discuss the subject further.

Richard McGrath, (no address given for record), came forward to speak to the issue of deferral. He stated that a delay in the case would be a significant inconvenience to the citizens as they had taken time off work and had arranged for child care during the hearing.

Mr. Kelley stated that the Board was not in the position to vote on the case because they had not had the chance to review all of the information related to the case.

Mr. Hart stated that the material had been revised and the Board did not have access either to a revised plat or application; therefore, they were not in a position to make any decisions regarding the case. Mr. Hart requested staff to provide to the Board an enlargement of the plat that was easier to read.

Mr. Hammack amended the motion to defer the public hearing for SP 00-S-063 until March 6, 2001, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

Joseph Gallagher, Wendy Ann Court, came forward to speak to the issue of deferral. He noted that although the child care center had been deleted from the application there still was a play area remaining.

Mr. Pammel explained that there was a Federal Law that prohibited any governmental unit from taking actions that would deprive a non-mainstream religious group from having a place of worship and if the application fell under that category the Board had no choice other than to grant the application. He suggested that the citizens work with the applicants to find an agreeable product.

Floyd Herdrig, (no address given for the record), came forward to speak to the issue of deferral. He stated that the applicant had not tried to address any community concerns until recently. He suggested that the applicants withdraw the application, meet with the community and then submit a revised application that was agreeable to the citizens.

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9:00 A.M. RICHARD S. & LUCINDA A. REINHOLTZ, VC 00-P-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 2433 Shenandoah St. on approx. 15,683 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 126.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lucinda Reinholtz, 2433 Shenandoah Street, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 9.4 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 2.6 feet was required.

Ms. Reinholtz presented the variance request as outlined in the statement of justification submitted with the application. She stated that the garage was needed to provide adequate storage space. She stated that the garage was the most cost effective way to achieve their goal.

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

Mr. Ribble moved to approve VC 00-P-150 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD S. & LUCINDA A. REINHOLTZ, VC 00-P-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.4 ft. from side lot line. Located at 2433 Shenandoah St. on approx. 15,683 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 126. 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 23, 2001; 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 standards required for the granting of a variance.
3. The staff report indicates that the location of the house on the lot and the converging lot lines towards the front of the lot caused the need for the variance.

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

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

adjacent to the subject property.

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Thomas F. Conlon, Jr., dated August 7, 2000, revised through October 11, 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.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 046 January 23, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHRISTOPHER T. & ELIZABETH A. TWEDDLE, SP 00-Y-067 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 8.8 ft. from side lot line. Located at 15535 Eagle Tavern La. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher Tweddle, 15535 Eagle Tavern Lane, Centreville,

Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested a special permit to allow the construction of an addition to be located 8.8 feet from the side lot line in the rear yard. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a special permit of 11.2 feet was requested.

Mr. Tweddle presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the original application requested the addition and a walk-up on the opposite side of the house. He said the addition on the rear of the house was to enclose an existing deck. He informed the Board that there were similar special permit approvals in the area.

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

Ms. Gibb moved to approve SP 00-Y-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

CHRISTOPHER T. & ELIZABETH A. TWEDDLE, SP 00-Y-067 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to certain R-C lots to permit construction of addition 8.8 ft. from side lot line. Located at 15535 Eagle Tavern La. on approx. 13,000 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (1) 16. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 2001; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of the addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated February 16, 2000, revised by Elizabeth A. Tweddle dated November 16, 2000, submitted with this application and is not transferable to other land.

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

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

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

Mr. 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 31, 2001.

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Page 048, January 23, 2001, (Tape 1) Scheduled case of:

9:30 A.M. CLIFTON PAUL CRAVEN AND NANCY CRAVEN, A 96-P-049 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that continued operation of a plant nursery, which has been expanded absent the approval of a Category 5 Special Exception from the Board of Supervisors, is a violation of Par. 2 of Sect. 15-101 and Par. 2 of Sect. 2-304 of the Zoning Ordinance. Located at 9023 Arlington Blvd. on approx. 3.72 ac. of land zoned R-1. Providence District. Tax Map 48-4 ((1)) 44. (MOVED FROM 2/4/97. DEF. FROM 2/25/97. MOVED FROM 5/20/97. CONTINUED FROM 7/22/97. RECONSIDERATION GRANTED 10/28/97. DEF. from 4/21/98, 9/29/98, 8/15/00, 9/12/00, and 10/17/00 and 1/9/01)

Mr. Hart made a disclosure that would not affect his participation in the hearing.

William E. Shoup, Deputy Zoning Administrator, stated that the case had been deferred several times awaiting a decision from the Virginia Supreme Court regarding the appellant's petition of the Circuit Court ruling. He informed the Board that the Supreme Court refused to accept the petition; therefore, staff was prepared to go forward with the appeal. He explained that the appellants began a plant nursery use in 1973. At that time the use was considered by-right as an agricultural use. In 1975, the Board of Zoning Appeals made a decision on appeal that the appellants could not sell non-nursery stock items. He said on August 14, 1978, the current Zoning Ordinance took effect and the property was zoned to the R-1 District. Under that Zoning Ordinance plant/nurseries became a Special Exception use and existing plant/nurseries could continue to operate but could not expand under the provisions in effect as of that date and any expansion required Special Exception approval from the Board of Supervisors.

Mr. Shoup explained that the appeal centered on an October 11, 1996, Notice of Violation for adding structures to the property after August 14, 1978, and for selling non-nursery stock items; therefore, it was determined that those activities constituted an unlawful expansion of the plant nursery use without Special Exception approval. He informed the Board that all but one of the structures had been removed; however, the appellants were still selling items that had never been permitted to be sold on the property. He stated staff's position that the appellants had continued to operate a plant nursery that was expanded without Special Exception approval. He noted that, notwithstanding the changes that had been made, the appeal was of the October 11, 1996, Notice of Violation and the facts at that time clearly constituted an expansion; therefore, the appellants were in violation of the Zoning Ordinance provisions at the time of the issuance of that Notice of Violation.

Mr. Shoup informed the Board that the appellants filed suit against the Zoning Administrator, the Board of Zoning Appeals (BZA) and the Board of Supervisors (BOS), and that the Circuit Court ruled that the appellants had no nonconforming or vested rights and the earlier decisions of the BZA and the Zoning Administrator regarding the requirement of a Special Exception for any expansion were things decided, since they were not appealed. He explained that since the Supreme Court had refused to hear a challenge of that Circuit Court decision, that decision was controlling in the appeal to the BZA.

Mark Moorstein, agent for the appellants, stated that at the time the appellants began to operate their plant nursery, it was similar to other plant nurseries in the County. He discussed the fact that in 1975, the

appellants requested a determination from Mr. Knowlton, the Zoning Administrator at that time. He stated the DeAngelis and Cupp court cases illustrated that the sale of manmade items was ancillary to an agricultural use, which was permitted in the residential zone and he suggested that those court cases proved the Knowlton decision to be wrong. He stated that because the decision by Mr. Knowlton had not been appealed, it became a thing decided and that was the only factor that prevented the appellants from being able to sell manmade items. He stated that other nurseries that were similar to the appellants sold identical manmade items on a routine basis in the same Zoning District. He stated that a quirk in the law had prejudiced the appellants because they could not exercise their rights under the grandfathered provisions. He presented arguments suggesting that the equal protection provisions of the Constitution trumped any lower court decisions. He indicated that the appellants were doing what every other plant nursery was doing and suggested that they were targeted because they failed to appeal the decision by Mr. Knowlton, a decision which he believed was wrong. He said that the appellants had asked for a determination and the decision was wrong; therefore, the appellants were prejudiced because they could no longer participate like other parties that were similarly situated. He stated that the Rowe Supreme Court case stated that you couldn't discriminate unless you can show a rational reason for the discrimination that has to do with health, safety or welfare. He suggested that because other nurseries in the County were not in violation for selling manmade items and the County had not used a health safety standard with respect to the appellants business they were not in violation of the Ordinance. He presented photographs and discussion relating to other plant nurseries that sold manmade items similar to the items being sold by the appellants. The nurseries he cited were; Wolf Trap Nursery; Burke Nursery; Meadows; Wakefield and Seneca Falls.

Mr. Moorstein concluded his testimony by noting that the appellants addressed much of the expansion issue and he noted that all that remained was the issue of the selling of manmade items. He suggested that the equal protection provisions would allow the appellants to continue to sell manmade items.
There was discussion between Mr. Hart and Mr. Moorstein as to whether or not there was Virginia authority for the BZA, regarding a constitutional issue, to move on an issue that had already been decided. Mr. Moorstein replied that there had never been an instance where that actually happened.

Mr. Hart asked if there was a factual disagreement regarding the existence of the one remaining shed that was still in violation. Mr. Moorstein replied that the remaining shed and previous sheds were erected as a result of a request from the County Fire Marshal and the expansion was not an intentional expansion in terms of violating the statute. He stated that the remaining shed was three-sided in order to protect some manmade items.

Mr. Hammack stated that he was present at all of the previous hearings and he did not recall any information pertaining to the Fire Marshal. Paul Craven submitted several Notices of Violation indicating infractions of the fire code and stated that the Fire Marshal had required that he construct several sheds.

Mr. Hart asked if there was a specific document that required him to construct a shed. Mr. Craven stated that there was no official paperwork; however, he had been told that he needed to construct several sheds to separate hazardous materials.

Mr. Pammel stated that the Fire Marshal's office did require the separation of chemicals and they would require separate structures.

Mr. Craven reported the steps he had taken towards bringing the property into compliance. He suggested that Fairfax County had permitted other nurseries to construct buildings and sell manmade items that were not permitted under the current Zoning Ordinance. He contended that if the BZA ruled in favor of the Zoning Ordinance he would be forced to go out of business.

Mr. Hammack asked the appellant why he did not comply with the Special Exception conditions. Mr. Craven replied that he was only given 6 months to acquire a Non-Residential Use Permit (Non-RUP), and that was not enough time to fulfill all the requirements needed to get the permit.

Mr. Hammack suggested that the appellants also provided a landscape contracting service out of the nursery. Mr. Craven stated that he wanted to run a nursery as opposed to pursuing landscape contracting on a full-time basis.

Mr. Hart asked if the existing shed was the subject of one of the three determinations that had not been appealed. Mr. Shoup stated that was correct.

Chairman DiGiulian called for speakers.

Freida Robey, 2525 Ogden Street, came forward to speak in support. She stated that she represented the citizens that had attended the initial hearing. She said that there was never an expansion in the business and all of the additional sheds had been created to satisfy the Fairfax County Fire Marshal. She reminded the Board that they had initially voted in favor of the appellants at the first hearing. She informed the Board that the other nurseries in the area were selling manmade items which were in violation of the current Zoning Ordinance.

Dionne Robey, (no address given for the record), came forward to speak in support. He stated that he knew people who had worked in his position at the nursery in 1971 and the jobs were virtually the same as at the present time. He stated that there were more materials than in the 1970's but the basic business was the same as it was from the beginning. He informed the Board that there were many Fairfax County residents that were employed at the nursery who were dependent on their jobs and could not afford to lose them.

Pat Bondy, (no address given for the record), came forward to speak in support. He stated that if the Board voted against the appellants, it would give them no other choice but to pursue a large landscape contracting use on the property.

Mr. Shoup informed the Board that staff had researched the requests of the Fire Marshal and discovered that the type of chemicals that were typically kept at a plant nursery did not fall under the code requirements that required storage in a separate structure; therefore, it was unlikely that any order to construct sheds to house such chemicals was given. He pointed out that even if the appellants were instructed to construct sheds, it did not negate them of the responsibility to obtain special exception approval for expansion. He referred to Jan Brodie, County Attorneys Office to speak to the issue of equal protection.

Ms. Brodie stated that the Cupp court case that the appellants had referenced was not similar with the aspects of the appeal. She explained that the Supreme Court had found that there was no vested right and no nonconforming use and that the appellants were required to get a special exception because they had not appealed the earlier decisions of the BZA and the Zoning Administrator regarding the requirement of a Special Exception for any expansion. She stated that there was no case law that stated that Mr. Knowlton's decision could be overturned even though appellants suggested that that decision was incorrect. She explained that the appellant could operate a plant nursery under the guidelines of a special exception and the Notice of Violation from 1996, was valid.

Ms. Gibb asked Mr. Shoup for his opinion regarding the circumstances of the appellants' unsuccessful special exception. He stated that the appellants never followed through with their site plan approval. Ms. Gibb asked what had happened with regard to the Non-RUP. Mr. Shoup explained that the special exception was in two phases, to try and legitimize the existing use of the property and secondly, a master plan for additional structures and expansion. He noted that the appellants could have requested additional time to obtain a Non-RUP. He contended that, had the appellants had been diligently pursuing that approval, they could have been provided that additional time from the County.

Mr. Hart asked if "things decided" could be revisited by the BZA, through either the equal protection analysis or if other uses were operating with the same violations without being penalized. Ms. Brodie replied that they could not. Mr. Hart asked if it was appropriate for the BZA to take into consideration the comparisons to other properties in the same context. Ms. Brodie explained that the BZA could not take into consideration other illegal uses when making decisions.

Mr. Ribble asked that staff research the other nurseries that were mentioned and act on any zoning violations.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he had visited the nursery early in the history of the appeal and investigated the

issue regarding expansion and at that time he felt that the appellants were in violation of the Zoning Ordinance. He stated that there had been an expansion as cited by the Zoning Administrator and since the appellants had not appealed the earlier decision of Mr. Knowlton, there was an issue of things decided.

Mr. Hammack moved to uphold the decision of the Zoning Administrator. Mr. Pammel seconded the motion.

Mr. Hart stated that he was in support of the motion. He stated that the appellants had raised a good argument of how the Ordinance dealt with plant nurseries with added retail aspects located in residential districts.

Mr. Kelley stated that he was opposed to the motion. He stated that the issue should be decided by the Circuit Court. He stated that he would not put anyone out of business.

Mr. Hammack stated that having the appellants come under compliance and obtain a special exception and abide by those development conditions would not put them out of business. He stated that if the Board did not make a decision the appellants wouldn't have any ability to appeal the decision. He stated that the Board had an obligation to make a decision.
Ms. Gibb stated that she reluctantly supported the motion. She said that the appellants were allowed to intensify the use that was grandfathered but she did have problems with the selling of the manmade items. She stated that a special exception application was not a simple process and for a small business it could be devastating to try to accommodate all of the regulations of the County.

The motion carried by a vote of 6-1. Mr. Kelley voted against the motion.

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Page 051, January 23, 2001, (Tape 1) After Agenda Items:

Consideration of Acceptance of Appeal
Sang Young Choi, LC & Bog Nim Choi, LC

Mr. Pammel moved to withdraw the consideration of acceptance. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 051, January 23, 2001, (Tape 1) After Agenda Items:

Approval of January 16, 2001 Resolutions

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

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Page 051, January 23, 2001, (Tape 1) After Agenda Items:

Additional Time Request
Korean Presbyterian Church
SPA 76-A-230

Mr. Pammel moved to approve the Additional Time Request. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is July 7, 2002.

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As there was no other business to come before the Board, the meeting was adjourned at 11:38 a.m.

Minutes by: Lori M. Mallam

Approved on: March 26, 2002

Regina Thorn Corbett, 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 27, 2000. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; James Hart; James Pammel and John Ribble. Paul Hammack and Robert Kelley were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies 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 053 January 30, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PATRICIA C. & JOHN D. VEATCH, VC 00-V-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line. Located at 1214 Falster Ct. on approx. 11,795 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 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. Patricia Veatch, 1214 Falster Court, Alexandria, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition to the dwelling, to be located 19.7 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5.3 feet was requested.

Ms. Veatch presented the variance request as outlined in the statement of justification submitted with the application. She stated that their home was an older home and that they would like to extend the bedroom and the bathroom on the upper level.

Mr. Pammel asked whether the proposed location was the only area they could expand. Ms. Veatch replied that was the area where the bedroom and bathroom were located.

Mr. Pammel asked if the lot was shallow. Ms. Veatch replied that the lot was long and narrow.

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

Mr. Pammel moved to approve VC 00-V-160 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICIA C. & JOHN D. VEATCH, VC 00-V-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.7 ft. from rear lot line. Located at 1214 Falster Ct. on approx. 11,795 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((10)) 14. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 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 indicating compliance with the required standards for a variance.
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 the second story addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 19, 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.

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. Mr. Ribble was not present for the vote and Mr. Hammack 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DEAN & WANDA HALSTEAD, VC 00-M-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line. Located at 6529 Jay Miller Dr. on approx. 12,698 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 261.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dean Halstead, 6529 Jay Miller Drive, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the enclosure of an existing screened porch, to be located 10.2 feet from the west side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 4.8 feet was requested.

Mr. Halstead presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing screened porch which was part of the existing footprint of the house. Mr. Halstead stated that the pollen in the area was very severe and the screened porch was unusable for several months because of the pollen.

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

Mr. Hart moved to approve VC 00-M-152 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEAN & WANDA HALSTEAD, VC 00-M-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line. Located at 6529 Jay Miller Dr. on approx. 12,698 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 261. 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 30, 2000; and

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

1. The applicants are the owners of the land.
2. The request is simply to enclose an existing screened porch.
3. The side lot line is not square to the house.
4. The variance request is relatively minimal.
5. 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 the addition (enclosure of the screened porch) shown on the plat prepared by SDE, Suburban Development Engineering, dated March 5, 1998, submitted with this application and is not transferable to other land.

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

Ms. Gibb seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote and Mr. Hammack 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 056 January 30, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MAURICE G. & PAULINE GAIL CODERRE, VC 00-S-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. from rear lot line. Located at 8106 West Point Dr. on approx. 14,455 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 122.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maurice Coderre, 8106 West Point Drive, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a screened porch room addition to be located 9.5 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 15.5 feet was requested.

Mr. Coderre presented the variance request as outlined in the statement of justification submitted with the application. He said a storm destroyed their deck and they would like to replace the deck by adding a screened porch. Mr. Coderre stated that their property was surrounded by parkland and open space, which would cause minimal effect on the neighbors. He said the application met the requirements for a variance.

Ms. Gibb asked if the back yard sloped under the deck. Mr. Coderre replied that the yard sloped under the deck and on the surrounding terrain.

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

Ms. Gibb moved to approve VC 00-S-151 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MAURICE G. & PAULINE GAIL CODERRE, VC 00-S-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.5 ft. from rear lot line. Located at 8106 West Point Dr. on approx. 14,455 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 122. 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 30, 2000; and

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

1. The applicants are the owners of the land.
2. The applicant's statement of justification and testimony indicates compliance with the required standards for a variance.
3. The lot is unusually shaped.
4. The house is located in an unusual manner.
5. The slope of the terrain causes unusual topographical conditions.
6. The lot is surrounded by parkland, which causes only minimal impact on the neighbors.

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

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz, dated, January 13, 1993, as revised through September 29, 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.

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-0-1. Mr. Ribble abstained from the vote and Mr. Hammack 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 058 January 30, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ABNER LOUIS NOTKINS, VA 97-D-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 97-D-043 to permit construction of addition 15 ft. 6 in. and eave 13 ft. 6 in. from side lot line. Located at 1179 Crest La. on approx. 38,585 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 17.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Notkins, 1179 Crest 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 amendment to a previously approved variance to permit the construction of a single story

addition to enlarge the kitchen area to be located 15 feet 6 inches and an eave to be located 13 feet 6 inches from a side lot line. A minimum side yard of 20 feet is required; therefore, variances of 4 feet 6 inches for the addition and 3 feet 6 inches for the eave were requested. Mr. Bernal noted that the applicants' previously approved variances were to permit construction of additions 27.0 feet from the front lot line and 18.6 feet from the side lot line. The subject application would bring the proposed addition 15 feet 6 inches to the same side lot line as in the previously approved application.

Ms. Notkins presented the variance request as outlined in the statement of justification submitted with the application. She said the house was built in 1950 and a variance was needed every time something was done to the house. Ms. Notkins stated that there would be plantings between the addition and the adjacent property. She said the addition would sit below the road and would not be visible.

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

Mr. Ribble moved to approve VA 97-D-043 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ABNER LOUIS NOTKINS, VA 97-D-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 97-D-043 to permit construction of addition 15 ft. 6 in. and eave 13 ft. 6 in. from side lot line. Located at 1179 Crest La. on approx. 38,585 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 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 January 30, 2000; and

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

1. The applicant is the owner of the land.
2. The applicant's statement of justification and testimony indicates compliance with the required standards for a variance.
3. The lot is narrow with exceptional topographical conditions.

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

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

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Susan Woodward Notkins, dated September 19, 2000, as revised through November 9, 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.

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 5-0. Mr. Hammack 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 060 January 30, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR L. BUTT, VC 00-P-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.3 ft. from side lot line. Located at 8605 Aponi Rd. on approx. 21,976 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 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. Arthur Butt, 8605 Aponi Road, Vienna, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 15.3 feet from the side lot line. The addition would include a garage, bedroom, bathroom and foyer. A minimum side yard of 20 feet is required; therefore, a variance of 4.7 feet was requested.

Mr. Butt presented the variance request as outlined in the statement of justification submitted with the application. He said the house was built in the 1950s and they would like to construct a garage, bedroom, and bathroom. Mr. Butt said the garage was requested to obtain shelter from the elements.

Mr. Hart asked if the proposed garage would be a 1-car garage. Mr. Butt replied yes.

Mr. Hart stated that the proposed garage was larger than what the Board typically approved for 1-car garages. Mr. Butt replied that the size of the garage was because of the chimney and if it was any smaller you could not open the car doors once inside the garage.

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

Mr. Pammel said when the homes were built in that area the zoning was rural residential and the minimum lot size was ½ acre. He stated that the County comprehensively rezoned in 1959 and it became R-1 and the subject lot size was a little over ½ acre. Mr. Pammel said the development should meet the standards for an R-2 District for side yards, which would be 15 feet. He moved to approve VC 00-P-154 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ARTHUR L. BUTT, VC 00-P-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.3 ft. from side lot line. Located at 8605 Aponi Rd. on approx. 21,976 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 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 30, 2000; and

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

1. The applicant is the owner of the land.

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

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Larry N. Scartz, dated July 8, 1999, revised by Scott Charles, dated October 24, 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.

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. Hammack 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 062 January 30, 2001, (Tape 1), Scheduled case of:

9:00 A.M. EINER R. NIELSON, VC 00-D-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 outlot into 5 lots with proposed Lots 3, 4 and 5 having a lot width of 4.85 ft. and proposed Lots 1 and 2 having a lot width of 4.84 ft. Located at on the W. side of Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A.

Chairman DiGiulian noted that the subject application had been administratively moved to March 13, 2001, because of notices.

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Page 062 January 30, 2001, (Tape 1), After Agenda Item:

Approval of January 23, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:34 a.m.

Minutes by: Regina Thorn Corbett

Approved on: May 8, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 6, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb, James Hart; Paul Hammack, James Pammel, and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman discussed the policies 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.

9:00 A.M. EUGENE P. MILUNEC, VC 00-Y-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line. Located at 13601 South Springs Dr. on approx. 10,374 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 66-3 ((9)) 312.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eugene Milunec, 13601 South Springs Drive, Clifton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 20 feet from the rear lot line. The Zoning Ordinance requires a minimum yard of 25 feet; therefore, a variance of 5.0 feet was requested.

Mr. Milunec presented the variance request as outlined in the statement of justification submitted with the application. He stated that a storm drain easement on the property skewed the orientation of the house; therefore, a variance was needed in order to construct the addition.

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

Mr. Hammack moved to approve VC 00-Y-156 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EUGENE P. MILUNEC, VC 00-Y-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line. Located at 13601 South Springs Dr. on approx. 10,374 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 66-3 ((9)) 312. 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 6, 2001; 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 required standards for the granting of a variance.
3. The house was sited askew on the property.
4. Only a corner of the proposed addition requires the actual variance.
5. The proposed application is in harmony with the neighborhood.

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Christopher Consultants, Jr., dated November 11, 2000, through November 17, 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.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 066 February 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. ANTHONY SPAGNOLO, VC 00-D-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 35.0 ft. from front lot line of a corner lot. Located at 1200 Corbin Ct. on approx. 37,291 sq. ft. of land zoned R-1. Dranesville District.

Tax Map 30-1 ((2)) 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. Anthony Spagnolo, 1200 Corbin Court, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure to be located 35 feet from a front lot line on a corner lot. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 5.0 feet was requested.

Mr. Spagnolo presented the variance request as outlined in the statement of justification submitted with the application. He stated that the present garage was detached but it would be attached when the new home was built. He noted that only the rear corner of the structure required a variance. He stated that the addition would be in character with the neighborhood. Mr. Spagnolo said that he resided next door to the subject parcel and the addition was being built in a very non-evasive fashion.

Mr. Pammel asked why a 4-car garage was needed. Mr. Spagnolo replied that Georgian buildings required appendicy structures and the roofline for a 4-car garage would be in proportion with the size of the proposed home. He stated that he was trying to maintain a degree of balance in order to represent a true Georgian style home.

Mr. Hart asked for clarification that the garage would be eventually attached to a new dwelling. Mr. Spagnolo explained that the new home would be built on top of the existing home and the garage would attach.

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

Mr. Pammel moved to approve VC 00-D-158 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY SPAGNOLO, VC 00-D-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 35.0 ft. from front lot line of a corner lot. Located at 1200 Corbin Ct. on approx. 37,291 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-1 ((2)) 36. 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 6, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The proposed addition is located on a corner lot.
4. The variance request is minimal.

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

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

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage) shown on the plat prepared by John A. Kephart, dated July 25, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MEAGAN C. JANS, VC 00-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line, 2.0 ft. from rear lot line and eave 1.0 ft. from rear lot line. Located at 1209 Priscilla La. on approx. 10,533 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (18) 8. (Def. from 1/2/01 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. Meagan C. Jans, 1209 Priscilla Lane, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. This case was originally heard on January 2, 2001, and deferred decision to allow the applicant time to address neighbors concerns and the Boards question about easements on the subject property.

Originally, the applicant requested variances to permit the construction of an accessory structure, a detached garage, to be located 5.0 feet from a side lot line and 2.0 feet from the rear lot line and eave 1 foot from the rear lot line. Since then, the applicant submitted a revised plat dated January 10, 2001, with revisions of the variance distances. The new requested variances were for the accessory structure to be located 5.0 feet from the rear lot line and eave to be 3.9 feet from the same rear lot line and 5.0 feet from the side lot line and eave 4.0 feet from the same side lot line.

With regard to the Boards question about easements, staff was faxed a copy of recorded easements which have been distributed to the Board. However, in staff's research no easements were shown on any of the plats that were submitted to the county in this vicinity and discussion with Alexandria Surveys indicated they did not identify any easements during their title search. The minimum side yard requirement for the R-3 district is 12 feet. The minimum rear yard required is 12 feet with a permitted extension of 3 feet for the eave. Therefore, variances of 7.0 feet for the side yard and 7.0 feet for the rear yard and 5.1 feet for the eave were requested.

Ms. Jans presented the variance request as outlined in the statement of justification submitted with the application. She addressed the Board's concerns from the last hearing by submitting an outline of the neighborhood, which illustrated the proximity of the structures surrounding her property. She explained that there were 16 structures similar to hers in the neighborhood and 5 of those structures were constructed without permits. She stated that there was one variance granted in her neighborhood and it was for a carport. Ms. Jans referred to her architect to explain the changes they had made in order to address the neighbors' issues.

Steve Calinski, Brown & Associates, stated that the windows, southern light, and ventilation to the home would be affected if the garage were attached to the home. He explained that rear of the proposed garage was moved up 3 feet, the roof was redesigned to be lower than the original application and the total footprint had been reduced.

Chairman DiGiulian called for speakers.

John Massey, 1207 Pricilla Lane, came forward to speak in support of the application. He stated that he lived adjacent to the applicant and he had no objection to the garage.

Jim White, (no address given for record), came forward to speak in opposition of the application. He stated that the new proposal only moved the garage an additional 3.0 feet away from his property line. He stated that there were already several buildings on the property in question. He stated that the garage would cause a negative impact on his property value.

James Hollanback, 8615 Connover Place, came forward to speak in opposition of the application. He stated that the variance request was unreasonable and the applicant was overbuilding the property. He said that the garage should be attached to the home to keep in character with the neighborhood.

Ms. Jans, in her rebuttal, stated that she was asking for reasonable use of her property and the proposed garage would be architecturally pleasing. She stated that the improvements to her home would increase the property values for the surrounding homes.

Chairman DiGiulian closed the public hearing.

Mr. Ribble asked staff to submit the zoning violations in the area to Zoning Enforcement.

Mr. Hart noted that there was a 5-foot easement on the property into which the proposed eave would encroach into and he asked staff if there was a history of variances that had been approved with similar

circumstances. Susan Langdon, Branch Chief, Special Permit and Variance Branch replied that in instances in which an easement was shown on the plat, with an encroaching eave was not approved.
Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve-in-part VC 00-V-140 for the garage and eave to be located no less than 5.0 feet from the side and rear lot lines and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MEAGAN C. JANS, VC 00-V-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line, 2.0 ft. from rear lot line and eave 1.0 ft. from rear lot line. **(THE BOARD APPROVED IN PART THE GARAGE AND THE EAVES TO BE LOCATED NO LESS THAN 5.0 FEET FROM THE SIDE AND REAR LOT LINES)** Located at 1209 Priscilla La. on approx. 10,533 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((5)) (18) 8. (Def. from 1/2/01 for decision only) 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 6, 2001; and

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

1. The applicant is the owner of the land.
2. The application has improved significantly since the previous presentation.
3. The applicant presented testimony indicating compliance with the applicable standards for the granting of a variance.
4. The reduction in the profile of the building with the projection on the side breaks the building up into more the scale of some of the rear yard sheds in the area and that goes a long way to mitigating the impact on the neighbors.

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

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (detached garage) as shown on the revised plat prepared by Kenneth W. White, dated May 30, 2000, as revised through January 10, 2001, 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 garage shall be architecturally compatible with existing dwelling and, in substantial conformance with the renderings presented to the Board of Zoning Appeals, dated January 9, 2001.

4. Notwithstanding anything shown on the plat the garage and eaves shall be located no less than 5.0 feet from the side and rear lot lines.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 071, February 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. HOLLY HOFFMAN MCSTRAVICK, VC 00-D-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 7.7 ft. from side lot line. Located at 6522 Ivy Hill Dr. on approx. 10,558 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 33.

The applicant requested a deferral in order to address the concerns of one neighbor who was in opposition of the application.

Mr. Ribble moved to defer VC 00-D-155 until March 6, 2001, at 9:00 a.m. 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 071, February 6, 2001, (Tape 1) Scheduled case of:

9:00 A.M. OAKWOOD L.L.C., VC 00-L-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of two buildings 55.46 ft. and 62.12 ft. from one side lot line and 105.47

ft. and 105.21 ft. from other side lot line and within 75 ft. of an interstate highway. Located on the S. side of I-495 at the E. terminus of Oakwood Rd. on approx. 10.56 ac. of land zoned I-I. Lee District. Tax Map 81-2 ((1)) pt. 24A; 82-1 ((1)) pt. 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. Keith Martin, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The applicant sought approval to permit construction of two office buildings, with Building #1 to be located 55.46 feet from the northern side lot line and 105.47 feet from the southern side lot line. Building #2 is proposed to be located 62.12 feet from the northern side lot line and 105.21 feet from the southern side lot line. The Zoning Ordinance requires a minimum side yard of 200 feet; therefore, variances of 144.54 feet, 94.53 feet, 137.88 feet, and 94.79 feet were requested respectively for the buildings. The Zoning Ordinance also requires that commercial structures be located at least 75 feet from an interstate highway, thus a variance of 19.54 feet for Building #1 and 12.88 feet for Building #2 was requested.

Mr. Hammack referenced the proposed construction of a bridge on the property and asked what kind of an impact it would have on the application. Ms. Josiah answered that a definite location for the bridge had not been identified however, it was suggested that the bridge could be located to the west of the property and would have no impact on the proposed buildings.

Mr. Hart asked if the proposed bridge would be on the applicant's property and whether it would change the parking. Ms. Josiah answered that the bridge was proposed to be located west of the existing detention pond and it would not disturb any parking.

Mr. Martin presented the variance request as outlined in the statement of justification submitted with the application. He stated that the beltway had bisected the original parcel in the 1960's and as a result the remaining property was extremely narrow; therefore, it was impossible to construct a building without a variance. He stated that the applicant had been working closely with the Department of Transportation (DOT) to design the buildings and parking in a fashion such that the impending bridge construction would not adversely affect the property. He stated that although the issue of the right-of-way dedication had been resolved, it was not reflected on the plat and asked for a deferral in order to submit a new plat reflecting that dedication.

Chairman DiGiulian called for speakers.

Gerald Antwerp, 5624 Overly Street, came forward to speak in opposition. He stated that he lived to the east of the subject property and that he was concerned about a storm management pond on the east of the property, which connected with a stream that ran behind the homes in his subdivision. He explained that currently there were flooding problems during heavy rain because the stream was not large enough to take care of the runoff that currently existed. He said that he was concerned that the construction of the buildings would produce more flooding.

Mr. Martin stated that there was an existing storm management pond located to the west of the property, which was larger than the proposed facility to the east, and the majority of the runoff would be channeled to that pond.

Ms. Gibb stated that the applicant, at the time of site plan approval, would have to accommodate the increased runoff. Mr. Martin concurred.

Mr. Hammack asked that specific language be added to the conditions reflecting the applicant's responsibility to accommodate the increased run off and that there would be no exacerbation of stormwater runoff on the properties located to the east of the application site.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer VC 00-D-153 until February 13, 2001, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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9:00 A.M. RITA POWELL, SPA 94-Y-059 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 94-Y-059 previously approved for a kennel to permit site modifications, building additions, veterinary hospital, animal crematory and increase in land area. Located at 4500 Upper Cub Run Dr. on approx. 6.05 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (moved from 1/23/01 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. Charles L. Shumate, 7737 Virginia Oaks Drive, Gainesville, Virginia, replied that it was.

William Mayland, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a special permit amendment to permit site modifications to construct additional kennels, an animal crematory, a veterinary hospital, and a second caretaker's quarters for a total of 20,400 square feet, and to expand the existing caretaker's quarters by 600 square feet. The applicant requested an increase in the number of animals permitted and the number of employees and parking spaces. Staff recommended approval of the application.

Mr. Shumate presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the use had perpetuated on the site for many years without any violations or incidents. He informed the Board that the Board of Supervisors had previously approved a rezoning of the site. He stated that the purpose of the special permit amendment request was to update the special permit to be in conformance with the approval of the rezoning.

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

Ms. Gibb moved to approve SPA 94-Y-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

RITA POWELL, SPA 94-Y-059 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 94-Y-059 previously approved for a kennel to permit site modifications, building additions, veterinary hospital, animal crematory and increase in land area. Located at 4500 Upper Cub Run Dr. on approx. 6.05 ac. of land zoned I-5, WS and AN. Sully District. Tax Map 33-4 ((1)) 9. (moved from 1/23/01 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 February 6, 2001; and

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

1. The applicant is the owner of the land.
2. The present zoning is I-5 as of February 5, 2001, and the area of the lot is 6.50 acres.
3. The Board of Zoning Appeals granted a special permit for this applicant in 1999 and this action is simply to make the applicant's plat and development conditions consistent with the Board of Supervisors' action in rezoning the property.

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 applicants only and is not transferable without further action of this Board, and is for the location indicated on the application, 4500 Upper Cub Run Road, (6.05 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 generalized development plan/special permit plat prepared by Dewberry & Davis dated May 5, 2000, as revised through November 16, 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 kennel shall be for the use of household pets only. The number of household pets in the facility shall not exceed 350 animals at any one time.

6. The hours of operation for the kennel shall be limited to 8:00 a.m. to 7:00 p.m., Monday through Friday, Saturday 8:00 a.m. to 5:00 p.m., and Sunday 1:00 p.m. to 5:00 p.m. The veterinary hospital may operate 24 hours a day, seven days a week.

7. There shall be a maximum of twelve (12) full time and twelve (12) part-time employees associated with these uses.

8. There shall be a minimum of thirty-six (36) parking spaces as shown on the generalized development plan/special permit plat. All parking shall be on-site.

9. All signs shall comply with the provisions of Article 12, Signs. Signage shall be lighted internally to minimize glare.

10. The two accessory dwellings shall be limited to use only by employees of the kennel to assist in the operation of the kennel after hours.

11. The cages used for all animals shall be designed to ensure the secure confinement of animals and shall comply with all State and County regulations.

12. The proposed building shall be soundproofed and constructed so that there will be no emission of odor or noise detrimental to other property in the area. Noise levels shall conform to the provisions of Chapter 108 of the Code.

13. The maximum height of the proposed building shall be 45 feet.

14. Rooftop mechanical equipment shall be screened to the maximum extent feasible to minimize the visual impact.

15. The proposed building architectural façade shall be consistent with the general style and quality of the photograph on Sheet 1.

16. Outdoor lighting fixtures used to illuminate the parking area and walkways between buildings shall not exceed twelve (12) feet in height, shall be of low intensity design and shall focus directly on the subject property. All other outdoor lighting fixtures shall be full cut-off; focused downward and shielded to minimize glare, and meet the Performance Standards set forth in Article 14 of the Zoning Ordinance.

17. All animal wastes from animals located inside on the concrete floors of the existing and proposed building shall be washed and drained into the sanitary sewage system. Wastes from small animals in cages shall be collected in newspapers and disposed of in trash. Wastes from animals located in the outdoor gravel floor kennels shall be scooped up and disposed of in the trash on a daily basis. Liquid wastes from animals shall be shall be washed down and drained into the sanitary sewage system. In no instance shall waste removal be directed towards the stormwater management pond or stream.

18. Limits of clearing and grading consistent with those reflected on the GDP/SPA plat shall be maintained during construction, subject to the necessary installation of utilities as determined by DPWES. The limits of clearing and grading shall be designated on the site plan and subject to review and approval by the Urban Forestry Branch. Prior to site plan approval the applicant shall walk the limits of clearing and grading with an Urban Forestry Branch representative to determine where minor adjustments to the clearing limits can be made, if necessary and where practical, to protect quality vegetation. The limits of clearing and grading shall be flagged prior to construction.

19. Landscaping shall be provided, subject to the Urban Forester approval, in substantial conformance with the location and quantity as depicted on GDP/SPA plat.

20. Prior to Non-Residential Use Permits (Non-RUP) the existing stormwater management pond shall be abandoned and restored to its natural state, as approved by the Urban Forester. The restoration may include the grassed areas from the RPA line north to the tree line to have three foot wide strips roto-tilled from east to west spaced every ten feet. The strips to be planted with native woody seed mix or a variety of native seedling species planted on five foot centers. The RPA feature to be identified as a "No mowing area". The applicant shall not be required to obtain a waiver from DPWES in order to conduct the restoration.

21. The applicant shall remove debris located in the Resource Protection Area (RPA) prior to dedication of the RPA to the Park Authority.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 075 February 6, 2001, (Tape 1) Scheduled case of:

9:30 A.M. TALL OAKS VILLAGE CENTER LLC C/O ATLANTIC REALTY, A 2000-HM-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that Special Exception SE 97-H-048 for a drive-in bank has expired. Located at 12054 North Shore Dr. on approx. 14,111 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((5)) pt. 8A.

Elaine Jensen, Staff Coordinator, Acceptance and Interpretation Branch, made staff's presentation as outlined in the staff report. A letter by the applicant dated September 7, 2000, inquired whether the pad site could be developed with a retail use permitted in the shopping center, instead of the special exception use.

Barbara Byron, acting as the duly authorized agent of the Zoning Administrator, issued a determination that the pad site could be developed with a by-right use. The determination also noted that the special exception for the drive-in bank had expired on June 8, 2000, (3 months earlier). This note, regarding the expiration, was the subject of the appeal. The expiration provision in the special exception stated that this special exception automatically expired, without notice, 30 months after the date of approval unless Phase 1 of the use (a drive-in bank) had been established or construction had commenced and been diligently prosecuted. Staff consistently interpreted that the approval of a Building Permit and the pouring of footings constituted the commencement of construction for a special exception or special permit use for a building. In this case, no Building Permit was requested, and no construction had occurred on this pad site. It was staff's opinion that no work had been done to establish Phase 1 of the drive-in bank use or the commencement of construction on this pad site; therefore, Special Exception SE 97-H-048 had expired.

Mr. Hammack asked if the previous transcripts of the case contained any conversations with respect to Phase 1 and how it was included in the development conditions. Ms. Jensen replied that the transcripts contained no information regarding the definition of Phase 1 or its implementation into the development conditions.

Ms. Gibb asked staff to elaborate on their definition of the commencement of construction for a structure. Ms. Jensen explained that footings were always considered commencement of construction because they were structural elements and were required in any type of construction.

There was discussion between the Board and staff relating to the required landscaping for the revitalization of the shopping center as a whole and what was required for the fast food restaurant and the bank as the special exception plat encompassed both sites.

Mr. Pammel asked if the pad site for the bank was bonded. Ms. Jensen explained that the entire shopping center had been bonded at the same time with the revitalization effort and the special exceptions.

Erika Byrd, McGuire Woods, agent for the appellant, stated that the site plan covered improvements on the whole shopping center and not just the special exception sites. She stated that the appellants had submitted an extension request; however, due to the backlog in the Plan Review Department, they had just received a letter, dated January 24, 2001, which contained instructions on how to obtain an extension of the site plan. She explained those special exceptions for the fast food restaurant and the bank were heard simultaneously and, although they had separate development conditions, shared a special exception plat. Ms. Byrd said she did not dispute the fact that the bank use had not been established, however, the appellant had commenced construction for the site with the paving of a parking lot, the construction of the pad, and the installation of some of the required landscaping and curb and gutter.

Ms. Byrd explained that the interpretation request relating to the by right use of the property in lieu of a bank was to preserve the appellant's options in terms of discussing leases with tenants. She reiterated that the site plan included the entire site of the shopping center and all that remained to be done was the construction of the bank building.

Ms. Gibb asked when the pad site was graded. Ms. Byrd referred to Chris Fencel, a representative of the owner of the shopping center. Mr. Fencel, Development Manager for Atlantic Reality, stated that construction for the entire center began in April of 1998 and concluded in May of 1999. He stated that the grading, and curb and gutter were installed at some point during that period of time.

Ms. Gibb asked what actions the appellant was taking to keep the construction of the bank in motion. Ms. Byrd stated that the appellant was in discussions with several potential tenants and wanted to preserve the right to go forward with the drive-through bank.

Mr. Hammack asked why the appellant had not originally requested an extension to the site plan approval. Ms. Byrd explained that the appellant had assumed that the special exception was vested based on the amount of work that had commenced on the site.

Ms. Jensen contended that the special exceptions were separate from the revitalization effort and it was clear that the uses were separate. She reiterated that the appellant had not acquired a tenant for the site and the bank had not been constructed. She said that the last construction work on the site was in 1999;

therefore, there had been no diligent prosecution of construction. She stated that the appellants had never applied for a building permit for the bank structure.

Ms. Gibb asked how often there was more than one special exception sharing a plat. Kevin Guinaw, Branch Chief, Acceptance and Interpretation Branch, stated that there were an infinite number of varieties of special exception plats and when that happened the two uses were carefully delineated and any linkages between them were documented.

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

Mr. Pammel stated that because the entire shopping center was bonded and the site in question was a part of the bond, construction had commenced and was diligently prosecuted.

Mr. Hammack stated that the appellant had not requested an extension to the site plan approval. He stated that the work on the site pad was not diligently pursued.

Mr. Hart stated that the two special exceptions were interrelated and the development conditions and their relationship to the plat were inconsistent. He stated that he agreed with Mr. Pammel.

Chairman DiGiulian stated that everything on the site was an intricate part of the site plan and the special exceptions were an administrative requirement to get that specific use, but the improvements were all one development.

Mr. Pammel moved to reverse the decision of the Zoning Administrator. Mr. Ribble seconded the motion which carried by a vote of 4-2. Ms. Gibb and Mr. Hammack voted against the motion and Mr. Kelley was absent from the meeting.

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Page 077 February 6, 2001, (Tape 1) Scheduled case of:

9:30 A.M. BURCIN KALENDER, A 2000-LE-032 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is operating a laundromat in the C-8 District which has more than 3,000 sq. ft. of net floor area and is occupying the property without a valid Non-Residential Use Permit, all in violation of the Zoning Ordinance. Located at 7500 Richmond Hwy. on approx. 1.41 ac. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 66.

Mr. Hammack moved to defer A 2000-LE-032 until May 15, 2001, 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 077 February 6, 2001, (Tape 1) After Agenda Item:

Additional Time Request
Chantilly Bible Church
SP 97-Y-022

Mr. Hart moved to approve the request for additional time for SP 97-Y-022. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting. The new expiration date is February 12, 2002.

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Approval of January 30, 2001 Resolutions

Mr. Pammel moved to approve the 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 11:25 a.m.

Minutes by: Lori M. Mallam

Approved on: July 17, 2001

Regina Thorn Corbett

Regina Thorn Corbett, 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 13, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 079, February 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JAMES E. & MELANEY J. MACKIN, VC 00-S-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line such that side yards total 21.4 ft. Located at 9004 Teddy Rae Ct. on approx. 11,664 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 359.

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 Mackin, 9004 Teddy Rae Court, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to enclose an existing screened carport. The minimum side yard requirement is 24 feet; therefore, a variance of 2.6 feet was requested.

Mr. Mackin presented the variance request as outlined in the statement of justification submitted with the application. Mr. Mackin stated that the request was to enclose an existing carport, which was converted to a porch prior to the variance request. He stated that it was currently a screened porch; however, the request was to make the porch a full season/year around room by enclosing the walls. Mr. Mackin stated that there was no additional footage requested that wasn't already enclosed by the carport and asked for the Board's approval.

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

Mr. Hammack moved to approve VC 00-S-164 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 6, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. & MELANEY J. MACKIN, VC 00-S-164 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line such that side yards total 21.4 ft. Located at 9004 Teddy Rae Ct. on approx. 11,664 sq. ft. of land zoned R-2 (Cluster). Springfield District. Tax Map 88-2 ((4)) 359. 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 13, 2001; 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 addition is already in place and required very little change to convert to an all-year room.
4. The addition would require no change in the Zoning District.
5. The addition would have no impact on the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Kenneth W. White, dated October 30, 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.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 081, February 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., VC 00-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots having lot widths of 110.0 ft. Located at 10615 and 10619 Zion Dr. on approx. 2.17 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 19 and 20.

Mr. Hart made a disclosure to the Board on the application; however, stated that it would not affect his ability to participate in the hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Reed, Smith, Hazel & Thomas, PC, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit subdivision of two lots into two lots with each lot 110 feet in width. A minimum 150 foot lot width is required; therefore, variances of 40.0 feet for each lot were requested. Ms. Stanfield stated that the applicant had submitted revisions to development conditions #4 and #6; however, stated that staff had not had an opportunity to thoroughly review the revised proposed development conditions.

Robert Lawrence distributed revised development conditions to the Board members and presented the variance request as outlined in the statement of justification submitted with the application. Mr. Lawrence stated that the lot sizes created by the variance were larger than most lots in the area and was not a question of compatibility, only to make two lots of equal size. Mr. Lawrence reviewed the development condition changes with the Board.

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

Riva Roland Mead, representative of the owners of Lot 18, Else Howard, John Tillet, Jr., Jean Roland Wall, James Roland and Len Roland, 10607 Zion Drive, Fairfax, Virginia, came to the podium to speak in opposition to the application. Ms. Mead read a prepared statement to the Board on behalf of her brothers and sisters who own the lot adjacent to the subject property. Ms. Mead stated that the property had been owned by her family for over 50 years and said that the request was detrimental to their property and asked for the Board's denial of the application.

Mr. Lawrence stated that the variance request met all criteria. He stated that the property was planned for 2-3 dwelling units per acre and that the lot sizes requested were 43,000 sq. ft. and asked for the Board's approval of the application.

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

Mr. Pammel made a motion to defer decision to February 27, 2001, at 9:00 a.m. to allow staff an opportunity to make a thorough review of the amended development conditions submitted by the applicant.

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

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Page 081, February 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 60. (Def. From 1/2/01)

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 J. Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Ms. Strobel stated that the application had been deferred from a January public hearing date due to concerns from adjacent homeowners. She stated that despite repeated attempts, she had been unable to speak with her client, who was to have had discussions with those neighbors. Therefore, Ms. Strobel asked that the application be moved to the end of the agenda to give her an opportunity to speak with her clients.

Mr. Hammack made a motion to move the application to the end of the agenda.

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9:00 A.M. BASHEER-EDGEMOORE-MCLEAN, L.L.C., VC 00-P-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit increase in dwelling heights. Located at 7700 & 7706 Magarity Rd. on approx. 5.06 ac. of land zoned R-20. Providence District. Tax Map 39-2 ((1)) 66 and 70.

Mr. Hart made a disclosure to the Board on the application; however, stated that it would not affect his ability to participate in the hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an increase in building heights of 23 attached single family homes to 37 feet. The Ordinance required a maximum building height of 35 feet; therefore, a variance of 2 feet was requested for Units 1 through 10 and 36 through 48.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. Ms. Strobel submitted photographs to the Board showing that the request would not be detrimental to the surrounding neighborhood. Ms. Strobel stated that the density proposed was significantly less than the density permitted in the R-20 district. She stated that the request was for a maximum building height of 37 feet for 22 of the 61 proposed units. Ms. Strobel stated that if the applicants were required to comply strictly with the height restrictions, the applicants would be required to re-grade areas of the property, which would raise the elevations of the units, creating a visual impact from the buildings on adjacent properties; therefore, she requested the Board's approval of the application.

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

Mr. Hart moved to approve VC 00-P-157 for the reasons noted in the Resolution subject to the Development Conditions contained in the staff report dated February 6, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BASHEER-EDGEMOORE-MCLEAN, L.L.C., VC 00-P-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit increase in dwelling heights. Located at 7700 & 7706 Magarity Rd. on approx. 5.06 ac. of land zoned R-20. Providence District. Tax Map 39-2 ((1)) 66 and 70. 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 13, 2001; 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 topography shows that the profiles of the buildings would actually be lower with the 2 foot height increase without change in grading.
4. The request is consistent with the apartment buildings around it.
5. The variance request is minimal.
6. If multi-family units were done rather than townhouses on the R-20 site, the height would be considerably greater with significantly greater visual impact.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 height of Units 1-10 and 36-48 shown on the plat prepared by Christopher Consultants, Ltd., dated September 26, 2000 and signed October 25, 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 additional time to commence construction if a written

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 084, February 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. OAKWOOD L.L.C., VC 00-L-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of two buildings 55.46 ft. and 62.12 ft. from one side lot line and 105.47 ft. and 105.21 ft. from other side lot line and within 75 ft. of an interstate highway. Located on the S. side of I-495 at the E. terminus of Oakwood Rd. on approx. 10.56 ac. of land zoned I-I. Lee District. Tax Map 81-2 ((1)) pt. 24A; 82-1 ((1)) pt. 2. (Deferred for decision only from 2/6/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith Martin, Agent, Walsh, Colucci, Stackhouse, Emrich & Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, stated that the application had been deferred for decision only from the February 6, 2001, public hearing. She stated that the applicant had requested a deferral in order to submit a revised plat compliant with the Comprehensive Plan; specifically, showing a bridge spanning Interstate 495. She stated that revised plans had been distributed to the Board, as well as revised development conditions dated February 13, 2001, to reflect the Board's requested changes.

Mr. Martin reviewed the revised plat with the Board regarding the agreed upon design of the bridge dedication with the Department of Transportation and the Virginia Department of Transportation. He stated that the revised plan met transitional screening requirements and asked for the Board's approval.

Mr. Ribble moved to approve VC 00-L-153 for the reasons noted in the Resolution subject to the revised Development Conditions dated February 13, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

OAKWOOD L.L.C., VC 00-L-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of two buildings 55.46 ft. and 62.12 ft. from one side lot line and 105.47 ft. and 105.21 ft. from other side lot line and within 75 ft. of an interstate highway. Located on the S. side of I-495 at the E. terminus of Oakwood Rd. on approx. 10.56 ac. of land zoned I-I. Lee District. Tax Map 81-2 ((1)) pt. 24A; 82-1 ((1)) pt. 2. (Decision Deferred from 2/6/01). 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 13, 2001; 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 applicant met the concerns of the neighborhood.
4. The lot was exceptionally narrow which 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 two (2) buildings shown on the plat prepared by Bowman Consulting Group, Ltd., dated July, 2000 as revised through February 8, 2001, submitted with this application and is not transferable to other land. 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. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. This Variance 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). A coordinated review shall be executed by DPWES in concert with the Virginia Department of Transportation (VDOT) to ensure compliance with VDOT construction standards. Any plan submitted pursuant to this variance shall be in substantial conformance with these conditions. Minor modifications to the approved variance may be permitted pursuant to Sect. 2-419 of the Zoning Ordinance.

4. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance. Additional landscaping shall be provided in both the southern portion of the parking lot

and in the vegetative buffer along the southern property line to mitigate the visual impacts of the subject development to the residential development to the south. The species, size and location of the vegetation shall be as determined by the Urban Forestry Branch, DPWES. The number of parking spaces may be reduced to accommodate this landscaping provided the number of spaces remaining meet the minimum requirements for the approved uses on the site.

5. The limits of clearing and grading shall be no greater than shown on the variance plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES.

6. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as approved by DPWES. Stormwater Management practices shall be provided in order to ensure that post-development flows do not exceed pre-development flows and that existing downstream flooding problems are not exacerbated by the proposed development.

7. There shall be no encroachment into the Resource Protection Area (RPA) identified on the variance plat.

8. Building materials with characteristics pursuant to commonly accepted industry standards shall be used in order to achieve a maximum interior noise level of 50dBA Ldn in both office buildings. The following acoustical attributes shall be employed:

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

   - Doors and windows shall have laboratory sound transmission class (STC) rating of at least 28. If windows constitute more than 20% of any facade exposed to the highway noise source, then the doors and windows shall have laboratory sound transmission class (STC) rating of at least 39.

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

   Alternative noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 086 February 13, 2001, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM C. MAY, A 2000-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an accessory storage structure (shed) which exceeds 8 1/2 ft. in height has been erected on the appellant's property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 9137 Leghorn Pl. on approx. 11,115 sq. ft. of land zoned R-3. Providence District. Tax Map 58-2 ((10)) 53.

Chairman DiGiulian noted that notices were not in order.

William Shoup, Deputy Zoning Administrator, stated that the appellant had not sent the required notices and asked Mr. May to address the issue.

Mr. May stated that he had failed to send the notices by the required deadline and apologized to the Board.

Mr. Hammack made a motion to defer the application to April 10, 2001, at 9:30 a.m. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

Robert Gerusi, complainant, came to the podium and asked the Board to allow the public hearing to proceed. Chairman DiGiulian noted that the applicant had not complied with notification requirements and the application must be deferred to allow proper notification to occur.

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Page 087, February 13, 2001, (Tape 1), Scheduled case of:

9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((20)) 9.

Maggie Stehman, Zoning Administration Division, made staff's presentation as contained in the staff report. Ms. Stehman stated that a special exception was required in order to operate a vehicle light and major service establishment in the C-8 district. Ms. Stehman stated that the remedy to the violation would be a special exception for the major service establishment or cease this particular business and bring another business in that would be permitted by-right. She stated that the business was being operated by a tenant.

Alfred Reilly stated that the property was purchased in 1976 and that there were various businesses located on the street at that time. The property was then rented to a company that performed muffler work. He stated that the renter was there for several years, and was then served a violation notice. Mr. Reilly stated that when the renter left, the building was vacant for 18 months, of which during that time it was advertised to non-automotive tenants, which was unsuccessful. He stated that the real estate agent handling the rental believed that since the street was occupied primarily by automotive business, an occupancy permit could be obtained and therefore rented the property to an automotive business.

Mr. Reilly stated that because the new renter was unable to obtain an occupancy permit, he proceeded with the special exception process in 1996. Mr. Reilly stated that the filing fees were refunded in 1999 and that the special exception process never took place, upon repeated attempts to complete the process.

The Board discussed, at length, with Mr. Reilly and staff their concern regarding the timeframe of the filing of the application and the return of the filing fees to the applicant and why the application had never been accepted and scheduled for public hearing.

Upon discussion of the filing and acceptance process, Mr. Hammack made a motion to defer the application to February 27, 2001, at 9:30 a.m. to allow staff an opportunity to obtain further information on the special exception application filed by Mr. Reilly and the issue of the denial of the acceptance of the application due to submission requirements.

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

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Page 087 February 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville

Page 088, February 13, 2001, (Tape 1), PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141, continued from Page 087

District. Tax Map 21-4 ((1)) 60. (Def. From 1/2/01)

Ms. Strobel stated that she had been unable to reach her client and therefore requested a deferral of the application for one week.

Mr. Hammack made a motion to defer the application to February 20, 2001, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 088, February 13, 2001, (Tape 1), After Agenda Item:

Approval of November 14, 2000 Minutes

Mr. Hammack made a motion to approve the November 14, 2000, Minutes. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 088, February 13, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration for Meagan C. Jans – VC 00-V-140

Mr. Ribble stated that he had received a call from Supervisor Hyland requesting the reconsideration. Mr. Ribble stated that he supported the motion somewhat reluctantly and stated that he would like an opportunity to review information submitted by the applicant.

Mr. Ribble made a motion to defer decision for the Request for Reconsideration to February 20, 2001. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 088 February 13, 2001, (Tape 1), After Agenda Item:

Approval of February 6, 2001 Resolutions

Mr. Hammack made a motion to approve the February 6, 2001 Resolutions absent the Meagan C. Jans variance Resolution. Mr. Pammel seconded on 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 10:28 a.m.

Minutes by: Deborah Hedrick

Approved on: July 3, 2001

Regina Thorn Corbett, 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 20, 2001. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman DiGiulian was absent from the meeting

Vice Chairman Ribble called the meeting to order at 9:00 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 089, February 20, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL RAFEEDIE, VC 00-P-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.92 ft. from rear lot line. Located at 2501 Carol Pl. on approx. 10,607 sq. ft. of land zoned R-3. Providence District. Tax Map 40-3 ((31)) 9.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael Zarou, 4401 Choptank, Ashburn, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variance to permit the construction of a two-story addition to the dwelling, to be located 7.92 feet from the rear lot line. The Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 17.08 feet was requested.

Mr. Hart asked why the yard was determined to be a rear yard when an outlot road easement was located behind the property. Ms. Josiah replied that the surface was unpaved and grassy, and therefore did not qualify as a "road".

Mr. Zarou, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to build an addition to extend the family room and have a larger kitchen area.

Vice Chairman Ribble noted the exceptional topographical conditions as indicated in the statement of justification.

Mr. Zarou stated that the boundaries were narrow and the lot was triangular in shape. He said there was an outlet road adjacent to the property but it was all grass. Mr. Zarou stated that the rear yard dropped dramatically and there was a large tree in the rear of the property.

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

Mr. Hammack moved to approve VC 00-P-162 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL RAFEEDIE, VC 00-P-162 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.92 ft. from rear lot line. Located at 2501 Carol Pl. on approx. 10,607 sq. ft. of land zoned R-3. Providence District. Tax Map 40-3 ((31)) 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 February 20, 2001; 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 reflect the severe topographical conditions.
4. The irregularly shaped lot places constraints on the location of the addition.
5. There will not be any impact because there is a 30-foot outlet road to the rear of the property.

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

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

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

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

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

1. This variance is approved for the location of the two-story addition and deck shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated October 11, 2000 through February 20, 2001, 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. 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 February 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 091, February 20, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBIN & GARY HARRIS, VC 00-D-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. 5 and 5/8 in. from side lot line. Located at 1918 Franklin Ave. on approx. 13,772 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 24.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robin and Gary Harris, 1918 Franklin Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 12 feet 5 and 5/8 inches from a side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 2 feet 3/8 inches was requested.

Mr. Harris 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. Mr. Harris said the addition would not encroach on the neighbors' property and there was no objection from the neighbors.

Mr. Hammack asked whether the variance was needed for only a small corner Mr. Harris replied yes.

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

Mr. Pammel moved to approve VC 00-D-163 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBIN & GARY HARRIS, VC 00-D-163 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. 5 and 5/8 in. from side lot line. Located at 1918 Franklin Ave. on approx. 13,772 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 24. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 20, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants presented testimony indicating compliance with the required standards for a variance.
3. The house is in an unusual position by not being parallel with the property 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 addition shown on the plat prepared by William John Dennehy, stamped, "Received, Department of Planning and Zoning, Zoning Evaluation Division, November 29, 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.

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 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 February 28, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KATHLEEN M. ARNTS, VC 00-D-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from side lot line. Located at 1644 Wrightson Dr. on approx. 13,239 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (3) 22.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kathleen Arnts, 1644 Wrightson Drive, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 7.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 4.6 feet was requested.

Ms. Arnts presented the variance request as outlined in the statement of justification submitted with the application. She said the garage addition would be replacing the attached garage. Ms. Arnts said the neighbors were in support of the application. She requested a waiver of the 8-day waiting period.

Mr. Hart asked if the dimension of the garage would be the same as the carport. Ms. Arnts replied that the garage would be larger.

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

Mr. Hart moved to approve VC 00-D-168 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHLEEN M. ARNTS, VC 00-D-168 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.4 ft. from side lot line. Located at 1644 Wrightson Dr. on approx. 13,239 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (3) 22. 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 20, 2001; 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 irregularly shaped.
4. The placement of the house causes the addition to only be placed in the proposed location.
5. There is an existing carport on site that is similar to the proposed garage.
6. The owners of Lot 21 have no objection to 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 an addition, shown on the plat prepared by L.S. Whitson, dated December 8, 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.

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. Ms. Gibb 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 public hearing.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 20, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 094, February 20, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 60. (Def. From 1/2/01 and 2/13/01)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, 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 application was deferred from January 2, 2001, by the Board to address the concerns of the adjoining neighbors. The applicant requested variances to permit the construction of a roofed deck to be located 10.0 feet from a side lot line; an accessory structure, a garage, to be located 2.0 feet and an eave 0.5 feet from a side lot line; and stairs to be located 25.0 feet from the front lot line. A minimum side yard of 20 feet is required with a 3 foot extension allowed for eaves; therefore, variances of 10 feet for the roofed deck and 18 feet for the garage and 16.5 feet for the eave were requested. The minimum front yard requirement is 40 feet; therefore, a variance of 10 feet was requested for the stairs. Mr. Bernal said revised copies of the plat and development conditions were distributed to the Board, which reflected the height of the garage being reduced from 24.2 feet to 20 feet, and a proposed carport that was deleted.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the applicants proposed to construct a garage and covered walkway in conjunction with a home that was under construction. Ms. Strobel said the property had been improved with an existing garage but would be replaced by a new structure that would be compatible with the home that was under construction. She said the applicant also proposed a covered walkway from the garage to the house, which would be covered by a roof but not enclosed and would provide a way to the house during inclement weather. Ms. Strobel said the applicants reduced the height of the proposed garage from 24.3 feet to 20 feet and removed a proposed covered carport at the request of the neighbors. She said the application met the standards for a variance. Ms. Strobel said the shape of the property was long and narrow, which dictated the architectural design of the house. She said the topographical conditions made the proposed location the only place for the garage.

Ms. Gibb asked how much larger was the proposed garage as compared to the existing garage. Ms. Strobel stated that it was slightly larger.

Mr. Hammack said the enlargement of the garage was fairly substantial and it would be 2 feet off the property line which would not allow for maintenance. He said he had a problem with enlarging a structure to that size and having it that close to the property line with an eave that was ½ foot from the property line. Ms. Strobel said there was an existing structure and the garage was being constructed to be compatible with the house that was being constructed. She said the new structure would be just a small enlargement.

Mr. Hart asked whether there was a 2nd level to the proposed garage. Ms. Strobel replied that there was a storage area, but the garage would not have plumbing or living space above the garage.

Mr. Hart asked was there a reason the garage needed to be as high as 20 feet. Ms. Strobel said the height matched the height of the garage on the adjacent property and it would be architecturally compatible with the house being constructed on the lot.

Mr. Hart asked whether the yard dropped off in the back. Ms. Strobel replied yes.

Ms. Gibb asked would the existing screening be removed. Ms. Strobel replied that the applicant proposed an extensive landscaping plan.

Mr. Hammack said there was a shed on the plat and asked if it was permitted. Mr. Bernal replied that the shed was determined to be pre-existing and a special permit was not required.

Mr. Hammack asked whether the doctor planned to have an office in the structure. Ms. Strobel replied that he did not work at home, and it would not be an office for people to visit.

Mr. Hammack said that the site plan showed a proposed pergola. Ms. Strobel said that had been removed.

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

Mr. Gibb moved to approve VC 00-D-141 for the reasons noted in the Resolution.

Mr. Hammack stated that the structure was too large and too close to the property line for him to support the motion. He said there was 75 feet between the front of the house and the property line which was a gravel court yard. Mr. Hammack said it seemed to him that if there was room for a covered walkway, that the garage could be relocated in such a way that it would be off the property line. He said it should be 5 or 10 feet off the property line with screening for the neighbor, because of its size. Mr. Hammack said he felt there was room to do that, and to not do it would be a convenience for the applicant. He said the applicant had maximized every square inch on the lot. Mr. Hammack said he would oppose the motion.

Mr. Pammel said he agreed with Mr. Hammack's comments. He said he did not believe that a hardship existed in this instance.

The motion to grant failed by a vote of 2-4. Therefore, the application was denied.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 60. (Def. From 1/2/01 and 2/13/01) 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 20, 2001; and

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

1. The applicants are the owners of the land.
2. The testimony and statement of justification indicated that the lot is fairly shallow.
3. The topographical conditions prevent the garage from being in the rear of the lot.
4. The proposed garage would replace an existing garage.
5. 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 roofed deck, detached garage and stairs as shown on the plat prepared by John C. Manganello, dated July 10, 2000, as revised through February 5, 2001, 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. All structures shall be architecturally compatible with dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 failed by a vote of 2-4. Vice Chairman Ribble, Mr. Hart, Mr. Pammel and Mr. Hammack voted against the motion. Chairman DiGiulian was absent from the meeting.

****THE APPLICATION WAS DENIED FOR A LACK OF 4 AFFIRMATIVE VOTES.**

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 28, 2001. This date shall be deemed to be the final decision date of this variance.

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Page 097, February 20, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS SAMUEL TEASLEY AND LINDA JEAN FISHER TEASLEY, VC 00-V-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 2116 Whiteoaks Dr. on approx. 20,824 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((20)) 14.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eason Cross, 2309 Glasgow Road, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an accessory structure, a garage, to be located in the front yard of a lot containing 36,000 square feet or less.

Mr. Cross, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said it would not be practical for the garage to be placed in the rear. Mr. Cross stated that the structure would not infringe on the neighbors and that it was approved by the Architectural Review Committee.

Mr. Hart asked whether any trees would be removed. Mr. Cross replied that no trees would be removed.

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

Mr. Kelley moved to approve VC 00-V-166 for the reasons noted in the Resolution.

Mr. Hart complimented the applicant on a design that was sensitive to the site and tree preservation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS SAMUEL TEASLEY AND LINDA JEAN FISHER TEASLEY, VC 00-V-166 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 2116 Whiteoaks Dr. on approx. 20,824 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((20)) 14. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 20, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' statement of justification indicates that the applicants meet the required standards for a variance.
3. The lot has exceptional topographical conditions.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (carport) as shown on the plat prepared by Kenneth W. White, dated November 28, 2000, as revised by Eason Cross, Jr. stamp dated December 5, 2000, submitted with this application 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. 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 February 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 099, February 20, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 7510 Ox Rd. on approx. 12.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 14. (Def. From 12/19/00).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, 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 case was originally scheduled to be heard by the Board on December 19, 2000, and was deferred to allow staff additional time to review a revised plat that was submitted a few days prior to the public hearing. The applicants requested approval of a special permit for a place of worship and related facilities. The applicant's proposed construction of a place of worship would contain approximately 9,400 square feet with 400 seats, 157 parking spaces would be constructed in the northern and western portion of the site. The proposed access to the site would be via a driveway located along the northern portion of the site onto Henderson Road and another driveway from Route 123. The FAR was proposed to be 0.02. The proposed hours of operation were 10 a.m. to 2 p.m. on Saturdays and 10 a.m. to 12 noon on Sundays. Evening hours for meetings and activities were proposed for Tuesdays and Wednesdays nights from 7:30 p.m. –

9:00 p.m. Administrative hours would be from 8:30 a.m. to 4 p.m. Monday through Fridays. The applicants proposed to employ a total of 6 employees. A revised plat dated January 24, 2001, depicted several minor changes from the previous submission. A structure was moved from 79 feet to 100 feet from the western property line. Ten parking spaces that were located along the western side of the entrance along Henderson Road had been moved towards the entrance driveway along Ox Road. The driveway adjacent to the large septic field on the west side had been reconfigured to have one way traffic and reduced in width from 24 feet to 18 feet and to be located 35 feet from the western lot line instead of 25 feet, as originally shown. The barrier and the proposed plantings along the western lot line had been extended further south to a point approximately the same distance as the last adjoining lot in the Summerwind Subdivision with only a break at the existing AT&T easement. Staff believed that the application continued to have significant negative land use issues such as the unconsolidated residual parcels along Route 123. Mr. Bernal said unconsolidated, the parcels would be isolated between Route 123, a proposed six-lane highway, and the proposed place of worship, a large non-residential institutional use. He stated that this would impact the quality of life for the residents of those lots and could serve to encourage requests to develop non-residential uses that were not in accordance with the Comprehensive Plan. Mr. Bernal said failure to consolidate these residual lots along Route 123 with the proposed development was a critical failure of this application. Staff felt that even with the submission of a revised plat, significant Land Use and Transportation issues remain unresolved as noted in the Addendum dated February 13, 2001. Mr. Bernal noted that Mike Davis from the Department of Transportation was available for questions.

Mr. Hart asked how the unconsolidated lots would gain access without a service drive. Mr. Davis said that when the Virginia Department of Transportation (VDOT) was acquiring property for the widening of Route 123, they approached the property owners to seek acquisition of the property and the property owners did not want to sell their property; they wanted to stay in their location. VDOT would accommodate them by providing a driveway directly to Route 123.

Mr. Hart asked if Henderson Road would be widened. Mr. Davis said Henderson Road would not be significantly widened.

Mr. Strobel, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the applicant was the contract purchaser of approximately 12 acres located at the intersection of Route 123 and Henderson Road and proposed a place of worship. Ms. Strobel said the request was for a single building containing 9,400 square feet and an FAR of .02. She said she believed some of the facts had not been accurately represented despite correspondence and meetings. Ms. Strobel stated that the applicant was not proposing a school, daycare, or gymnasium. She said there was no EQC on the property. She said the size of the building and the parking had been reduced to accommodate the staff and the neighbors. Ms. Strobel stated that the buffers had been increased to a minimum set back of 30 feet and a 6-foot board on board fence would be added. She said the site was sloped which minimized impact on adjacent property owners. Ms. Strobel stated that the applicant was willing to eliminate septic field number 2 to be left as undisturbed open space. She said the building would only be used for religious services during off peak hours. Ms. Strobel asked for the people to stand to represent their support of the application. Ms. Strobel distributed a handout reflecting churches in the RC District with their lot sizes, seats, and FAR. She asked for a one-week deferral until after a meeting with VDOT.

Mr. Hart asked whether septic field number 1 was eliminated. Ms. Strobel replied yes.

Mr. Hart asked whether the applicant was proposing any improvements to Henderson Road. Ms. Strobel asked Chuck Dunlap, from Walter Phillips to address the question.

Mr. Dunlap stated that VDOT plans showed that Henderson Road would be improved through the subject property's frontage on Henderson Road to the west approximately 150-200 feet.

Mr. Hart asked if the applicant was proposing any modifications above what VDOT would do. Mr. Dunlap stated no. He said they evaluated the entrance based on VDOT's criteria using the current traffic count for Henderson Road, based on the trip generation that would be expected from the subject property, and applying that to VDOT's entrance criteria, no turn lanes were required.

Mr. Hart asked what would be in the lower level of the building. Ms. Strobel replied a social hall, an office, and classrooms.

Vice Chairman Ribble called for speakers.

Scott Moore, 7007 Brookington Court, Bruce Bakaysa, 4227 Willow Wood Drive, Reverend Wesley Payton, 8355 Stallway Lane, David Muller, 8217 Shallowood Drive, Pat Cava, 8042 Oak Hollow Lane, Jonathan Moore, 7007 Brookington Court, Regina and Edward Smith, 9113 Woodspice Lane, Leon Bright, 9725 Hackle Circle, and Karl Pearson, 7500 Culder Street. They stated that the church would be an asset to the community, would not impact traffic, and would be aesthetically pleasing.

The following speakers came forward to speak in opposition: Joseph Hirl, President of Summerwind Homeowners Association, David Snare, 6366 Pineview Court, Occoquan Watershed Coalition, Eric Field, 7505 Manor House Drive, Michael Kosecoff,11011 Hampton Road, Bill Dextex, 7535 Thistledown Trail, James Iannuzzi, 7538 Thistledown Trail, Janice Kozlowski, 10313 Henderson Road, Joyce West, 10505 Summerwind Lane, Suzanne Klein, 7725 Gingerbread Lane, George Stephenson, 79001 Manorhouse Drive, William Strutt, 11711 Lakewood Lane, Shawn Dack, 10622 Chainbridge Road, President, Timberlane Homeowners Association, Shawna Thompson, 7714 Gingerbread Lane, and Mike Giguere, Attorney representing Summerwind Homeowners Association. The expressed concerns related to traffic, safety issues, minimizing property values, intensity of the site, septic fields, affect on the quality of the drinking water, the exit and entrance being blocked, overflow parking, the church being too big for a conservation area, the property being too fragile, stream overflowing, environmental impact, expansion, sight distance problems, and commercial development being possible.

Ms. Strobel stated in her rebuttal that they would be meeting with VDOT to hopefully resolve the issues with the driveway. She said the proposal was reasonable and the applicant agreed with the conditions and would abide by them. Ms. Strobel said the applicant would provide a fence along the property line. She said that commercial development would not take place. She stated that there was no environmental impact. Ms. Strobel said the sight distance had been evaluated.

Mr. Hammack asked how the applicant would deal with leasing activities and that it could duplicate the use. Ms. Strobel replied that the applicant would agree not to lease the property and that they would limit the users.

Mr. Hammack asked what was to prevent the applicant form doubling the size later. Ms. Strobel stated that the applicant made a deliberate choice to limit the size and if it were to increase, the intent would be to start another church someplace else.

Mr. Pammel said he would like for Ms. Strobel to address whether the subject religious group was mainstream, non-mainstream, or associated with a mainstream religious group. He said there was federal legislation that related to that.

Mr. Hart asked whether there was any overflow parking for this site. Ms. Strobel said there was no designated overflow parking but there would be an opportunity along the driveway accesses both to Route 123 and Henderson Road, and there was also plenty of room on the site where parking could be provided.

Mr. Hart said the Henderson Road entrance and the proximity to Route 123 and the sight distance troubled him. He said he did not understand the VDOT improvements with relationship to this entrance.

Mr. Davis said that staff recommended that the Henderson Road entrance be closed because they were concerned about it from a safety standpoint. He said the condition about the applicant's latest proposal of exit only to Henderson Road was worded to state that if VDOT and the County Environmental Services Department evaluates the exit and determines that it does meet sight distance requirements and it will not cause operational problems to the future intersection, that they could have an exit only.

Mr. Kelley said he felt that he was voting on half an application if there would be someone else on the property and he didn't know anything about them. Ms. Strobel said there were limiting factors, the development conditions, which would run with the application no matter who was using the facilities.

Mr. Ribble said that special permits were granted to the applicant only and that presented a problem sometimes. The neighbors did not expect two or three congregations to be sharing the space and intensifying the use.

Ms. Strobel said that the problem was not unique to the subject application. She said it was something that had been ongoing for years throughout the County.

Mr. Hammack asked whether Ms. Strobel thought it was improper for the Board to impose limitations on the hours of operation. He said the Board had been reluctant in doing that because it could lend itself to the argument that they would be interfering with religious practices. Mr. Hammack asked how the Board would know if an associate congregation would be aware of the development conditions or would care about honoring them. Ms. Strobel said that it would be the responsibility of the applicant who would be operating the place of worship.

Mr. Hart asked whether a lease to another congregation was a transfer of some right to occupy the premises at certain times or dates. He said in light of the other Board members questions, he felt this was a timely topic in the context of the intensity of use of places of worship, the number of times they would be used or what the community expects, what had been advertised and approved and what that became over time as the community grew and other congregations came in. He said he did not know what Development Condition #1 meant if it did not mean that it was not transferable.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to defer decision to March 6, 2001, to obtain the information from the VDOT. He said if there was any additional testimony that it be limited to the issues raised by VDOT.

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 102, February 20, 2001, (Tape 1), Scheduled case of:

9:30 A.M. THOMAS G. AND KATHRYN E. BRANNON, A 2000-MA-035 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are using a portion of a building located in the C-8 District as a dwelling unit in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5705 Center La. on approx. 19,095 sq. ft. of land zoned C-8. Mason District. Tax Map 61-2 ((20)) 8.

9:30 A.M. JAMES E. SWANNER, A 2000-MA-036 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a portion of a building located in the C-8 District to be used as a dwelling unit in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5705 Center La. on approx. 19,095 sq. ft. of land zoned C-8. Mason District. Tax Map 61-2 ((20)) 8.

9:30 A.M. DAVID SCHMUGGE, A 2000-MA-037 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is using a portion of a building located in the C-8 District as a dwelling unit in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5705 Center La. on approx. 19,095 sq. ft. of land zoned C-8. Mason District. Tax Map 61-2 ((20)) 8.

Mr. Hammack moved to withdraw A 2000-MA-035, A 2000-MA-036, and A 2000-MA-037 as requested by the appellants. 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 102, February 20, 2001, (Tape 3), After Agenda Item:

Approval of December 5, 2000 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 103, February 20, 2001, (Tape 3), After Agenda Item:

Request for Reconsideration for Meagan C. Jans

The Board decided that there was no action required; therefore the request was denied.

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Page 103, February 20, 2001, (Tape 3), After Agenda Item:

Approval of February 13, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb 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 12:15 p.m.

Minutes by: Regina Thorn Corbett

Approved on: July 3, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, February 27, 2001. The following Board Members were present: Nancy Gibb, James Hart, Paul Hammack, Robert Kelley, James Pammel, and John Ribble. John DiGiulian was absent from the meeting.

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

Page 105, February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MARGARET A. QUIGLEY & THOMAS J. QUIGLEY, TRUSTEES FOR THE MARGARET A. QUIGLEY LIVING TRUST, VC 00-H-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.8 ft. from street line of a corner lot. Located at 10106 Garrett St. on approx. 27,116 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 37-2 ((9)) 61.

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. Thomas J. Quigley, 10106 Garrett Street, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 26.8 feet from a front lot line of a corner lot. The minimum front yard requirement for the R-1 district is 40 feet, therefore; a variance of 13.2 feet was requested for the garage addition.

Mr. Quigley presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance request was to provide shelter for his vehicles and for additional storage. He stated that the topography of his property prohibited the construction of the garage anywhere else.

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

Mr. Pammel moved to approve VC 00-H-165 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET A. QUIGLEY & THOMAS J. QUIGLEY, TRUSTEES FOR THE MARGARET A. QUIGLEY LIVING TRUST, VC 00-H-165 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.8 ft. from street line of a corner lot. Located at 10106 Garrett St. on approx. 27,116 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 37-2 ((9)) 61. 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 27, 2001; 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. The property has unusual topographic conditions.
4. The structure is located on a corner lot.
5. The applicants preserved a significant amount of vegetation on the site.

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

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

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

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

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

1. This variance is approved for the location of an addition (garage) as shown on the plat prepared by Kenneth W. White, dated November 21, 2000, submitted with this application and is 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. Hart seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 March 7, 2001. This date shall be deemed to be the final approval date of this variance. //

9:00 A.M. WALTER C. PAGUE, JR., VA 00-P-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 ft. from side lot line and 3.4 ft. from rear lot line. Located at 2960 Hibbard St. on approx. 17,767 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 6.

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. Franklin Ebersole, 4701 Sangamore Road, Suite 2405, Bethesda, Maryland, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance amendment request as contained in the staff report. The applicant requested approval to permit construction of a detached garage, to be located 7.9 feet from the side lot line and 3.4 feet from the rear lot line. The Ordinance requires a minimum side yard of 15 feet and a minimum rear yard of 16 feet; therefore, variances of 7.1 feet for the side yard and 12.6 feet for the rear yard were requested for the garage. This proposal was the subject of a variance request that was approved in part on July 18, 2000. The Board granted a variance for a fence with greater height than permitted to remain but denied the request for variances to construct a detached garage.

Mr. Ebersole, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He submitted an architectural drawing, which outlined the layout of the proposed garage. He stated that the reason for the structure was to house the applicant's work vehicle as the existing garage was too small. He informed the Board that because of the high elevation of the property, there was no other place to locate the garage. He stated that there was full neighborhood support.

Vice Chairman Hammack asked if the set back was the same as what was previously proposed. Mr. Ebersole stated that it was. He stated that a concrete slab for a detached garage already existed and the applicant wished to utilize that slab.

Mr. Hart asked staff if a building permit had been issued to construct the slab. Ms. Josiah stated that no building permits had been issued.

Vice Chairman Hammack asked for the dimensions of the proposed garage. Mr. Ebersole replied "24X24" feet. Vice Chairman Hammack asked if there was an existing garage. Mr. Ebersole answered that there was an existing garage that was used to house the applicant's personal vehicles.

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

Mr. Pammel moved to approve VA 00-P-038 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. PAGUE, JR., VA 00-P-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 7.9 ft. from side lot line and 3.4 ft. from rear lot line. Located at 2960 Hibbard St. on approx. 17,767 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((7)) 6. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 2001; and

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

1. The applicant is the owner of the land.

2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is irregularly shaped.
4. The house is located at the extreme north end of the lot, and due to that configuration, there is no other location for the garage to be located to serve the needs of the family.

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

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

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

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

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

1. This variance is approved for the location of the detached garage shown on the plat prepared by Alexandria Surveys, Inc., dated March 9, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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

Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 109 February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. VIOLETA A. PEITH - MOMMY PEITH CHILD DAY CARE, SP 00-Y-059 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6323 South Springs Ci. on approx. 10,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((4)) 379. (Def. Decision Only from 1/2/01)

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. Violeta A. Peith, 6323 South Springs Circle, Clifton, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator presented the special permit request as contained in the staff report. This application was deferred for decision only on January 2nd. The Board had identified three issues that needed to be further explored by the applicant. Specifically, the use of the garage for the parking of the homeowners' vehicles, front door access to the child care facility and the installation of a fence. The applicant submitted information pertaining to each of these issues. Staff distributed revised development conditions to the Board on February 20, 2001. The applicant requested that proposed Development Condition #9 be modified to allow rear access to the child care facility between the hours of between 9 AM and 2 PM and after 4 PM.

Ms. Peith presented the special permit request as outlined in the statement of justification submitted with the application. She informed the Board that she had complied with their requests from the previous meeting by installing a fence around her yard and clearing out her garage. She presented photographs of the fence and the two cars parked in the garage. She explained that her request to amend development condition #9 related to safety. She said that since her daycare was in the basement of her home she could not hear if anyone had entered her home and was not comfortable with leaving the front door unlocked. She requested that the condition be amended to allow rear access to the child care facility between 9 a.m. and 2 p.m. and after 4 p.m. She said that there was a walkway to the rear entrance of her home and she was willing to install a bell on the gate leading to the backyard.

Vice Chairman Hammack called for speakers.

Gail Ellis, 6412 Stonehaven Court, came forward to speak in opposition. She stated that the fence did little to mitigate the noise from the backyard. She informed the Board of the openings in some of the daycare centers in the surrounding area.

Dale Ellis, 6412 Stonehaven Court, came forward to speak in opposition. He stated that an increased number of children at the daycare would decrease the property values of the surrounding homes, negatively affect the neighborhood, and affect his quality of life. He stated that the fence did not help to alleviate the noise. He requested that the Board deny the application and enforce that the applicant only be allowed seven children.

Mr. Ribble stated that the requirement for the fence originated from a complaint from one of the neighbors that the children were trespassing on their property. He stated that the applicant had every right to construct the fence on her property.

Mr. Ellis stated that he was the one who had made the complaint. He said that the entire operation was too large for the site and had expanded onto his property.

Mr. Hart asked if he preferred a total of ten children with conditions or seven without any conditions. Mr. Ellis replied that the lesser amount of children was preferred.

Rosetta Whiting, 6325 South Springs Circle, came forward to speak in opposition. She stated that the fence acted like a chimney flue and carried the noise directly up to her deck. She said that, weather permitting, the children were in the yard for approximately 7.5 hours per day.

Paul Severence, 13801 South Springs Drive, came forward to speak in opposition. He reiterated the previous comments. He stated that the business was too large for the neighborhood and it decreased his privacy and quality of life.

Ms. Peith, in her rebuttal, stated that there was a set schedule for the children and they were not outside 7.5 hours per day. She said that the children were involved in many inside activities and the average time outside was 3 hours per day. She informed the Board that a home next door to her sold for a very high price; therefore, the daycare was not negatively affecting property values. She said the neighbors had never complained about the daycare until she submitted the special permit request.

Mr. Kelley stated that he was disturbed that the hearing was opened to speakers. He said that it was advertised for decision only and there were no speakers in support.

Vice Chairman Hammack closed the public hearing.

Mr. Hart stated that he was satisfied that the applicant had met the standards for the granting of the special permit.

Vice Chairman Hammack stated that he could not support the application because of the extreme land use issues and the detrimental effects that an increase in children would have on the neighbors.

Ms. Gibb stated that the majority of day care centers did not operate at full capacity as children were often out sick or absent for other reasons. She stated that she was in support of the application.

Mr. Hart moved to approve SP 00-Y-059 with the applicants revised development condition 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

VIOLETA A. PEITH - MOMMY PEITH CHILD DAY CARE, SP 00-Y-059 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home child care facility. Located at 6323 South Spring Ci. on approx. 10,170 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((4)) 379. (Def. Decision Only from 1/2/01) 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 27, 2001; and

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

1. The applicant is the owner of the land.
2. There have been at least two hearings and there have been a number of changes to the application in which it has significantly improved.
3. The neighbors have some legitimate concerns; however they have been adequately mitigated by the conditions and the limitations on the use.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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, 6323 South Springs Circle (10,170 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 Larry N. Scartz, dated June 26, 1990, revised by James S. Peith, dated October 1, 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 hours of operation of the home child care facility shall be limited to 7:30 a.m. to 5:45 p.m., Monday through Friday.

5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time.

6. The number of staff for the home child care facility shall not exceed one (1) employee in addition to the proprietor.

7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.

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

9. All access to the child care facility shall be through the front door of the home, except for drop-offs after 9:00 a.m. and pick-ups after 4:00 pm. At no other time shall the rear of the home be utilized for drop-off or pick-up of children.

10. The garage shall contain two usable parking spaces and shall be utilized by the residents of the home in order to provide available parking space in the driveway for patrons of the child care facility.

11. A fence shall be installed in order to separate and screen the child care use from adjacent properties.

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Ribble voted against the motion. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 7, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 112, February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER, SP 00-D-069 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 91-D-064 previously approved for a church and related facilities to permit building addition and site modifications. Located at 1331 Spring Hill Rd. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C. (Concurrent with VC 00-D-169).

9:00 A.M. TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER, VC 00-D-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit church to remain 29.8 ft. and steps to remain 16.5 ft. from front lot line. Located at 1331 Spring Hill Rd. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C. (Concurrent with SP 00-D-069).

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. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator presented the requests as contained in the staff report. The applicant requested approval to permit the church to remain 29.8 feet and the steps to remain 16.5 feet from the front lot line. The Ordinance requires a minimum front yard of 40 feet with a permitted extension of 5 feet for the steps, therefore; variances of 10.2 feet for the church and 18.5 feet for the steps were requested. The church also did not meet the angle of bulk plane requirements of 50 degrees, requiring a variance of approximately 5 degrees. The applicant also sought approval to bring the existing church and related facilities under special permit and to permit a two-story, 3,232 square foot building addition containing 50 seats bringing the total seating capacity to 260 and the reconfiguration of the 65 space parking lot. No additional parking spaces were proposed. As described in detail in the staff report, the site had been the subject of special permits and a variance granted by the BZA since 1986, all of which subsequently expired. Subject to the proposed development conditions in Appendix 1 of the staff report, staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Staff recommended approval of SP 00-D-069.

Ms. Strobel, agent for the applicant, presented the requests as outlined in the statement of justification submitted with the application. She stated that all of the proposed improvements were intended to serve the needs of the existing congregation. She stated that the resulting FAR was .06, which was less than half of the FAR permitted in that district. She stated that the existing church was constructed in the late 1800's and improvements were needed to bring the church in compliance with the current zoning requlations. Ms. Strobel stated that the applicants' wished to revise Development Condition #17 which required that a trail be provided along the frontage of the application property. She stated that the trail was proffered for construction by others and the adjacent residential developer, when the property was rezoned, agreed to construct the trail on an interim basis before the permanent construction of the trail. She requested that the words "for construction by others" be inserted into that development condition to provide clarity.

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

Ms. Gibb moved to approve SP 00-D-069 with the applicants' revised development condition 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

TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER, SP 00-D-069 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 1331 Spring Hill Rd. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C. (Concurrent with VC 00-D-169). 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 27, 2001; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The staff report reflects the applicants' compliance with the general standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 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, 1331 Spring Hill Road (3.16 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 Harold A. Logan Associates, P.C. dated June 15, 1999, revised through January 30, 2001, 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 in the main area of worship shall be two hundred sixty (260) with a corresponding minimum of sixty five (65) parking spaces as reflected on the Special Permit Plat. All parking for the church shall be on site.

6. Transitional screening 1 (25 ft.) shall be waived along eastern property line adjacent to the existing cemetery. Transitional screening 1 (25 ft.) shall be modified along the eastern property line south of the cemetery as shown on the special permit plat, to screen the church use and any headlight glare from the adjacent low density residential uses. Species shall be as approved by the Urban Forester.

7. The barrier requirement shall be waived along the eastern lot line.

8. Additional plantings, a minimum of six (6) feet in height at time of planting, shall be provided between the parking lot and Spring Hill Road in order to screen the view of the parking lot from Spring Hill Road. Plantings a minimum of six (6) feet in height at time of planting, shall also be provided along the eastern edge of the parking lot, as shown on the plat, in order to screen the parking lot and minimize glare from headlights to the adjacent residential development. The species of plantings shall be as approved by the Urban Forester.

9. Interior and peripheral parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance and as determined by DPWES.

10. Any lighting of the parking area 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 focused directly on to the subject property and shall not impact adjacent properties.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.
    - All lights shall be full cut off.

11. If Stormwater Management/Best Management Practices (BMPs) requirements are not waived, such facilities shall be provided outside the transitional screening areas and cemetery as shown on the plat and as determined by DPWES.

12. Tree cover shall be provided in Article 13 of the Zoning Ordinance. Final determination regarding compliance with these requirements shall be as determined by DPWES at the time of site plan review.

13. All signs on the property shall conform to the provisions of Article 12. The existing church sign currently located within the right of way of Spring Hill Road shall be moved to a location out of the right of way, in a location that complies with the Zoning Ordinance, prior to the issuance of a Non-RUP for the addition.

14. The proposed addition shall consist of materials that are the same style, material and color as the existing structure.

15. Both the southern and northern entrances shall be closed and access to the site shall be via Turning Leaf Lane only, prior to the issuance of a Non-RUP for the addition.

16. Ancillary easements to facilitate future improvements to Spring Hill Road shall be provided in fee simple to the Board of Supervisors at a width to be determined by the Office of Transportation at the time of site plan review.

17. A trail shall be constructed by others along the frontage of the application property, to be installed at a location as determined by DPWES at the time of site plan review.

18. The sales trailer located on the site south of the existing parking lot shall be removed within sixty (60) days of approval of this special permit. Failure to remove the sales trailer within the specified time period shall nullify this special permit approval.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning

Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 March 7, 2001. 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 00-D-169 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF SHILOH BAPTIST CHURCH OF ODRICK'S CORNER, VC 00-D-169 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit church to remain 29.8 ft. and steps to remain 16.5 ft. from front lot line. Located at 1331 Spring Hill Rd. on approx. 3.16 ac. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 58C. (Concurrent with SP 00-D-069). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 27, 2001; and

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

1. The applicants are the owners of the land.
2. The church building was built in the mid 1800's and it would require a substantial hardship on the part of the applicant to bring the building into compliance with the current Zoning Ordinance.
3. The variance request is modest.
4. The applicants presented testimony indicating compliance with 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 the church and steps shown on the plat prepared by Harold A. Logan Associates, P.C., dated June 15, 1999, revised through January 30, 2001, submitted with this application and is not transferable to other land.

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 March 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 116, February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., VC 00-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots having lot widths of 110.0 ft. Located at 10615 and 10619 Zion Dr. on approx. 2.17 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 19 and 20. (Def. From 2/13/01)

Susan Langdon, Chief, Special Permit and Variance Branch informed the Board that the applicant had verbally requested a deferral of one week because there was a question regarding the Beech trees at the front of the property. The applicant wanted staff to visit the property and look at the trees.

Vice Chairman Hammack called for speakers to the issue of deferral.

Racheal McCain, (no address given for record), came forward to speak to the issue of deferral. She explained that the developer for Eastwood Properties had stated that he would install curb and gutter, a fence 8 feet in height, and had assured her that the development would not disturb her property or impact her lifestyle. She stated that she was concerned because the staff report did not cover these issues. She requested that, if the case were deferred, it would be heard earlier in the day as she had already missed work.

Page 117, February 27, 2001, (Tape 1), EASTWOOD PROPERTIES, INC., VC 00-B-161, continued from Page 116

Mr. Pammel moved to defer VC 00-B-161, until March 6, 2001, to be the first case on the agenda. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

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Page 117, February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM ROBERT, III & GISELINDE I. TUTEN, VA 00-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 5926 Shadow Walk on approx. 29,968 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((4)) 2.

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. Robert Tuten, 5926 Shadow Walk, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance amendment request as contained in the staff report. The applicants requested a variance amendment to a previously approved variance, VC 00-L-008, to permit the construction of an accessory structure in the front yard of a corner lot containing 36,000 square feet or less. The purpose of the variance amendment request was to correct an error on the approved plat.

Mr. Tuten presented the variance amendment request as outlined in the statement of justification submitted with the application. He stated that the survey company had not drawn the existing patio and walkway to scale on the original plat. He stated that the dimensions of the garage were "24X26" feet with a 6 foot overhang. He reiterated that the overhang would not be used for a carport as a neighbor had voiced a concern about that possibility. He said that the proposed garage would be in character with the neighborhood.

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

Mr. Pammel mentioned that there were several letters in opposition of the request and asked the applicant to read the letters and respond to the concerns. Mr. Tuten stated that the neighbors concerns had been met. He stated that the variance amendment request was for only 2.7 more feet than what was previously approved.

Mr. Hart asked the applicant if it was a problem to add a development condition which mandated that the overhang could not be used as a carport. Mr. Tuten had no objection.

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

Mr. Kelley moved to approve VA 00-L-008 with the Board's revised development condition and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM ROBERT, III & GISELINDE I. TUTEN, VA 00-L-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 5926 Shadow Walk on approx. 29,968 sq. ft. of land zoned R-2. Lee District. Tax Map 82-4 ((4)) 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 February 27,

2001; 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 required standards for the granting of a variance.
3. The variance request is not significant enough to require denial.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Kenneth W. White, dated December 17, 1999, revised through November 28, 2000, submitted with this application and is not transferable to other land.

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

3. The overhang depicted on the new plat shall not be used as a carport.

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

request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 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 March 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 119, February 27, 2001, (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 IN OFFICE (GOOD SHEPHERD CATHOLIC CHURCH), SPA 82-V-035-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-035 previously approved for a place of worship and related facilities to permit a rectory. Located at 8710 Mount Vernon Hwy. on approx. 10.53 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 22A.

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. Lynne Strobel, Walsh, Colucci, et al, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicants requested a special permit amendment to construct a rectory consisting of a two-story dwelling and three-car garage. A modification of the transitional screening and barriers was requested to allow existing vegetation and fences along the north and west boundaries to satisfy the barrier requirements and existing vegetation along the Mount Vernon Highway to satisfy the screening requirements. A modification of the screening requirement and a waiver of the barrier requirement were requested along Surey Drive for the rectory. Staff recommended approval of SPA 82-V-035-2.

Ms. Strobel presented the special permit amendment as contained statement of justification submitted with the application. She stated that the proposed rectory would serve as the residence for the priests of the church. She said that the total FAR on the property would be much less than what was permitted in that district, the building was located as to minimize the disturbance of existing vegetation and the applicant was in agreement within the development conditions to provide landscaping as necessary. She stated that there were no other proposed changes to the property. She submitted a letter of support from one of the surrounding neighbors. Ms. Strobel noted that there was no site plan requirement for this application.

Mr. Kelley asked if the church shared the facilities with any other religious group. Ms. Strobel referred to a representative from the church. Tom Ramp replied that the church did not share the facility.

Ms. Gibb mentioned a letter in opposition citing problems with the church's lighting. Ms. Strobel replied that the lighting described in the letter went back many years prior to the requirement for special permits. She said the lights were legally installed and inspected and the church would do what they could to better direct the lighting as needed, but they were existing and approved lights on the site.

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

Mr. Pammel moved to approve SPA 82-V-035-2 with the deletion of Conditions 10, 11 and 12 and for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

There was conversation between the Board, Staff and Ms. Strobal regarding whether or not to delete Development Conditions 10, 11, and 12 and whether or not to remove DPWES from the language of Development Condition 8.

Mr. Pammel modified the motion to approve SPA 82-V-035 with the Board's revision of Development Condition 8 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

THE MOST REVEREND PAUL S. LOVERDE, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA AND HIS SUCCESSORS IN OFFICE (GOOD SHEPHERD CATHOLIC CHURCH), SPA 82-V-035-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-035 previously approved for a place of worship and related facilities to permit a rectory. Located at 8710 Mount Vernon Hwy. on approx. 10.53 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((1)) 22A. 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 27, 2001; 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, 8710 Mount Vernon Highway (10.53 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 Alexandria Surveys, Inc., dated June 28, 2000 revised through July 28, 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. Any plan, submitted to the Department of Public Works and Environmental Services (DPWES) 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 shall be limited to a total of 875 with a corresponding minimum of 221 parking spaces. There shall be a maximum of 333 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. Al the parking spaces shall be of a size and the aisles of a width, which will meet the Zoning Ordinance and Public Facilities Manual standards.

6. Transitional screening shall be modified as follows:

   Along the front lot lines abutting Surrey Drive, boulevard type trees shall be maintained which have a minimum diameter of 2 ¼ to 2 ½ inches and shall be maintained a maximum of thirty (30) feet on center. The type shall be boulevard type trees such as red maple, pin oak, willow oak, Linden, velcova, green ash, Norway maple or other deciduous tree which has an ultimate height of 40 feet at maturity an can be limbed up 5 to 6 feet for visibility. In all other areas the plantings shall be maintained in the general location as shown on the landscape plan submitted with SPA 82-V-035-1. The maintenance of such plantings shall be deemed to satisfy the transitional screening requirement except in the areas along the northern lot line where Transitional Screening 1 shall be maintained in a 25 foot planted area. The planting requirement shall be modified to allow the 15 foot sewer line and the pedestrian walkway within the screening yard and no additional plantings shall be required in that area except where existing pavement restricts the area available for planting to less than 25 feet. Additional plantings consistent with Transitional Screening 1 requirements shall be maintained. Existing vegetation may be maintained to satisfy the planting requirement of Transitional Screening 1 to the satisfaction of the Urban Forester. Dead or unhealthy vegetation shall be removed and replaced in accordance with the requirements of this condition. Notwithstanding the requirements of transitional screening noted above, additional landscaping shall be provided as approved by the Urban Forester, along the southern boundary of the site, to provide a buffer between the rectory and garage and the residential uses on Surrey Drive. Healthy understory vegetation removed as a result of the subject application shall be replanted elsewhere on the property as determined feasible by the Urban Forester.

7. The barrier requirement shall be waived.

8. The exterior of the buildings, including the roofs, shall be architecturally compatible with the existing buildings and shall be similar in style, color and materials.

9. Parking lot landscaping shall be maintained around the periphery of the parking lot in order to improve the visual appearance of the property.

10. Right of way to total 20 feet from the existing centerline of Surrey Drive plus ancillary easements necessary for future road improvements shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors, in fee simple on demand or at time of site plan approval, whichever comes first.

11. A geotechnical engineering study in accordance with Chapter 107 of the Fairfax County Code shall be required at the time of site plan review if determined necessary by the Director of DPWES, and its recommendation implemented as determined by the Department of Public Works and Environmental Services.

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

    - The combined height of the light standard and fixtures shall not exceed twelve (12) feet.
    - The lights shall be low intensity design, full-cut-off fixtures, which focuses the light directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

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

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 5-0. Mr. Ribble 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 March 7, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 122, February 27, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MARGARET J. DUBOIS, VC 00-P-143 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 2921 Fairhill Rd. on approx. 24,013 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 23. (RECONSIDERATION granted 1/9/01).

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 Dapogny, 8700 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant had originally requested a variance to permit the construction of a dwelling 9 feet from both side lot lines. On January 22, 2001, the Board approved the application for 12 feet from both side lot lines. The applicant asked the Board to reconsider the application because the approved plat would not allow any construction beyond the building restriction lines which reflected a house sized to 9 foot side yards instead of 12 foot side yards. The applicant submitted a revised plat illustrating the request to construct the dwelling 12 feet from the side yard to the south and 9 foot to the north; therefore, the applicant requested variances of 8 feet and 11 feet respectively.

Mr. Dapogny presented the variance request as contained in the statement of justification submitted with the application. He stated that the request was a reconsideration to allow a preferred house type that the previously approved 12 foot side yards would not allow.

Vice Chairman Hammack called for speakers.

John Douds, 2922 Fairhill Road, came forward to speak in support of the application. He stated that he was in favor of a house on the property since the lot was currently abandoned and littered with trash. He said the addition of the home to the neighborhood would be an improvement.

Vice Chairman Hammack closed the public hearing.

Mr. Hart moved to approve VC 00-P-143 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARGARET J. DUBOIS, VC 00-P-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9.0 ft. from both side lot lines. (THE BOARD APPROVED SIDE YARDS OF 9 AND

12 FEET) Located at 2921 Fairhill Rd. on approx. 24,013 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((6)) 23. (RECONSIDERATION granted 1/9/01). 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 27, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of the variance.
3. The lot is extraordinarily narrow for its size and it is difficult to place a house on it within the setbacks allowed by the Ordinance.
4. Half of the lot is located in a flood plain.
5. The statement of justification and photographs indicate compliance with 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 the new dwelling shown on the plat prepared by Larry J. Ratliff, dated October 3, 2000, as revised through January 31, 2001 and 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.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble 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 Ap peals and became final on March 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 124, February 27, 2001, (Tape 1) Scheduled case of:

9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((20)) 9. (Def. From 2/13/01)

Vice Chairman Hammack stated that this case had been deferred on 2/13/01 in order to allow staff and the appellant to acquire further information for the Board.

Maggie Stehman, Zoning Administration, stated that the Board had asked questions regarding the chain of events surrounding the special exception application that was submitted by the appellants in 1996. She stated that the application was returned to the appellants for several deficiencies and additional information was requested from them. She explained that approximately one year later and after several follow up letters from the County, the appellants resubmitted the application along with a request to modify the topography requirements. She said that the application was ultimately withdrawn after Barbara Byron, Director, Zoning Evaluation Division, informed the appellants that the modifications would not be granted and that there were still deficiencies in the application. Ms. Stehman reiterated staff's position that the appellant was in violation of the Zoning Ordinance wherein a special exception was required for a vehicle light service establishment.

Mr. Reilly submitted photographs of the surrounding businesses that were operating in violation of the Zoning Ordinance. He stated that the County was singling out his business because his was the only one that had been served with a violation.

Ms. Gibb asked the appellant why he hadn't followed through with the special exception application. Mr. Riley replied that he had consulted with an attorney when the second application was filed and the attorney advised him to withdraw the special permit application as all of the surrounding businesses were also in violation.

Ms. Gibb asked the appellant why they couldn't apply for a special exception and come into compliance since the things that were missing from the previous applications were minimal and had to do with surveying. Mr. Reilly replied that he was willing to proceed with the special exception application process.
There was conversation between the Board, staff and the appellant regarding the amount of time the appellant needed to complete the special exception application process.

Mr. Shoup suggested that the Board defer the appeal to give the appellant time to acquire a special exception.

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

Mr. Kelly moved to defer decision regarding A 2000-MA-034 until May 1, 2001. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

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Page 125, February 27, 2001, (Tape 1) After Agenda Items:

Request for Reconsideration
Prakash and Sunandini Ambergaonkar
VC 00-D-141

Lynne Strobel, agent for the applicant stated that the previous motion failed due to a split vote. She said the applicant was willing to reduce the size of the garage from a three-car to a two-car garage and to reduce the height from 22 feet to 16 feet. She stated that the reduction would be within the parameters of the plat that had been submitted. She mentioned that the Board had a problem with the turning radius of the garage and she explained that the neighbor closest to the garage had requested that it be turned so the short side was towards their property.

Mr. Pammel stated that the new facts should have been before the Board at the hearing and that the County should have to bear the burden of expense re-advertising the application. He stated that he was willing to waive the 12-month waiting period for re-filing the application.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant would bear the cost of the re-advertisement.

Ms. Strobel reiterated that the request was for a lesser variance.

Mr. Hart stated that he voted against the motion for more reasons than the height and width of the garage; however, he was in favor of reconsideration.

Mr. Hart moved to approve the reconsideration request for VC 00-D-141. Mr. Kelley seconded the motion which carried by a vote of 4-1. The case was scheduled for May 1, 2001, at 9:00 a.m. Mr. Pammel voted against the motion. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

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Page 125, February 27, 2001, (Tape 1) After Agenda Items:

Approval of February 20, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

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Page 125, February 27, 2001, (Tape 1) After Agenda Items:

Request for Intent to Defer
Apolonia Gloria Fuentes-Pastor
A 2000-PR-027

William E. Shoup, Deputy Zoning Administrator, informed the Board that the appellant had previously

requested a deferral to obtain minor site plan approval and this deferral request was for the same reason. He stated that the appellant was currently in violation of the Zoning Ordinance as she had 10 children under her care as opposed to 7 and she had ample time to obtain site plan approval. He stated that staff did not support this deferral request.

Mr. Pammel moved to deny the deferral request for A 2000-PR-027. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and Chairman DiGiulian was absent from the meeting.

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Page 126, February 27, 2001, (Tape 1) After Agenda Items:

Approval of Revised Plat
David S. Reeves
VC 00-Y-063

Mr. Pammel moved to approve the revised plat for VC-00-Y-063. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote and 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 12:00 noon.

Minutes by: Lori M. Mallam

Approved on: May 1, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 6, 2001. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble.

Mr. Ribble made a motion for the Board to go into Executive Session. Ms. Gibb seconded the motion. Mr. Pammel and Mr. Hammack were not present for the vote.

The Board recessed at 9:00 a.m. and reconvened at 9:24 a.m.

Mr. Ribble then moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia freedom of information act, and only matters identified in the motion to convene executive session were heard, discussed, or considered by the board of zoning appeals during the executive session. Ms. Gibb seconded the motion. Mr. Pammel and Mr. Hammack were not present for the vote.

Chairman DiGiulian called the meeting to order at 9:24 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.

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Page 127, March 6, 2001, (Tape 1), Scheduled case of:

9:00 A.M. EASTWOOD PROPERTIES, INC., VC 00-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots having lot widths of 110.0 ft. Located at 10615 and 10619 Zion Dr. on approx. 2.17 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 19 and 20. (Def. From 2/13/01 and 2/27/01)

Mr. Hart made a disclosure to the Board on the application; however, stated that it would not affect his ability to participate in the hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Lawrence, Agent, Reed, Smith, Hazel & Thomas, PC, 3110 Fairview Park Drive, Falls Church, Virginia, replied that it was.

Mr. Lawrence stated that the application was deferred for decision only and he was not prepared to make a presentation to the Board. He stated that the applicant had resolved their differences with staff and concurred with the revised development conditions. Mr. Lawrence stated that a revised plat certified as of March 5, 2001, would reflect that two Beechwood trees would be unable to be saved; however, stated there was no change in the conservation area.

Mavis Stanfield, Staff Coordinator, stated that revised development conditions were distributed to the Board dated March 6, 2001, as well as a revised plat dated March 5, 2001.

Rachel McCain, wife of James Roland, 10607 Zion Drive, Fairfax, came to the podium to speak in opposition of the application. Ms. McCain stated that they were the only adjacent landowner and had not had the opportunity to review the revised plat. She expressed her concern regarding a fence and additional trees to be provided by the applicant.

Ms. Gibb stated that the items of concern were contractual items between the owners. She stated that the Board only acted on the land use issues of the application and stated that the Board could not enforce the agreement between neighbors.

Mr. Lawrence stated that he had met with a member of the Roland family to seek whether or not there could be a consolidation of lots in the area. He stated that a subdivision of lots was proposed to include a portion of a lot of the estate of the Roland family. He stated that the family did not want to join the application. Mr. Lawrence stated that no other commitments were made.

Chairman DiGiulian closed the hearing.

Mr. Pammel moved to approve VC 00-B-161 for the reasons noted in the Resolution subject to the revised Development Conditions dated March 6, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EASTWOOD PROPERTIES, INC., VC 00-B-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots having lot widths of 110.0 ft. Located at 10615 and 10619 Zion Dr. on approx. 2.17 ac. of land zoned R-1. Braddock District. Tax Map 68-3 ((1)) 19 and 20. (Def. From 2/13/01). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 6, 2001; 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. Staff recommended approval as meeting the standards and provisions of the Comprehensive Plan for the area in which it is located.

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

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

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

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

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

1. This variance is approved for the subdivision of lots 19 and 20 as shown on the plat prepared by Charles P. Johnson and Associates, Inc. dated October, 2000 and revised through March 5, 2001. 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. A 15 foot ancillary easement from the proposed right-of-way on Zion Drive shall be conveyed to the Board of Supervisors upon demand or at the time of building permit approval, whichever comes first.

3. Access to Zion Drive from proposed lots 1 and 2 shall be via a single access point, located directly across Zion Drive from Holden Street. The driveways to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

4. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES.

5. A conservation easement shall be recorded among the land records of Fairfax County over the southern portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the areas in proposed Lots 1 and 2, located outside the limits of clearing and grading, as shown on the submitted variance plat. The easement shall specify that undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Prospective purchasers of homes on proposed Lots 1 and 2 shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Each deed of conveyance for a lot shall expressly contain these disclosures.

6. In the event that a request for a stormwater management waiver is denied, stormwater management/best management practices shall be provided in accordance with the Public Facilities Manual as determined by the Department of Public Works and Environmental Services. If a stormwater management/best management practices facility is to be located within the conservation easement area, any disturbance within the conservation easement area shall be accomplished in the least disruptive manner reasonably possible, given engineering, cost and site design constraints. In order to restore a natural appearance to the stormwater management/best management practices facility, the applicant shall provide for a submission of a landscape plan, for review and approval by the Urban Forester prior to final approval of the overlot grading plan, showing landscaping in appropriate planting areas surrounding the facility, in keeping with the planting policies of DPWES and in accordance with the PFM.

Pursuant 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.

Page 130, March 6, 2001, (Tape 1), EASTWOOD PROPERTIES, INC., VC 00-B-161, continued from Page 129

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 130, March 6, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT H. BOEHM, VC 00-V-167 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 10.0 ft. from rear lot line. Located at 1310 Alexandria Ave. on approx. 34,477 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 6.

Chairman DiGiulian noted that the applicant had requested a withdrawal of the application.

Mr. Ribble made a motion to withdraw VC 00-V-167. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 130, March 6, 2001, (Tape 1), Scheduled case of:

9:00 A.M. HOLLY HOFFMAN MCSTRAVICK, VC 00-D-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 7.7 ft. from side lot line. Located at 6522 Ivy Hill Dr. on approx. 10,558 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 33. (Def. from 2/6/01)

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane Kelsey, Jane Kelsey & Associates, Inc., 4041 Autumn Court, Fairfax, Virginia, replied that it was.

Mr. Hammack made a disclosure to the Board on the application and recused himself from the vote.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a sunroom addition 7.7 feet from the side lot line. A minimum side yard of 12.0 feet is required; therefore, a variance of 4.3 feet was requested. Mr. Bernal noted that a revised plat had been distributed by the applicant increasing the length of the sunroom from 21.9 feet to 26.42 feet; however, he noted that the side yard request remained at 4.3 feet. Mr. Bernal stated that the applicant requested a deferral.

Jane Kelsey stated that the purpose for the deferral was to address the concern of the adjacent property owner. Ms. Kelsey stated that an error was found on the plan and had been corrected. She stated that the addition would be compatible with the existing dwelling and the surrounding neighborhood. Ms. Kelsey stated that the screened porch was existing and the request would be to increase the existing porch by 2.0 feet in order to enclose the addition to create a sunroom.

Ms. Kelsey presented photographs to the Board showing similar approvals for surrounding properties in the neighborhood and asked for the Board's approval of the request.

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

Sara Allen, 6520 Ivy Hill Drive, McLean, Virginia, came to the podium to speak in opposition of the application. Ms. Allen stated that after reviewing the revised proposed plan, she still opposed the addition. She said that the concern was noise levels due to four sliding glass windows and french doors to the sunroom facing her bedroom windows and asked the Board to deny the application.

James Allen, 6520 Ivy Hill Drive, McLean, Virginia, came to the podium to speak in opposition of the application. Mr. Allen stated that the steps leading to the yard from the sunroom made the addition 6.7 feet

from their property line and he opposed the request. He stated that he would not oppose the application if it was only to enclose the existing carport area.

Mr. Pammel and Mr. Hart questioned the applicant about the French doors.

Ms. Kelsey came to the podium to rebut the opposition. She stated that the main access to the patio would be to the rear of the addition with a sliding glass door entrance. However, she stated that to keep the look of the sunroom pleasant, the applicant wanted to keep the french doors on the side. Ms. Kelsey stated that no other neighbor was in opposition to the request.

Ms. Kelsey offered to plant evergreen trees and fencing to provide acoustical measures and would also block the neighbors' view of the sunroom.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-D-155 for the reasons noted in the Resolution subject to the Development Conditions dated January 30, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOLLY HOFFMAN MCSTRAVICK, VC 00-D-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 7.7 ft. from side lot line. Located at 6522 Ivy Hill Dr. on approx. 10,558 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 33. (Def. from 2/6/01). 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 March 6, 2001; 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. In addition to the reasons in the statement of justification, the house is oddly placed on the lot, which is fairly shallow and the house is positioned closer to one side.
4. With the arrangement of rooms inside the house, and a very small kitchen, the only way to expand for a sunroom or a dining area is to utilize the existing area.
5. The existing screened porch is somewhat dilapidated and the addition is an improvement based on the applicant's presentation.
6. The visual impact is not significant compared to what is currently there now.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Richard J. Cronin IV, dated, November 2, 2000, and revised through February 21, 2001, 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.

4. The applicant will plant four (4) evergreen trees between the sunroom and the common property line with Lot 34.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 March 14, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 132, March 6, 2001, (Tape 1), Scheduled case of:

9:00 A.M. VK ASSOCIATES I LIMITED PARTNERSHIP, SP 00-Y-052 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses. Located at 14564 Lee Rd. on

approx. 7.50 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((1)) 14; 34-3 ((1)) 23F1. (Def. from 11/14/00 and 12/19/00). (Moved from 2/27/00).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Greg Riegle, McGuireWoods LLC, 1750 Tysons Boulevard, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit an indoor electric go-cart racing facility with two racing tracks and associated accessory uses to include an eating establishment, a video arcade, laser tag, conference rooms, and an outdoor skate park. Mr. Bernal reviewed the revised development conditions and revised plat with the Board. Mr. Bernal stated that staff recommended approval of the application subject to the revised development conditions.

Mr. Riegle thanked staff and stated that all issues concerning the application were addressed to include meetings with the West Fairfax Citizens Group and their approval. Mr. Riegle stated that the by-right use allowed a larger building than that proposed by the applicant.

Mr. Riegle introduced Mr. Mike Nurake, Envision Designs, who presented a video presentation to the Board.

Mr. Hammack asked if on-site repair and replacement would take place for the go-carts. Mr. Riegle stated that it would be considered accessory to the principal use; however, there would be no gas or oil as the go-carts were electrical.

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

Ms. Gibb moved to approve SP 00-Y-052 for the reasons noted in the Resolution subject to the revised Development Conditions contained in the staff report dated February 27, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VK ASSOCIATES I LIMITED PARTNERSHIP, SP 00-Y-052 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial recreation uses. Located at 14564 Lee Rd. on approx. 7.50 ac. of land zoned I-5 and WS. Sully District. Tax Map 44-1 ((1)) 14; 34-3 ((1)) 23F1. (Def. from 11/14/00 and 12/19/00. Moved from 2/27/00). 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 March 6, 2001; 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. The present zoning is I-5 and the area of the lot is 7.50 acres
4. The application is supported by a staff report which indicates full compliance with the general standards for a special permit and is consistent with the Comprehensive Plan.

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

continued from Page 133

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, VK Associates I limited Partnership, 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 John F. Amatetti, Professional Engineer, VIKA Inc., dated June 14, 2000, as revised through February 13, 2001, 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. Notwithstanding any notes on the approved special permit plat, the accessory activities and operations in the facility shall be limited to the following: two indoor electric go-cart racing tracks, conference facility, eating establishment, video arcade, laser tag, meeting rooms, an outdoor skate park and accessory retail uses.

6. At the time of site plan review, a Landscape Plan shall be submitted for review and approval by the County Urban Forester. The plan shall depict:

   -The provision of a combination of trees and shrubs within the parking islands to meet parking lot landscaping requirements;

   - The provision of evergreen trees along the outer perimeter of the Skate Park to mitigate views of and noise from the skate park to adjacent parcels;

   - The provision of landscaping between the parking lot and Lee Road. This landscaping shall consist of a mixture of trees, shrubs and ground covers and shall serve to soften the appearance of the parking lot and associated impervious surface on site;

   - The provision of peripheral parking lot landscaping to include trees, shrubs and ground covers along the periphery of the remaining parking areas, including the driveway directly north of the building; and,

   - The provision of foundation planting, which shall include ground covers, shrubs and small trees along the eastern, southern and western foundations of the building.

   Species, size and number of all plantings shall be as determined by the Urban Forestry Branch, DPWES.

7. The use of any outdoor loudspeakers or noise amplification devices shall be confined to the area of the skate park described in the special permit plat and shall fully comply with the sound levels prescribed by Chapter 108 of the County Code.

8. The hours of operation shall not exceed 9:00 A.M. to 1:00 A.M., daily.

9. The number of 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). All parking for the use shall be on-site as shown on the special permit plat. A one-way circulation pattern shall be used along the northern portion of the building. The landscape strip to the north of the loading area shall be widened to a minimum of eight feet with landscaping as outlined in Condition number 5.

10. The stormwater management pond (SWM), generally shown on the special permit plat within the area of the minor flood plain along the southern boundary of the property, shall be designed to BMP standards as determined by DPWES at the time of site plan approval. Prior to submission of the site plan, the applicant shall coordinate with DPWES, the County Urban Forester and the Environmental Review Branch of the Department of Planning and Zoning to develop a plan for supplemental tree and vegetation planting in the areas of the site adjacent to the edge of the proposed pond so as to provide landscaping of the pond and habitat appropriate to the soil and hydrologic conditions. Upon completion, this planting plan shall be part of the site plan and shall be subject to the review and approval of DPWES. In the event that it is determined by DPWES that the location of the pond shown on the special permit plat does not permit the pond to comply with BMP and associated stormwater requirements, as exist or may be modified or waived by DPWES, the pond may then be relocated to an alternative area of the property, provided such relocation is in substantial conformance with the approved special permit plat. In the event the pond is relocated, the applicant shall remain obligated to develop and implement the tree planting program described herein for the areas adjacent to the pond.

11. Native species of wildlife habitat plantings shall be provided for the areas between the channel and the southern property line, around the SWM pond, and in the triangular shaped area southeast of the SWM pond on the north side of the channel per the Urban Forestry Branch. Native species of trees shall be provided along the non-embankment sides of the proposed stormwater management pond and south of the stream channel (excluding the area of the 100 foot wide VEPCO easement). Tree plantings south of the channel shall be randomly spaced and of sufficient quantity to reforest that portion of the site (excluding the area of the 100 foot wide VEPCO easement) per the Urban Forestry Branch. The applicant shall record a conservation easement to the benefit of Fairfax County, in the form approved by the Department of Public Works and Environmental Services (DPWES), over the areas located within Environmental Quality Corridors (EQCs) to protect the wildlife habitat improvements south of the channel. The conservation easement shall ensure that areas within the EQC remain protected as undisturbed open space, and shall prohibit the construction of any structures including fences. The easement shall be approved by the Office of the County Attorney and further specify that undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass.

12. In order to maximize opportunities for the creation of man-made wetlands and revegetation of the flood plain areas, the site plan shall reflect the configuration of flood plain channels, created wetlands equal or greater in size to the amount of area disturbed along the stream and its floodplain, and revegetated as generally depicted in the southwestern corner of the special permit plat. This site plan shall include plans and descriptions for selective excavation of areas to create the man-made wetlands and the placement of native and water tolerant plantings and trees in open space areas. Specific plantings within the areas shall be proposed by the applicant's wetland consultant and reviewed and approved by the Urban Forestry Branch in consultation with the environment and Development Review Branch of the Department of Planning and Zoning.

    At time of site plan review, the system for conveying floodwaters and creating man-made wetlands and revegetating areas of the floodplain shall be reviewed by both the Urban Forestry Branch and Environment and Development Review Branch of the Department of Planning and Zoning in order to insure opportunities for wetland revegetation and preservation are maximized.

13. The applicant shall diligently pursue permission to construct, at applicant's expense and concurrent with site development, an off-site entrance to Lee Road along the frontage of parcel 34-3 ((1)) 23D1,

and related travel aisle extensions to the entrance on both properties. Said access shall be at a location which will align with a future median opening at such time as Lee Road is improved with a raised median. If permission cannot be obtained to construct the off-site improvements, such shall be demonstrated to DPWES.

14. In the event that additional access is not constructed as noted above, the applicant shall extend the proposed on-site travel aisle located in front of the building to the property line of parcel 34-3 ((1)) 23D1 with a vertical and horizontal alignment which can readily be continued into that parcel in the future, and shall provide for unrestricted access between the two parcels at such time at connection may be completed to the adjoining property.

15. Accommodation shall be provided for the possible future construction of inter-parcel access by others between the subject site and parcel 44-1 ((1)) 2C. Unrestricted inter-parcel access between the two parcels shall be provided in the event that inter-parcel access with parcel 2C becomes appropriate and is recommended by the Department of Transportation.

16. Right-of-way of 45 feet from centerline plus ancillary easements necessary for the future road widening of Lee Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever comes first.

17. Notwithstanding Note #18 on the special permit plat, the applicant shall construct half of a four lane divided roadway along Lee Road with the face of curb set at 35 feet from centerline.

18. Sidewalks shall be provided along the northern perimeter of the SWM pond adjacent to the parking lot. A pedestrian crosswalk shall be provided at the southwestern corner of the building and extend across the travel lane to connect the two sidewalks.

19. Lighting of the property shall focus only onto the subject property. All parking lot lighting on the site shall be limited in height to a maximum of 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 off-site.

20. All signs shall be in conformance with the regulations of Article 12 of the Zonin g Ordinance. Signs associated with this use that are affixed to the building, if permitted by Article 12, shall be architecturally compatible with the building and shall be subject to and in compliance with Article 12 of the Zoning Ordinance.

21. Notes 6, 11, 16, 17 and 18 on page 2 of the special permit plat shall be null and void.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SP 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities and child care center with an enrollment of less than 100 children daily. Located at 10501 New Rd. on approx. 3.98 ac. of land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18. (Def. from 1/23/01).

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 Mittereder, Agent, 12198 Henderson Road, Clifton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Bernal stated that the application had been deferred from January 23, 2001, to allow the applicant the opportunity to address the concerns of the Fairfax Station East Subdivision. Mr. Bernal stated that the applicant had submitted a revised plat dated February 11, 2001, and reviewed those changes with the Board, to include the deletion of the child care center and transportation issues. Mr. Bernal stated that staff continued to support the application and recommended approval.

Mr. Mittereder presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Mittereder reviewed the history of the church. Mr. Mittereder reviewed the applicant's changes to the original application and transportation issues. He stated that the applicant would also install a fence on the southwest property line and provide additional transitional screening. Mr. Mittereder stated that progress had been made with the community to support the application and explained to the Board that the applicant had decided to delete the child care center.

Chairman DiGiulian called for speakers.

The following speakers came to the podium to speak in support of the application: Jeff Rice, 6303 Barski Court, Fairfax Station, Virginia; Dean Young, 6156 Pohick Station Drive, Fairfax Station, Virginia.

The following were their reasons for support: the applicant had addressed all original opposition concerns.

The following speakers came to the podium to speak in opposition of the application: Thomas McKee, 6177 Pohick Station Drive, Fairfax Station, Virginia; and Jeff Curoso, 6305 Pohick Station Drive, Fairfax Station, Virginia.

The following were their reasons for opposition: opposition of the child care center; play area could be a safety issue if it was not fenced in; the excess amount of vegetation to be destroyed; lighting concern in the parking lot; concerns regarding additional parking on New Road.

Mr. Mittereder came to the podium to rebut the opposition and submitted a letter in support. He stated that the parking spaces provided were twice as many as required and he did not envision an overflow parking issue. He assured the Board that all parking would remain on-site, as addressed in the development conditions. Mr. Mittereder stated that the lighting concern would also be addressed and enforced, as outlined in the development conditions.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 00-S-063 for the reasons noted in the Resolution subject to the Development Conditions dated February 27, 2001, with revisions submitted by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SHALOM PRESBYTERIAN CHURCH OF WASHINGTON, SP 00-S-063 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 10501 New Rd. on approx. 3.98 ac. of

land zoned R-1. Springfield District. Tax Map 77-4 ((1)) 18. (Def. from 1/23/01). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 6, 2001; 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. This application is a good example of how the applicant and the citizens have worked together to reach an end.

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, 10510 New Road (3.98 acres) and is not transferable to other land.

2. This Special Permit is granted only to permit a church and related facilities as indicated on the special permit plat prepared by Mark D. Mittereder, dated September 18, 2000, as revised through February 11, 2001, 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 100.

6. A maximum of seven (7) employees shall be permitted on-site.

7. Fifty (50) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.

8. The outdoor play area shall be a maximum of 5,000 square feet and may be enclosed with a four (4) foot high fence. Notwithstanding what is shown on the special permit plat, the play area shall be moved completely outside the Environmental Quality Corridor (EQC). The play area shall be located east and north of the proposed social hall in the general area shown on the plat. No additional vegetation that is shown on the plat shall be cleared for the installation of the play area.

9. Existing vegetation along the eastern, southern and western lot lines shall be preserved and maintained and shall satisfy the requirement of Transitional Screening 1. Supplemental evergreen

plantings shall be provided along the northern portion of the lot in order to soften the impact of the proposed use and screen the dwelling and proposed church structure. The number, size and species of plantings shall be determined by the Urban Forester.

The barrier requirements shall be waived along the northern and eastern lot lines. The existing wood fence shall be used to satisfy the barrier requirement along the western lot line. A split rail fence shall be constructed along the southwestern lot line.

10. A tree preservation plan shall be submitted to the Urban Forestry Branch, DPWES, for review and approval at the time of site plan review. This plan shall depict limits of clearing and grading as shown on the special permit plat and any additional vegetation that may be feasible to preserve as determined by the Urban Forester and tree protection measures to be used during construction of the facility.

11. The EQC shall be denoted on the site plan as that area shown on the special permit plat and shall remain as perpetually undisturbed open space. There shall be no clearing or grading of any vegetation within the EQC except for dead or dying trees and shrubs. There shall be no structures or fences located within the EQC.

12. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required to the satisfaction of DPWES. Subject to the approval by DPWES, a privately owned, operated and maintained underground stormwater management system shall serve the subject property as shown on the special permit plat. The underground system shall be subject to conditions imposed the Department of Public Works and Environmental Services (DPWES) in coordination with the applicant. Should approval of the underground stormwater management system not be obtained, the applicant shall seek alternative methods for achieving adequate stormwater management and may be required to amend the special permit to reflect the alternate stormwater management facility. No additional vegetation shall be cleared for installation of a SWM facility.

13. 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.
    - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
    - 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.

14. A right turn lane shall be provided along New Road onto the Fairfax County Parkway as shown on the Special Permit Plat. A no left turn sign shall be installed at the entrance to the site to prohibit left turns from the site onto New Road. The right turn only channelization at the entrance to the site shall be constructed of concrete.

15. The dwelling shall only be occupied by the proprietor, owner and/or an employee and his /her family that is directly related to the church use.

16. Notwithstanding that shown on the special permit plat, notes 32, 33 and 35 shall be null and void.

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

18. The facade of the building shall be brick veneer. The type and color of brick shall be compatible with the existing residential character of the neighborhood.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 140, March 6, 2001, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 7510 Ox Rd. on approx. 12.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 14. (Def. From 12/19/00). (Decision deferred from 2/20/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Walsh, Colucci, Stackhouse, Emrich and Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, stated that the application was deferred for decision only to allow the applicant the opportunity to meet with representatives of the Department of Transportation (DOT) and the Virginia Department of Transportation (VDOT). Ms. Strobel stated that due to the lengthy testimony on both sides of the application at the public hearing, she did not believe it was necessary to review all issues; however, she discussed with the Board the meeting held with DOT and VDOT. Ms. Strobel submitted revised development conditions to the Board dated March 6, 2001, and reviewed those revisions.

Chairman DiGiulian allowed testimony to be presented relevant to the transportation issues only.

The following speakers came to the podium to speak in opposition of the application: Michael Giguere, McGuireWoods, LLC, representative of the Summerwind subdivision; Joe Hirl, President, Summerwind Homes HOA; Shana Thompson, 7714 Gingerbread Lane, Fairfax Station, Virginia; Michael Cosecof, 11011 Hampton Road, Fairfax Station, Virginia; William W. Cole, 10600 Sandy Run Trail, Fairfax Station, Virginia; David Watkins, 10818 Henderson Road, Fairfax Station, Virginia; James Ionessi, 7538 Thistledown Trail, Fairfax Station, Virginia; William Decker, 7535 Thistledown Trail, Fairfax Station, Virginia; Albert Acres, President of the Occoquan Watershed Coalition.

Members of the audience stood in opposition of the application in lieu of all persons speaking on transportation issues. The above noted people came to the podium to state their concerns on the following issues: Henderson Road access did not meet the needs required; transportation improvements were not satisfactory; inter-parcel access to all adjacent parcels should be provided; the church needed to be scaled down and meet the community situation; Henderson Road was designated by the Governor as a scenic route and would not be able to accommodate the additional traffic, currently at approximately 3,000 cars per day; the lives of people would be endangered because of the traffic issues; the church was not buffered by park land to protect adjacent neighborhoods; the applicants' insistence to have access from Henderson Road; speed limit concerns; no acceleration lane on 123 into church property; ingress/egress access on Henderson Road; the site was not a proper location for such a large church.

Ms. Strobel came to the podium to rebut the opposition. She stated that Henderson Road would be an exit only and that the property had access to an arterial at Route 123. Ms. Strobel proposed an additional development condition regarding inter-parcel access to all parcels fronting on Route 123. Ms. Strobel concluded by stating that the applicant had proposed a reasonable development of the property and that they were cooperative with adjacent property owners.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to deny SP 00-S-063 for the reasons noted in the Resolution.

Mr. Pammel expressed his agreement with the motion and also noted that standards 3 and 5 were not met and he had concerns with safety issues. He further noted that Henderson Road was not an acceptable site for the church.

Ms. Gibb stated that the applicant had made every effort to scale down and that the site was difficult; however, expressed her concern with traffic issues as well. Mr. Hart expressed his concurrence.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship. Located at 7510 Ox Rd. on approx. 12.04 ac. of land zoned R-C and WS. Springfield District. Tax Map 87-4 ((1)) 14. (Def. from 12/19/00. Decision deferred from 2/20/01). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 6, 2001; and

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

1. The 12.04 acre property is unusual in its impact on adjacent properties and has an irregular configuration.
2. The lot is almost land locked internally between lots that face Ox Road and a residential community.
3. The proposed FAR is a .02, which is low; however, the request has environmental concerns that have not been completely addressed in the proposal.
4. Regardless of the size, traffic and ingress/egress are the major concern on this application.
5. The Henderson Road entrance is inadequate and insufficient and the approval by VDOT for the Ox Road entrance improves the application but not enough to approve it.
6. The lots on Route 123 are definitely impacted because it isolates those properties from other residential properties.
7. Staff continues to oppose the application regardless of the VDOT approval.
8. The application does not meet the requirements for approval at this time.

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-C03 of the Zoning Ordinance.

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

Page 142, March 6, 2001, (Tape 2), TRUSTEES FOR OHEV YISRAEL MESSIANIC JEWISH CONGREGATION, SP 00-S-058, continued from Page 141

Mr. Ribble seconded the motion which carried by a vote of 7-0. Mr. Hart moved to waive the one (1) year waiting period for re-filing an application. Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 2001.

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Page 142, March 6, 2001, (Tape 2), After Agenda Item:

Additional Time Request
SPA 74-M-116
Grace Evangelical Lutheran Church

Mr. Pammel made a motion to approve the additional time request for an additional thirty months to July 8, 2003. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 142, March 6, 2001, (Tape 2), After Agenda Item:

Additional Time Request
SPA 90-M-036
Crossroads Baptist Church

Mr. Pammel made a motion to approve the additional time request for an additional six months to April 24, 2001. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 142, March 6, 2001, (Tape 2), After Agenda Item:

Approval of February 27, 2001 Resolutions

Mr. Pammel made a motion to approve the February 27, 2001 Resolutions. 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 11:25 a.m.

Minutes by: Deborah Hedrick

Approved on: July 31, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 13, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 143, March 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS W., JR & JANICE M. CALL, VC 01-S-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 6.9 ft. from side lot line such that side yards total 14.4 ft. Located at 8125 Viola St. on approx. 8,875 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-4 ((8)) 168.

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 and Janice M. Call, 8125 Viola Street, Springfield, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a second story addition to the dwelling to be located 6.9 feet from the north side lot line such that side yards total 14.4 feet. The Ordinance requires a minimum side yard of 8 feet and a minimum total side yard of 20 feet; therefore, variances of 1.1 feet and 5.6 feet were requested respectively for the addition. Ms. Josiah noted that the staff report incorrectly stated that a total side yard of 24 feet was required, whereas a total minimum side yard of 20 feet was required.

Mr. Call presented the variance request as outlined in the statement of justification submitted with the application. He said the 2nd floor addition would be over the existing garage. Mr. Call stated that they had lived in the neighborhood since 1993 and wanted to stay in the neighborhood, but they were limited with locations in which to build. 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 01-S-001 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS W., JR & JANICE M. CALL, VC 01-S-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 6.9 ft. from side lot line such that side yards total 14.4 ft. Located at 8125 Viola St. on approx. 8,875 sq. ft. of land zoned PDH-3. Springfield District. Tax Map 89-4 ((8)) 168. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 2001; 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 has exceptional topographical conditions.
4. The construction is over the existing footprint of the garage.
5. The addition will be in harmony with the neighborhood and will not change the character.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Larry N. Scartz, dated through December 7, 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.

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack moved to waive the 8-day waiting period. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Pammel 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 March 13, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. DAVID & KAREN SHERWOOD, VC 01-D-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less and 7.0 ft. high fence to remain in front yards of a corner lot. Located at 903 Banbury Ct. on approx. 26,017 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-1 ((5)) 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. Joe Buckley, 9200F Old Keene Mill Road, Burke, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an accessory structure consisting of a pool house, to be located in the front yard of a lot containing less than 36,000 square feet in area. The Ordinance does not permit accessory structures in the front yard of any lot containing 36,000 square feet or less in area. The applicant also requested that a 7-foot high fence remain in the front yards of a corner lot. The Ordinance permits fences with a maximum height of 4 feet in front yards, thus a variance of 3 feet was requested.

Mr. Buckley, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the structure had been on the property since 1979 and the fence had been erected ever since the pool had been on the property. Mr. Buckley stated that the applicant was concerned that a 4-foot fence would not be of adequate height to shield visibility of the pool. He submitted letters in support of the application.

Karen Sherwood, the applicant, came forward stating that the original fence had been removed and replaced because it was dilapidated. She said the fence was needed for the safety of the children in the neighborhood. Ms. Sherwood said that visibly, the fence was on the side of the house.

Mr. Hart asked whether the pool house was already built. Ms. Sherwood replied yes, but everything had needed repair and she wanted to make them all legal.

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

Mr. Hart moved to approve VC 01-D-003 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID & KAREN SHERWOOD, VC 01-D-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less and 7.0 ft. high fence to remain in front yards of a corner lot. Located at 903 Banbury Ct. on approx. 26,017 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-1 ((5)) 13. 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 March 13, 2001; and

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

1. The applicants are the owners of the land.
2. The lot is oddly shaped.
3. The location of the septic field behind the house causes the pool to be located on the side of the house where the lot is very shallow.
4. Based on the photographs and the letters from the neighbors, there is no impact visually.
5. The previous owners are at fault because they did not obtain approval for the projects.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 pool house and fence shown on the plat prepared by Highlander Surveying Services P.C., dated July 19, 1999 as revised through December 15, 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. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 146, March 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD G. AND CYNTHIA HOPKINS BROWN, VC 01-V-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.6 ft. from rear lot line and dwelling to remain 36.5 ft. in height. Located at 8527 Bertsky La. on approx. 2,250 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 156.

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 Gardner, Patio Enclosures, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 0.6 feet from the rear lot line and a dwelling to remain 36.5 feet in height. A minimum rear yard of 25 feet is required; therefore, a variance of 19.4 feet was requested for the addition. A maximum dwelling height of 35 feet is required; therefore, a variance of 1.5 feet was requested.

Mr. Hammack asked why the variance was for height. Ms. Stanfield replied that there was an error when the dwelling was constructed.

Mr. Gardner, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the applicant did not know that the dwelling exceeded height requirements. Mr. Gardner said the lot was shallow.

Mr. Hammack asked whether the applicant obtained homeowner association approval. Mr. Gardner replied yes.

Mr. Ribble asked if there were similar structures in the in the area. Mr. Gardner replied that he did not know and the area was still under construction.

Mr. Hart asked whether the fence was on the property line. Mr. Gardner replied yes.

Ms. Gibb asked if the fence was 6 feet tall and would the addition be ½ foot from the fence. Mr. Gardner replied affirmatively to both questions.

Mr. Ribble asked if there was any was to lessen the variance requested. Mr. Gardner replied yes, but only if it was a foot or so.

Mr. Hammack asked whether the request had been discussed with the neighbors. Mr. Gardner replied that it had.

Mr. Hart asked if there was something unusual about the lot as compared to the other lots in the area. Mr. Gardner replied that most of the lots were the same.

Mr. Kelley asked whether sundecks were an option for the townhouses. Mr. Gardner replied that he did not know.

Ms. Gibb asked if the deck went to the lot line. Mr. Gardner replied yes.

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

Mr. Ribble moved to defer decision for one week for the applicant to reduce the size of the room. He said he was trying to consider what the neighbor's view would be.

Ms. Gibb said she would like to know about other decks in the neighborhood, have a letter from the homeowners association, and for the applicant to be present.

Mr. Hammack stated that he would also like a letter from the neighbor next door. He said a sunroom was too large and would have a lot of other impacts.

Mr. Ribble said it would be helpful if there were better photographs.

Mr. Kelley said he could not support the motion because the addition would be an eyesore and it was not appropriate for a townhouse.

Mr. Hammack said he would not support the motion.

Mr. Ribble moved to approve-in-part VC 01-V-007 for the reasons noted in the Resolution. The building height was approved and the addition was denied.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RICHARD G. AND CYNTHIA HOPKINS BROWN, VC 01-V-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.6 ft. from rear lot line and dwelling to remain 36.5 ft. in height. **(THE ADDITION WAS DENIED)** Located at 8527 Bertsky La. on approx. 2,250 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-3 ((16)) 156. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 2001; and

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

1. The applicants are the owners of the land.
2. The lot is shallow, but other lots in the neighborhood are shallow as well.
3. There were concerns about the addition's proximity to 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-IN-PART** with the following limitations:

1. This variance is approved for the height of the dwelling shown on the plat prepared by Kenneth W. White, dated October 2, 2000, submitted with this application and is not transferable to other land.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble moved to waive the 12-month waiting period for re-filing an application. Mr. Hart seconded the motion which carried by a vote of 4-2. Mr. Kelley and Ms. Gibb voted against the motion. Mr. Pammel was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 149, March 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ANTHONY L. WHITLOCK, VC 01-M-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.2 ft. from one side lot line and dwelling and deck 11.2 ft. from other side lot line. Located at 6432 Holyoke Dr. on approx. 8,902 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 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. Anthony Whitlock, 3301 Dona Avenue, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 11.2 feet from one side lot line and a dwelling and a deck to be located 11.2 feet from the other side lot line. A minimum side yard of 15 feet is required; therefore, variances of 3.8 feet were requested.

Mr. Hart said the photographs reflected a building permit tied to a tree and asked staff to clarify. Ms. Stanfield replied that she suspected it was a demolition permit.

Mr. Whitlock affirmed that it was a demolition permit because he had the house torn down.

Mr. Whitlock presented the variance request as outlined in the statement of justification submitted with the application. He said the variance was needed because the house was designed to the right.

Chairman DiGiulian asked the applicant if his lot was exceptionally narrow. Mr. Whitlock stated that all the lots were the same in that development.

Ms. Gibb said the plat show that the house was the same width as the other houses, but longer. Mr. Whitlock replied yes.

Ms. Gibb asked if the proposed location was the only place for the house. Mr. Whitlock replied yes.

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

Ms. Gibb moved to approve VC 01-M-006 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ANTHONY L. WHITLOCK, VC 01-M-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.2 ft. from one side lot line and dwelling and deck 11.2 ft. from other side lot line. Located at 6432 Holyoke Dr. on approx. 8,902 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 18. 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 March 13, 2001; 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 exceptionally narrow.
4. The house is located to the rear and in the center to not impact the neighbors.
5. The dwelling would be the same width as the other homes.
6. The dwelling is placed in the best location because of the drainage ditch at the rear of the lot.

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

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

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

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

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

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

1. This variance is approved for the location of the dwelling and deck shown on the plat prepared by William G. Hawes, dated December 7, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 151, March 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEE OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-952 previously approved for a church and related facilities and nursery school to permit building additions and site modifications. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Springfield District. Tax Map 80-3 ((3)) (39) 2 and 2A.

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, Agent, 708 Belleview Court, Leesburg, 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 a previously approved church and related facilities and a nursery school to permit the construction of two additions to the existing parish hall. The proposed additions were for a kitchen and additional space for the parish hall. The church use was established in 1955. The existing fellowship hall and sanctuary buildings contained offices, classrooms, and a sanctuary with 270 seats. The existing three parking areas contained a total of 84 spaces. The kitchen addition, which was to be located to the northeast side of the parish hall, was proposed to contain 1,144 square feet. The additional space for the fellowship hall was proposed to be located on the northwest side and would add 1,408 square feet to the fellowship hall, resulting in a total floor area of 21,567 square feet for the entire site and a floor area ratio of 0.14. The church proposed no changes to the total seating capacity of 270 seats. Staff recommended approval subject to the development conditions dated March 6, 2001.

Mr. Kalriess, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the proposal was to rebuild the kitchen and provide extra space for Sunday school. Mr. Kalriess said the neighbors were in support of the application. He said Development Condition #9 no longer applied because transitional screening was not necessary.

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

Mr. Kelley moved to approve SPA 68-S-952-3 for the reasons noted in the Resolution.

Mr. Kelley asked if the applicant would have to go through the site plan process. Susan Langdon, Chief, Special Permit and Variance Branch, said they would at least have to go through the minor site plan process.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEE OF ST. CHRISTOPHER'S EPISCOPAL CHURCH, SPA 68-S-952-3 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 68-S-952 previously approved for a church and related facilities and nursery school to permit building additions and site modifications. Located at 6320 Hanover Ave. on approx. 3.68 ac. of land zoned R-3. Springfield District. Tax Map 80-3 ((3)) (39) 2 and 2A. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 2001; 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. Dunlop of Walter L. Phillips, Inc., dated November 3, 2000, as revised through January 24, 2001, 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 270.

6) The maximum daily enrollment fort he 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) Eighty-four (84) parking spaces shall be provided. All parking associated with this use shall be contained on-site as shown on the special permit plat.

9) Transitional Screening Type 1 shall be modified along the northern lot line in favor of that shown on the Special Permit plat. Transitional Screening Type 1 shall be waived along the southern and eastern lot lines, in favor of that show on the special permit plat. The barrier requirement along the northern, eastern, and southern lot lines shall be waived.

These conditions incorporate and supercede all previous conditions.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 153, March 13, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with an enrollment of less than 100 students daily. Located in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A. (Def. From 11/28/00)(moved from 2/6/01)

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 Farrell, Agent, McLandish and Lilliard, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The Board deferred the subject application on November 28, 2000, at the request of the applicant in order to address staff's issues. The applicant requested a special permit to permit a church and related facilities and a nursery school with a maximum daily enrollment of 99 students. The applicants proposed that the church and parking areas be built in two phases. Phase I proposed the construction of a church sanctuary which contained approximately 15,358 square feet, 600 seats, and a cellar. Parking areas for 276 spaces would be constructed at the western portion of the site. Access to the site was via two areas of ingress and egress located along the northern lot line onto Blue Spring Road. Phase II proposed the construction of an addition, which contained 18,379 square feet and a cellar. Two hundred (200) additional seats would be provided for a total of 800 seats. A pavilion containing approximately 2,100 square feet was proposed to be located 50 feet southeast of the main sanctuary. At completion of Phase II, the final building size would be 33,737 square feet including the pavilion. Also at the completion of Phase II, the nursery school would be implemented that would have a maximum daily enrollment of 99 students. The proposed F.A.R. for the site would total 0.09. Mr. Bernal stated that subsequent to meeting with the Western Fairfax County Civic Association and neighbors of the surrounding community, the applicant submitted a revised plat dated through January 2001, which reflected minor changes to the previously submitted plat. The changes included moving the SWM/BMP out of the EQC; reducing clearing of the existing trees along the western lot line; delineation of several large trees along the western boundary with additional landscaping provided to replace the existing

driveway on the Loudoun County portion; additional plantings provided in the area west of the proposed SWM/BMP pond as well as within the pond itself; and a tree preservation plan which showed the locations of the areas to be preserved and the areas to be restored. Mr. Bernal said only 35% of the site was designated to be maintained as undisturbed open space, 31% located in Fairfax County and 4% in Loudoun County. The Comprehensive Plan recommended that a minimum of 50% be maintained as undisturbed open space.

Staff believed that the scale of non-residential uses permitted in the R-C District should reflect the residential intensity planned for the property, as well as adjacent uses. Mr. Bernal said because the subject property bordered on an arterial road and industrial uses were to the north, a church use on the property with a lower intensity could be appropriate. He said nevertheless, the proposal should be designed to minimize impacts on water quality in the R-C District by reducing the amount of impervious surfaces, minimizing the size of the structure, and retaining undisturbed open space at least to the point of a previously approved special permit (SP 97-Y-013, Victory Christian Church) on this same site. The application for the Victory Christian Church proposed a church structure and a rectory that contained 800 seats with a total of 28,700 square feet, 171 parking spaces, and yet managed to obtain 48% undisturbed open space with an FAR of 0.076 and staff recommended approval of that application. Mr. Bernal said the previous application did not include a childcare center. He said with regard to the transportation issues, the revised plat did not show the construction of a 19-foot cross section nor a 26-foot cross section for turn lanes as requested by the Department of Transportation in Appendix 7 of the staff report. He said Blue Spring Road was a substandard facility that the applicant proposed to construct two points of access. Blue Spring Road should be improved to facilitate the movement of traffic anticipated with a church of this size on weekends and evenings as well as a nursery school that operated five days per week. The construction of the two requested cross sections (19 feet and 26 feet) should alleviate negative traffic impacts at the intersection of Pleasant Valley Road and Blue Spring Road. Mr. Bernal said the changes to the revised plat were minor in nature and did not alter staff's previous recommendation. Therefore, staff continued to recommend denial of the application. Mr. Bernal stated that John Ziker, Urban Forestry Division, DPWES, Noel Kaplan from the Department of Planning and Zoning's Environmental Section, and Mr. Mark Canale from the Department of Transportation were present to answer questions regarding the issues. Mr. Bernal said staff had received a new plat and new development conditions that morning and did not have adequate time to review them.

Mr. Hart asked how much time staff would need to review the new plat and the proposed development conditions. Mr. Kaplan replied he could review them as quickly as the Board needed.

Mr. Farrell, the applicant's agent, said he would be more than happy to agree to a deferral of the Board's decision but would like a deferral of less than 30 days to avoid the need of re-advertising. He submitted 2 photographs reflecting that the condition of property had not substantially changed. Mr. Farrell presented the request as outlined in the statement of justification submitted with the application. He said the issue was the impact the subject application would have on stormwater quality. Mr. Farrell said when the Board zoned the area to industrial they must have been aware that there would be runoff from the property into the streams that would go into the Occoquan. He compared the subject property's open space to the surrounding properties, noting that the subject application's open space was 35% as compared to the others being 42% and 22%. Mr. Farrell said ultimately the application site would have 60% undisturbed open space, but it would be disturbed originally because it would need to be graded. He said the changes to the plat related to changing the wording from wet pond to dry pond. He said the other change related to landscaping which would add 20 under-story trees. Mr. Farrell said he would like feedback from staff regarding the applicant's proposed restoration/re-forestation plan. He said the site had been over-parked to avoid overflow parking. Mr. Farrell discussed proposed changes to the development conditions. He said they changed condition #1 because the language proposed by staff could not be used to regulate the ownership of land. Mr. Farrell said Condition #7 wanted 20 under-story trees that they had incorporated. He said in Condition #8 and #9 there appeared to be delegation of the Board's authority to the Urban Forester and he felt that was inappropriate. Mr. Farrell said Condition #12 reflected the fact that the applicant would have to go into the areas of clearing and grading in order to plant trees. He said the barrier requirement noted in Condition #13 was waived for the two churches to the south, and he didn't know why staff proposed a barrier requirement on the subject property. Mr. Farrell said there was a substantial row of trees along the northern and western boundary. Mr. Farrell said the applicant was not capable of doing the construction of suspending that road because that was not something a private individual should be undertaking. He said that should be a project for the public agencies to deal with. Mr. Farrell said the applicant would give money to the County to build the sidewalk.

Mr. Hart said he was surprised at the statement in the letter about RC zoning being arbitrary and capricious and the case law required that to be pointed out. He said if there was some case law to that effect he would like to read it. Mr. Farrell said if the BZA denied the special permit and he were to go forward and appeal the denial to the Circuit Court, he would be obliged to demonstrate that the underlying zoning was arbitrary and capricious. He said he was simply trying to perfect the record so that in the unlikely event that the BZA denied the special permit, the record would have been perfected for appeal.

Mr. Hart asked staff about the R-17 and the RC zoning. He said his understanding was that the lots across the street were zoned RC and they were just developed prior to the change in zoning and they were grandfathered so that was why they were as small as they were, but they were still RC. Susan Langdon, Chief, Special Permit and Variance Branch stated that was correct. She said they were rezoned under the downzoning to RC but they were developed prior to that downzoning.

Mr. Hart said that one of the common themes in the changes in the development conditions contained in the staff report and the ones proposed by the applicant was that almost every reference to the Urban Forester doing anything was taken out. He said he understood that they might be a difficult agency to work with, but it seemed that on a development application where there were significant issues with the amount of undisturbed open space on a special permit in the RC whether the applicant agreed with it or not, the reforestation plan was prepared in response to that. Mr. Hart said it was an important component of the application. He said the applicant's response to staff's complaint is that they would reforest, but it seemed that if the Urban Forester was removed from the mix, that would be a giant leap. He said the BZA consistently approved staff's suggested language such as that.

Mr. Farrell said he meant that the applicant had already submitted the plans and submitted them to the County and he wanted that issue resolved as part of the special permit approval and not at site plan stage.

Mr. Hart and Mr. Farrell discussed the need to improve the public facilities that were substantially affected by traffic generated by the application. Mr. Farrell said that County law must be consistently applied with the case law of the Supreme Court. He said the road was substandard and it was unconstitutional under the Virginia Constitution for the general public to impose on one individual the obligations of the general public to maintain a safe public road system.

Ms. Gibb asked staff to respond to the issue of ultimately having 60% undisturbed open space. Mr. Kaplan said staff had looked at the way in which DPWES considered undisturbed open space and the context of the BMP requirement for the Water Supply Protection Overlay District (WSPOD). Mr. Kaplan said for every 1% undisturbed open space the applicant would get a 1% phosphorous removal credit. Mr. Kaplan said the applicant was required to achieve a 50% phosphorous removal for the entirety of the site. He said if the applicant were to reserve half of their site as perpetual undisturbed open space they could achieve the BMP requirement using a land use approach, that the land use itself provided the BMP.

Ms. Gibb asked whether undisturbed in the future meant never undisturbed, and would it be sufficient if the applicant designated the space. Mr. Kaplan said staff would have no problem with that considering there was an existing sod farm on the property. He said they had applied that approach to the area of the EQC outside of the current woodland. Mr. Kaplan said the development condition would allow them to do some grading in that area if needed to provide for their stormwater pond in place, as long as it would be ultimately restored to a perpetually undisturbed condition.

Ms. Gibb asked Mr. Farrell whether the applicant would consider reducing the amount of impervious surface, minimize the structure, and designate some undisturbed open space to help meet water quality control. Mr. Farrell stated that the size of the building was part of the program needs of the applicant. He said the 50% number was not in any kind of regulation, that it was a way to avoid having to build a BMP. Mr. Farrell said the applicant was building a BMP that would address the water quality issue. He said one of the reasons the applicant was hesitant to provide more open space was because they wanted to make the area around the picnic pavilion available to the community and express some consideration for the people who lived across the street. Mr. Farrell said the applicant would prefer not to impact the neighbors with parking.

Mr. Hammack asked whether the applicant had submitted anything to staff that justified the need for 276 parking spaces. Mr. Farrell said that Mr. Harding, a church consultant, had built enough churches over the years and they used his testimony and experience when making the parking decision.

Page 156, March 13, 2001, (Tape 1), GRACE COVENANT CHURCH INC., SP 00-Y-050, continued from Page 155

Mr. Hammack said he would like to see some correlation between the church uses that were proposed and the requirement for this number of parking spaces. Mr. Farrell said that 4 parking spaces per church seat did not work.

Chairman DiGiulian called for speakers.

The Pastor, no address given, Darryl Greene, no address given, Shawn Perkins, no address given, Joe Fairchild, 4307 Pleasant Valley Road, and Ron Smith, resident of Pleasant Valley commu nity spoke in support of the speakers supported the application for the following reasons: the church would be an asset to the community, onsite-parking was an asset, and the church worked diligently with the neighbors.

Carol Hahn, 6500 Harvest Mill Court, WFCCA Land Use Committee, came forward to speak in opposition. She said the committee supported the application but she did not because the use was intense. Ms. Hahn said the number of seats in the church should be reduced to provide adequate open space. She said the applicant should be encumbered with making the road improvements. She submitted photographs to the Board.

Mr. Farrell stated in his rebuttal that the Western Fairfax group supported the application. He said if the area around the pavilion counted then the applicant would be at 40% undisturbed open space which would be equivalent to the church to the south.

Mr. Hammack moved to continue SP 00-Y-050 to April 3, 2001, at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 156, March 13, 2001, (Tape 1), After Agenda Item:

Approval of December 12, 2000 Minutes

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

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Page 156, March 13, 2001, (Tape 1), After Agenda Item:

Approval of Revised Plat for
VC 00-P-162 Michael Rafeedie

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

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Page 156 March 13, 2001, (Tape 1), After Agenda Item:

Approval of March 6, 2001 Resolutions

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

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Page 156, March 13, 2001, (Tape 1), After Agenda Item:

Approval of the Board of Zoning Appeals proposed meeting dates
for the latter six months of 2001.

Mr. Ribble moved to defer the decision on the above referenced item to March 20, 2001. 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 12:50 p.m.

Minutes by: Regina Thorn Corbett

Approved on: July 31, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 20, 2001. The following Board Members were present: John DiGiulian, Nancy Gibb, James Hart, Paul Hammack, 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.

9:00 A.M. DEAN E. GALLARDO, VC 01-H-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.1 ft. from side lot line. Located at 13028 Monroe Manor Dr. on approx. 11,749 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((23)) 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. Dean Gallardo, 13208 Monroe Manor Drive, Oak Hill, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a deck 4.1 feet from the side lot line. The Zoning Ordinance requires a side yard of 8.0 feet; therefore, a variance of 3.9 feet was requested.

Mr. Gallardo presented the variance request as outlined in the statement of justification submitted with the application. He stated that the closest structure to the area of his property which required a variance was his neighbor's garage. He said that he had full neighborhood support.

Mr. Hart asked how high the deck was proposed to be. Mr. Gallardo replied 7.5 feet.

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

Mr. Hammack moved to approve VC 01-H-002 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DEAN E. GALLARDO, VC 01-H-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.1 ft. from side lot line. Located at 13028 Monroe Manor Dr. on approx. 11,749 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-1 ((23)) 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 March 20, 2001; 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.
3. The house is positioned almost diagonally on the center of the lot.
4. The property contains converging lot lines in the area in question.
5. The variance is opposite a two-car garage on the adjoining property; therefore, there will be no adverse impact.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Kenneth W. White, dated October 3, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 160, March 20, 2001, (Tape 1) Scheduled case of:

9:00 A.M. LARI D. & MARY F. ANDERSON, VC 01-M-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line. Located at 8220

Brittainy Dr. on approx. 16,050 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((14)) 27A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lari Anderson, 8220 Brittainy Drive, Annandale, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval to permit construction of an addition to the dwelling, to be located 6.7 feet from the east side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance of 8.3 feet was requested.

Mr. Anderson presented the variance request as outlined in the statement of justification submitted with the application. He explained that the house was built in 1965 and was the last lot before the next subdivision. He stated that the addition was needed to provide adequate living space.

Mr. Hammack asked if there was neighborhood support. Mr. Anderson replied that there was.

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

Mr. Pammel moved to approve VC 01-M-005 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LARI D. & MARY F. ANDERSON, VC 01-M-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line. Located at 8220 Brittainy Dr. on approx. 16,050 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3 ((14)) 27A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 20, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' testimony and statement of justification indicated compliance with the prescribed criteria for the granting of a variance.
3. The lot is very narrow in width.

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

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

adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 November 6, 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.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 162 March 20, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BASHEER-EDGEMOORE-MCLEAN, L.L.C., VC 01-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a wall 15.0 ft. in height in a front yard. Located at 7700 & 7706 Magarity Rd. on approx. 5.06 ac. of land zoned R-20. Providence District. Tax Map 39-2 ((1)) 66 and 70.

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.

Jennifer Josiah, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval to construct a 15 foot high wall in the front yard of a lot. The Zoning Ordinance requires a maximum fence height of 4 feet in the front yard; therefore, a variance of 11 feet was requested for the wall. The applicant submitted a revised design for the wall and it did not involve any changes in dimension.

Mr. Hammack asked staff what was the total fence height. Ms. Josiah explained that the fence was 7 feet in height and it was located on top of a 3 foot retaining wall. The pedestals were 12 feet tall and they also were on top of the retaining wall; therefore, the total height was 15 feet.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the adjacent properties were made up of multi-family buildings, which were approximately 40 to 45 feet in height. She explained that the Zoning Ordinance required a 3 foot barrier between the dwellings and screening of 25 feet; however, the screening requirement could be reduced by 2/3 if a 7 foot solid barrier was provided. She said that the applicant proposed screening of 17.78 feet and a 10 foot high barrier with plantings up to an additional 5 feet. She said that 3 feet of the wall served as a retaining wall. She said that the topography varied across the width of the property and the height differential required the architect to develop a unique design that required a variance of the barrier height restriction. She said the height was necessary to ensure adequate first floor screening of the proposed town house units. She explained that there was a storm drainage easement which crossed the front of the property and the applicants modified the design of the fence in the easement to be a wrought iron feature to make it removable so the easement could be accessed for maintenance.

Mr. Hart asked whether the back or the front of units 1 through10 faced the wall. Ms. Strobel explained that they were the backs of units but were designed to appear as fronts. Mr. Hart asked whether the decks on units 1through 10 were at ground level and how close the decks were to the proposed wall. Ms. Strobel replied that the decks were elevated and they would be located 8 feet from the proposed wall. Mr. Hart asked if the decks were higher than the wall. Ms. Strobel requested that Dory Winkelman, representative for the applicant, answer the question. Mr. Winkelman explained that the structure of the deck was the height of the wall and the railings of the deck were above the wall. Mr. Hart asked how far away the wall was from the railings of the decks. Mr. Winkelman stated that there was a jog in units 1 through 10 and the units that were closer to the wall would be 6 feet and the other half would be 8 feet away from the wall.

Ms. Strobel explained that the community was set up as a condominium in operation and as a result the Zoning Ordinance requires a minimum open space of 4 feet that could not be built upon.

There was conversation between the Board, staff and the applicants as to what type of fencing was along the other portions of the property which were not covered under the variance request. The result was that there was a 7 foot fence proposed at the rear of the property which was to be located on top of the retaining wall.

Mr. Hammack stated that the proposed fence was too tall for the neighborhood and it resembled a compound. Ms. Strobel replied that the proposal was in keeping with the scale of the surrounding buildings. She pointed out that there were two approved variances for height in the area. She reiterated that the only portion of the fence that was too high was the area of the posts with the finials.

Chairman DiGiulian called for speakers.

Dory Winkelman, Vice President of Basheer Edgemore Corporation, 2071 Chain Bridge Road, came forward to speak in support of the application. He stated that the fence needed to be the proposed height due to the topography of the land and if it were any lower it would not provide adequate privacy for the ground floors of units 1 through 10.

Chairman DiGiulian closed the public hearing.

Mr. Hart asked staff if the Zoning Ordinance considered the rear of units 1-10 to be front yards or backyards. Ms. Josiah explained that because there was open space between the structures and the road frontage, they were considered to be rear yards. Mr. Hart asked if the owners of the units would be able to extend their

decks closer to the wall and if so did the Zoning Ordinance mandate whether or not variances would be required. Ms. Josiah replied that the Zoning Ordinance was not clear on that matter.

Mr. Hart stated that while he would not often be inclined to permit a fence of this height in a front yard, based on the topographic conditions the fence was warranted. Mr. Hart suggested an addition to Development Condition #3 to read, notwithstanding the architectural rendering in the staff report, the revised drawing showing the wrought iron section to replace the brick in the area of the storm drainage easement is approved.

Mr. Pammel noted that greater fence heights in other areas of the site above the retaining wall were also proposed. He said that needed to be clarified because the variance only pertained to the fence in the front yard of the site. Ms. Strobel stated that there was no additional variance required for the rear property line. Mr. Pammel stated that the maximum height of a fence was 7 feet and if there were other areas where the fence was on top of the retaining wall then a variance was also needed for that area. Mr. Pammel questioned whether the application had been property advertised.

Mr. Hammack stated that the fence was too high for the property.

Mr. Hart moved to approve VC 01-P-009 with the Board's additional development condition and for the reasons stated in the Resolution. Mr. Hart noted that his motion only pertained to the fence in the front of the application site.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BASHEER-EDGEMOORE-MCLEAN, L.L.C., VC 01-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a wall 15.0 ft. in height in a front yard. Located at at 7700 & 7706 Magarity Rd. on approx. 5.06 ac. of land zoned R-20. Providence District. Tax Map 39-2 ((1)) 66 and 70. 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 March 20, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' testimony and statement of justification indicated compliance with the required standards for the granting of a variance.
3. Based on the topographical conditions of the property as well as the condition with the backyards of the units, the retaining wall beneath, and the scale of not only these buildings but the apartment buildings in the neighborhood, this is not going to be a problem for adjacent properties.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the wall shown on the plat prepared by Christopher Consultants, Ltd., dated September 26, 2000 and signed October 25, 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.

3. Notwithstanding the architectural rendering in the staff report, the revised drawing showing the wrought iron section to replace the brick in the area of the storm drainage easement is approved.

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

Mr. Pammel seconded the motion which carried by a vote of 4-3. Ms. Gibb, Mr. Hammack and Mr. Ribble voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 165, March 20, 2001, (Tape 1) Scheduled case of:

9:00 A.M. THOMAS H., JR. & KATHERINE Z. GAILLIOT, VC 01-V-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 1807 Stratford Dr. on approx. 9,866 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Galliot, 1807 Stratford Drive, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of bedroom extensions to be located 7.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 4.2 feet was requested for the proposed bedroom extensions.

Mr. Galliot presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was constructed in 1951 and as a result the bedrooms were very small. He said the variance was needed to provide adequate living space.

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

Mr. Ribble moved to approve VC 01-V-004 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS H., JR. & KATHERINE Z. GAILLIOT, VC 01-V-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line. Located at 1807 Stratford Dr. on approx. 9,866 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-2 ((2)) (6) 16. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 20, 2001; 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. The applicants stated in their statement of justification that the lot was narrow and had exceptional topographical conditions.

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

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Hugh H. Hughes, dated, July 18, 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.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 167, March 20, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KHALIL SORBI, VC 00-M-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 13.0 ft. from front lot line and 2.8 ft. from side lot line. Located at 6477 Little River Tnpk. on approx. 13,950 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (A) 5. (Concurrent with SP 00-M-068). (Moved from 2/27/01)

9:00 A.M. KHALIL SORBI, SP 00-M-068 Appl. under Sect(s). 3-203 and 8-914 of the Zoning Ordinance to permit a private school of special education and reduction to minimum yard requirements based on error in building location to permit structure to remain 21.4 ft. from rear lot line. Located at 6477 Little River Tnpk. on approx. 13,950 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (A) 5. (Concurrent with VC 00-M-159). (Moved from 2/27/01)

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 C. Thomas, Jr., 11320 Random Hills Road, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the requests as contained in the staff report. The applicant requested approval of a special permit for a school of special education (International Shotokan Karate Association) which was proposed to be located in the 2,666 square foot "studio" addition located at the rear of the dwelling. The "studio" portion was constructed in 1999 for a total 7,579 square feet. The applicant proposed to teach a maximum daily enrollment of 35 students per day. The majority of students were proposed to arrive between the hours of 6:00 p.m. and 8:30 p.m. The principal instructor would be residing in the front and upper portions of the structure.

According to the statement of justification, the applicant proposed to run the Karate school with a class size which ranges from three to four students to a maximum size class up to fifteen students. The proposed hours of operation for the karate school were 11:00 a.m. to 9:00 p.m., Monday through Friday, with the Saturday classes from 10:00 a.m. to 2:00 p.m.

Associated with this special permit was a request for an error in building location to permit the 2,666 square foot "studio" addition to remain 21.4 feet from the rear lot line. The minimum rear yard requirement for the R-2 District is 25 feet. Therefore, a modification of 3.6 feet was requested for the building addition at the rear of the dwelling. A variance was also requested which would permit the existing structure that was originally built in the 1930's to remain 13.0 feet from the front lot line and 2.8 feet from the eastern side lot line. The Zoning Ordinance requires a minimum front yard of 35 feet and 15 feet for the side yard requirement; therefore, variances of 22.0 feet for the front yard setback and 12.2 feet for the side yard were requested.

Since Little River Turnpike was classified as a principal arterial that carried the major portion of the areas through traffic directly along the frontage of the proposed site, the proposed application would increase vehicular use along this portion and consequentially could generate a significant number of vehicle U-turns on Little River Turnpike during the evening peak hour. Staff believed that the generation of U-turns on a principal arterial, especially during the peak hour was detrimental to the function of the highway and might decrease the safety factor of the highway in the subject area. Mr. Bernal said even with the reduced number of proposed students arriving during the peak hour, there would still be too many students that would negatively impact the flow of traffic on Little River Turnpike. Therefore, the only way staff could support the application was to reduce the total maximum number of students to 25 and to not permit any classes during the peak hours of 5:45 to 7:00 p.m.

The subject application represented a request by the applicant to establish a private school of special education. Based on the preceding analysis, staff concluded that the subject application could meet all standards for a Special Permit as required by Sect. 8-006 of the Zoning Ordinance and be in harmony with the applicable recommendations of the Comprehensive Plan. Therefore, staff recommended approval of application SP 00-M-068 only subject to the approval of the Proposed Development Conditions in the appendix of the staff report dated March 13, 2001.

Mr. Hart asked if the parking lot abutted the property line. Mr. Bernal explained that the parking lot currently extended to the property line however, the applicant had agreed to reconfigure the parking to maintain 4 feet of undisturbed open space between the adjacent property and the parking lot. Mr. Hart asked where the mistake was made with regard to the error in building location. Mr. Bernal replied that the builders mistakenly built into the minimum side yard.

Mr. Thomas presented the requests as outlined in the statement of justification submitted with the application. He stated that the applicant was not in agreement with Development Condition #6 which mandated that the site was limited to a maximum of 25 students with not more than 10 on the site at one of time. He stated that the applicant preferred to hold two classes per day, during the time frame that staff suggested, with 10 students at one and 15 at the other. Mr. Thomas explained that the addition had been built in two phases and the contractor had unknowingly made the error in building location.

Ms. Gibb asked staff if Development Condition #6 pertained only to parking or if it also encompassed the coming and going on the property. Mr. Bernal replied that the condition addressed the coming and going on

the site and also would curtail the number of students on the site on any one time.

Mr. Thomas stated that the limitation on the number of students stemmed from concerns of traffic to and from the application site during rush hour, however, the applicant agreeing to hold classes during non-rush hour times remedied the concern.

Ms. Gibb noted that the noise factor with relation to the neighbors could be more detrimental than the traffic impact. Mr. Thomas stated that the neighbors had no concerns regarding noise.

There was conversation between staff and the applicant regarding the availability of onsite parking spaces with regard to the applicant's family and teaching assistants verses the number of student's vehicles.

Mr. Hart noted that there was not a median break to enter the application site and anyone entering or leaving the application site would have to make a U-turn on Little River Turnpike.

Chairman DiGiulian called for speakers.

Jose Ferusio, 4807 Cherokee Avenue, came forward to speak in support. He stated that he thought the school was a good idea for the neighborhood.

Mr. Pammel noted that the plat reflected 4 lots on the property and he thought it would be appropriate for the applicant to go through a boundary line adjustment to consolidate the property into one to avoid any confusion.

Ms. Gibb asked staff's opinion of the proposed development condition to limit no more than 15 students on the property at any given time. Mr. Bernal replied that staff could not support that because it would increase the number of cars on the site and would cause traffic congestion due to the U-turn issue.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 00-M-159 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KHALIL SORBI, VC 00-M-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 13.0 ft. from front lot line and 2.8 ft. from side lot line. Located at 6477 Little River Tnpk. on approx. 13,950 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (A) 5. (Concurrent with SP 00-M-068). (Moved from 2/27/01) 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 March 20, 2001; and

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

1. The applicant is the owner of the land.
2. The house was built in the 1930's and it did meet the required standards for a variance because it existed prior to the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location of the dwelling shown on the plat certified by Zia U. Hassan dated, September 19, 2000, as through January 23, 2001, submitted with this application and is not transferable to other land.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 28, 2001. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve SP 00-M-068 for the reasons stated in the Resolution. Mr. Hammack seconded the motion.

Mr. Pammel made a substitute motion to amend Development Condition #6 to read that the maximum daily enrollment should be 25 students and the maximum number of students permitted on site at any one time shall be 15.

There was no second and the amendment failed for the lack of a second.

Mr. Kelley stated that there were several issues that needed to be addressed regarding parking and traffic. Mr. Hart stated that he had issues with the dimensions of the parking area and would support a deferral.

Mr. Pammel requested that the applicant provide the Board with a breakdown of the class sizes that were needed during the course of the day.

Mr. Hart made a substitute motion to defer SP 00-M-068 until April 3, 2001, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 171, March 20, 2001, (Tape 1) Scheduled case of:

9:30 A.M. APOLONIA GLORIA FUENTES-PASTOR, A 2000-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the child care center use authorized under Special Permit SP 99-P-050 in violation of certain conditions set forth in the special permit approval and without first obtaining the required Non-Residential Use Permit. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (Def from 12/12/00)

Mr. Hammack abstained from the public hearing as he had business dealings with the appellant's former representative.

John Bell, Zoning Administration Branch, made staff's presentation as contained in the staff report. On March 7, 2000, the Board of Zoning Appeals approved a special permit for a child care center at 8615 Hilltop Road. On April 12, 2000, the appellant submitted a minor site plan, as required by the conditions from the approved special permit. The minor site plan was returned to the appellant for deficiencies in May of 2000. A complaint was filed May 30, 2000, and follow up inspections by Zoning Enforcement staff were conducted in June, July, and August and subsequently, on August 22, 2000, a Notice of Violation was given to the appellant for operating a child care center in violation of the conditions of the approved special permit. Those conditions included requirements to obtain an approved site plan and a Non-Residential Use Permit (Non-Rup), which had not been obtained. The conditions also included requirements for transitional screening, a fence for the child's play area, provisions for additional parking, and entrance features on site. The appellant subsequently submitted the appeal application on September 15, 2000. Staff accepted that appeal on September 21, 2000. Based on the existing conditions, it was staff's opinion that the appellant had not complied with the special permit conditions and was operating a child care center with anywhere from 9 to 12 children on site at any one time. The most recent inspection revealed that there were 10 children on site and 2 employees, 1 of whom did not live at the site. Staff had repeatedly informed the appellant that she could not operate as a childcare center until she met the minor site plan approval, however she could operate a home child care facility with a total of 7 children but that offer had been repeatedly refused.

Ms. Gibb asked staff if a Non-Rup could be obtained without having site plan approval. Mr. Bell explained that site plan approval was a condition of the special permit approval. He stated that the issue of the appeal was that the appellant had been operating as a childcare center and not a home child care center. He explained that the appellant could operate with up to 7 children per day without the need for a special permit, however, upon several inspections, including date the Notice of Violation was issued, she had anywhere from 9 to 12 children on site.

Ms. Gibb asked staff what "refusing the offer" amounted to. Mr. Bell replied that staff had informed the appellant that she could operate as a home childcare center until such time that she completed the requirements of the minor site plan and special permit approval conditions. Thus, the appellant refused to release the one employee that did not live on the premises; therefore, she remained in violation of the approved special permit conditions.

Mr. Kelley asked if the situation was tantamount to a revocation of the special permit. William E. Shoup, Deputy Zoning Administrator, replied that it was not because it was an enforcement action. He explained that the issue in the Notice of Violation was for operating without a Non-Rup; however, the appellant was

also violating certain conditions of the special permit conditions so she could not obtain a Non-Rup. He noted that a revocation would totally dissolve the special permit approval and the appellant would have no opportunity to come into compliance and continue to operate.

Ms. Fuentes stated that she had tried very hard to come into compliance and work toward getting minor site plan approval. She stated that one of the delays was that the County was slow at answering her questions. She explained that she had a State license to operate her childcare center with a total enrollment of 12 children; therefore, she did not understand why she was in violation. She said she had never lowered her enrollment to 7 children because she always thought she could have 12 children. She explained that she needed the income from 12 children to make all of the improvements and changes to the property that the County had requested. Ms. Fuentes said that she was ready to go forward with all of the changes to the property upon minor site plan approval. She requested a deferral to give her some more time to come into compliance. She also requested that the Board allow her to operate with 12 children.

Chairman DiGiulian asked the appellant how long of a deferral was needed. Ms. Fuentes replied that 3 months would be adequate because she was all set to go upon the approval of the minor site plan. Chairman DiGiulian asked the appellant how long after site plan approval would she need to finish the transitional screening and parking elements. Ms. Fuentes replied that those improvements would immediately begin and be implemented in one month.

Ms. Gibb asked the appellant why she took so long to resubmit the minor site plan to the County. Ms. Fuentes explained that before she could resubmit the site plan again she needed to obtain some answers from the Department of Transportation and they took a long time to respond to her.

Mr. Kelley noted that upon a conversation with Juan Bernal, Staff Coordinator, it was his understanding that it would take 6 months to 1 year to complete the entire process for minor site plan approval. Mr. Shoup explained that the Department of Public Works and Environmental Services, (DPWES), had 60 days to respond to the minor site plan. He said that the work that needed to be done on the site was quite extensive and he questioned whether or not it could be completed in one month.

Mr. Kelley asked Ms. Fuentes why she had increased her enrollment up to 12 children after the County had told her that the maximum enrollment that she was allowed was 7 children. Ms. Fuentes explained that she had never gone down to 7 children and that the days that the Zoning Enforcement Inspectors had been at the facility, the numbers were only down because several children were absent. She stated that she was working under the regulations of her State license, which allowed her a maximum of 12 children.

Mr. Hart asked the appellant why after the two previous public hearings, in which she was told that she could only have 7 children and the Notice of Violation from the County, she was still under the impression that she could have 12. Ms. Fuentes replied that she was confused because she was following the regulations of her State license.

Ms. Gibb asked the appellant how much money she had spent in the entire application process. Ms. Fuentes replied $15,000.

Chairman DiGiulian called for speakers.

Scott Risue, 1965 Horseshoe Drive, came forward to speak in support. He stated that his two children had been in the appellant's care for two years. He stated that she provided excellent care for his children. He said that he had never had a parking problem with the current structure of the circular driveway. He stated that he would stay actively involved in the process to be sure that all of the steps were taken to ensure the future of the childcare center.

Carmen Santo, (no address given for the record) came forward to speak in support. She stated that she was the appellant's sister. She read a letter of support from a neighbor who resided at 8613 Hilltop Road.

Robert Phillips, 3754 Knollside Lane, came forward to speak in support. He stated that he had visited the childcare center with hopes of enrolling his children there however, there were no openings. He stated that the appellant was providing a needed service to the community.

Page 173, March 20, 2001, (Tape 1), APOLONIA GLORIA FUENTES-PASTOR, A 2000-PR-027, continued from Page 172

Mr. Shoup noted that although the State license authorized a capacity of 12 children, it was noted that the license did not exempt the licensee from maintaining compliance with local Ordinances and laws. Mr. Shoup stated that Ms. Fuentes had confirmed with a Zoning Inspector during an inspection that she was only operating with 7 children. Mr. Shoup noted that if the appellant had always been operating with 12 children then she had been in violation for some time.

Ms. Fuentes reiterated that she was doing everything she could to comply with the County and to achieve the minor site plan approval.

Mr. Kelley stated that he thought the appeal should be deferred for 6-months with a status report at 3-months to see if the appellant was diligently pursuing the minor site plan.

Ms. Gibb stated that she believed that the appellant was trying to comply and that working with engineers and lawyers could take a lot of time and she would support a deferral.

Mr. Pammel stated that the appellant had not been working diligently and she was again asking the Board to grant her more time. He said she was aware that she was in violation because the State license stated that she was not exempted from local requirements.

Mr. Hart stated that he would support a deferral but informed the appellant that she could only operate with 7 children until such time as the Non-Rup was issued and then she needed to operate under the guidelines of the special permit conditions.

Mr. Kelley moved to defer A 2000-PR-027 until September 18, 2001, at 9:30 a.m. with a 3 month status report from staff. Ms. Gibb seconded the motion which carried by a vote of 5-1-1. Mr. Hammack abstained from the vote and Mr. Pammel voted against the motion.

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Page 173, March 20, 2001, (Tape 1) Scheduled case of:

9:30 A.M. ROBERT L. LOVE, MORTIMER C. LOVE AND BETTY P. LOVE, A 2000-DR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are maintaining two dwelling units on the property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7712 Georgetown Pi. on approx. 2.61 ac. of land zoned R-E. Dranesville District. Tax Map 20-2 ((1)) 29A. (moved from 9/19/00, 11/7/00 and 1/2/01) (moved from 3/20/01).

Chairman DiGiulian noted that the case had been administratively moved to April 24, 2001.

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Page 173, March 20, 2001, (Tape 1) After Agenda Items:

Yearly Review
Mustafa Center
SPA 95-M-036-2

Tracey Steele, Piper, Marbury, Rudnick & Wolfe, representative for the Mustafa Center explained that the Non-Rup was issued on October 15, 1999, and since that date there have been no zoning complaints or violations for the property. She stated that staff had contended that the applicants were in violation of Development Conditions #7 regarding on-site parking and #19 regarding the hiring of off-duty police officers to monitor and assist with traffic flow into and around the property. She addressed Development Condition #7 by stating that off-site parking did occur during some services on Fridays and during the month of Ramadan. She explained that the church had discussed a shared parking agreement approval with the County; however, based upon the conversations a shared parking agreement could not be obtained at the site. She submitted a parking agreement that the applicants had with Combined Properties, the owner of the Bradlick Shopping Center. She stated that the applicants were also in the process of obtaining a formal

parking agreement with Immanuel Bible Church, to allow overflow parking for the church on Sundays and Fridays. She stated that with the two private parking agreements Development Condition #7 would be satisfied. She said that the church had also increased their Friday services to deter off site parking.

Ms. Steele addressed Development Condition #19 by stating that the church had submitted an application to the Fairfax County Police Department in October or November of 1999, requesting an off duty police officer for Friday worship services; however, the application was never selected. She stated that the church had been utilizing a member who had military background to direct traffic.

Mr. Kelley asked if there was still offsite parking on days that were not Holidays. Ms. Steele stated that there was; however, they were permitted to park in the rear of the Bradlick Shopping Center.

Mr. Pammel asked staff if there was a requirement for special exception approval regarding shared parking. Susan Langdon, Chief, Special Permit and Variance Branch, replied that Condition #7 mandated that any shared parking agreement be approved by the Board of Supervisors.

Mr. Pammel asked Ms. Steele if the church had planned on applying for a special exception for the shared parking. She stated that the church had met with a representative from Supervisor Gross office about obtaining approval for a shared parking agreement and were told that one was not possible. She stated that the church was encouraged to seek private parking agreements.

Mr. Pammel stated that there was a conflict with the development conditions and the church needed to go through the process of a special permit amendment to amend those conditions.

There were no speakers and the review was concluded.

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Page 174, March 20, 2001, (Tape 1) After Agenda Items:

Approval of BZA Meeting Dates
July to December 2001

Mr. Hammack moved to defer the item until March 27, 2001. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 174, March 20, 2001, (Tape 1) After Agenda Items:

Approval of March 13, 2001 Resolutions

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

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Page 174, March 20, 2001, (Tape 1) After Agenda Items:

Request for Intent to Defer
Ralph Duke
A 1999-HM-026

William E. Shoup, Deputy Zoning Administrator, stated that the issue involved a second dwelling unit on the lot and the case had been deferred for a total of 16 months to allow time for the appellant to pursue the possibility of coming into compliance. He stated that the appellant needed to acquire additional land area in order to come up with one acre of property, rezone the property to R-2 and then subdivide. He said that the appellant had health concerns that had impeded the process although staff was concerned about the length of time the appeal had been deferred.

Ralph Duke, 9935 Corsica Street, explained that he had been diagnosed with prostate cancer and that had impeded the process of coming into compliance. He informed the Board that he was attempting to purchase a portion of his neighbor's property to acquire the mandated 1 acre of land. He said he was in the process of acquiring a surveyor to study both of the lots to make sure that was possible.

Mr. Pammel moved to approve the intent to defer until May 1, 2001, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Request for Intent to Defer
Springhill Dulles General Partnership
A 2000-PR-040

William E. Shoup, Deputy Zoning Administrator, stated that because there was an incorrect appellant listed on the application form the case had to be readvertised. He said there was an opportunity to reschedule the case on May 1, 2001, and the appellant was in agreement with that date.

Mr. Pammel moved to approve the intent to defer A 2000-PR-040 until May 2, 2001, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:03 p.m.

Minutes by: Lori M. Mallam

Approved on: August 21, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, March 27, 2001. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley and John Ribble. James Pammel 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 177, March 27, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83- D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00)

Chairman DiGiulian noted that there was a deferral request.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the special permit application was in conjunction with a special exception application for a communication tower which was under discussion for a possible withdrawal or an indefinite deferral of the special exception application.

Mr. Hart made a motion to indefinitely defer SPA 83-D-022-2. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mr. Pammel was absent from the meeting.

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Page 177, March 27, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARK D. & HELEN M. RUSSELL, VC 01-Y-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 13125 Applegrove La. on approx. 8,560 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 100.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Helen and Mark Russell, 13125 Applegrove Lane, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a deck and two additions that included a therapy room and a sunroom 17.0 feet from the rear lot line. A minimum side yard of 25.0 feet is required; therefore, a variance of 8.0 feet was requested.

Mrs. Russell presented the variance request as outlined in the statement of justification submitted with the application. Mrs. Russell stated that they had four children, one with multiple disabilities, and the request was to build a therapy room which would contain the necessary equipment needed for the child with disabilities, to include a therapy pool located within the therapy room. Mrs. Russell submitted a letter of approval from the Franklin Farm Foundation.

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

Mr. Hammack moved to approve VC 01-Y-024 for the reasons noted in the Resolution subject to the revised Development Conditions contained in the staff report dated March 20, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK D. & HELEN M. RUSSELL, VC 01-Y-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 13125 Applegrove La. on approx. 8,560 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-1 ((4)) (15) 100. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 27, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant presented testimony indicating compliance with the required standards for a variance.
3. The property backs to a large utility easement.
4. The additions would not cause an impact on adjoining neighbors.

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

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

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

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

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

1. This variance is approved for the location of the addition (therapy and sunroom) as shown on the plat prepared by Harold A. Logan, dated January 17, 2001, 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 179, March 27, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MILL CREEK PARTNERS LLC, VC 00-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots and three outlots with proposed Lots 1, 2 and 3 having lot widths of 6.0 ft. Located at 3806 Millcreek Dr. on approx. 6.13 ac. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) (2) A (formerly known as 59-4 ((1)) 1); 59-4 ((2)) 79, 80. (Moved from 12/5/00) (Def. From 12/19/00) (Admin moved from 2/13/01 for notices).

Mr. Hart made a disclosure to the Board on the application; however, stated that it would not affect his ability to participate in the hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. H. Kendrick Sanders, 3905 Railroad Avenue, Fairfax, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the subdivision of an outlot and two lots, into four lots and three outlots, with proposed Lots 1, 2 and 3 having a lot width of 6.0 ft. each at the point where they connect to Hillcrest Road. A minimum lot width of 100 feet is required; therefore, variances of 94.0 feet were requested for each of the three lots. The applicant also proposed to resubdivide Lots 79 and 80 into one lot. Ms. Langdon stated that staff believed that the application did not meet all nine standards for granting a variance. She noted that a revised affidavit had been distributed.

Ken Sanders presented the variance request as outlined in the statement of justification submitted with the application. Mr. Sanders distributed revised plats to the Board. Mr. Sanders stated that the application was necessary due to the variance standards involving constraints of the topography of the property which were impacted by a floodplain and a resource protection area, with steep topography on the southernmost portion of the property. Mr. Sanders stated that there would be no change to the streetscape of the neighborhood. He stated that a by-right development would cause the applicant to remove the existing home and change the character of the existing neighborhood. He stated that the existing home would remain in its current location.

Ian Smith, Wetlands Solutions, reviewed an aerial photograph with the Board which was taken in 1998. Mr. Smith explained to the Board which areas would be disturbed and cleared and which areas would be new impervious surface. He stated that the request was less than that allowed by-right.

Mr. Hart discussed with Mr. Sanders, at length, the issues of house location, floodplain requirements and outlots. He also discussed dedication of an outlot to the Park Authority. Mr. Hart expressed his concern with regard to advertising issues of outlots, stating that an additional outlot was necessary for Park Authority

dedication and that another plat showing the additional outlot was required. Mr. Hart recommended a deferral of the application to allow staff the opportunity to review revised development conditions submitted by the applicant.

The following speakers came to the podium in support of the application:

Jon Gissendanner, 8200 Hillcrest Road, Annandale, Virginia; James Bruyette, 3808 Millcreek Drive, Annandale, Virginia; James & Ruth Bucher, 8203 Hillcrest Road, Annandale, Virginia; Kristine and Reed Scull, 8205 Hillcrest Road, Annandale.

The following were their reasons for support: the developer had worked with several neighbors to improve the proposed plan; they recommended that the tree save area on the east side increase by 15 feet; they requested additional trees be planted to enhance tree save area; the proposed plan was a better plan for the property as opposed to a cul-de-sac, which was out of character for the neighborhood; it would allow parkland donation; if the existing home was to be removed, it would be devastating to the neighborhood; and they believed the developers had acted reasonably.

The following speakers came to the podium to speak in opposition of the application:

John Martin, 8212 Hillcrest Road, Annandale, Virginia; Susan Renna, 8214 Hillcrest Road, Annandale, Virginia; Lisa Drake, 8207 Hillcrest Road, Annandale, Virginia; Paul & Deborah Hirsh, 8212 Woodland Avenue, Annandale, Virginia.

The following were their reasons for opposition: the builder was attempting to gain better access by purchasing more lots; the builder asked for neighborhood approval of the variance, threatening the by-right use of the property if approval was not given; construction of the homes would increase traffic and density in the neighborhood; and variance criteria 4, 5 and 6 were not met with the application requested.

Mr. Sanders came to the podium to rebut the opposition. Mr. Sanders defended the applicant and stated that he had spoken with 80 or more people to discuss options of development. Mr. Sanders gave a detailed explanation of the outlot issues and stated that the reason for the request as it was presented was due to topography issues. Mr. Sanders reiterated to the Board that half of the land owned by the applicant would be donated to the Park Authority and tree save areas were delineated on the plan.

The Board discussed at length the issue of Outlot A, cul-de-sac concerns for access, and topography issues.

Chairman DiGiulian closed the public hearing.

Mr. Hart made a motion to defer decision on the application to May 15, 2001, at 9:00 a.m. He requested that the applicant revise the plat showing the parkland parcel in order to meet advertising requirements, to allow staff time to review revisions to the development conditions; and to allow staff an opportunity to review the by-right concerns of speakers.

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

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Page 180, March 27, 2001, (Tape 1), Scheduled case of:

9:00 A.M. VULCAN MATERIALS COMPANY, SPA 82-V-091-4 Appl. under Sect(s). 3-103, 3-C03 and 5-603 of the Zoning Ordinance to amend SP 82-V-091 previously approved for stone quarrying, crushing, sales and related associated quarrying activities to permit renewal, modification of development conditions and site modifications. Located at on the W. side of Route 123 and N. of the Occoquan River on approx. 305.40 ac. of land zoned R-1, R-C, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) pt. 4B; 106-4 ((1)) pt. 1B, pt. 20B, pt. 23, pt. 54, pt. 56; 112-2 ((1)) pt. 8, pt. 9 and pt. 11, 12 and 13. (Moved from 2/6/01 and 3/6/01)

Chairman DiGiulian noted that the applicant had requested a deferral to April 24, 2001.

Page 181, March 27, 2001, (Tape 1), VULCAN MATERIALS COMPANY, SPA 82-V-091-4, continued from Page 180

Mr. Ribble made a motion to defer the application to April 24, 2001, at 9:00 a.m. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Pammel was absent from the meeting.

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Page 181, March 27, 2001, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. CHANTILLY BIBLE CHURCH, SPA 85-C-023-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-023 previously approved for a church and related facilities to permit change in development conditions. Located at 2739 West Ox Rd. on approx. 4.60 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis Smith, Agent, 13159 Applegrove Lane, Herndon, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit extension of the term for the portable classroom trailer for two years from the date of approval. Ms. Josiah stated that no other changes were requested to be made to the previously approved development conditions.

Mr. Smith presented the special permit amendment request as outlined in the statement of justification submitted with the application. Mr. Smith reviewed the history of the church and stated that the only purpose of the application was to extend the use of the trailer, portable classrooms, to March 2003 and asked for the Board's approval of the application.

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

Mr. Ribble moved to approve SPA 85-C-023-3 for the reasons noted in the Resolution subject to the Development Conditions dated March 20, 2001.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHANTILLY BIBLE CHURCH, SPA 85-C-023-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-C-023 previously approved for a church and related facilities to permit change in development conditions. Located at 2739 West Ox Rd. on approx. 4.60 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 30. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 27, 2001; and

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

1. The applicant is the lessee of the land.
2. The applicant presented testimony indicating compliance with the required standards.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2739 West Ox Road (4.6 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles P. Johnson & Associates, Inc. dated September, 1989, revised through March 11, 1997, and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (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. Transitional Screening 1 shall be modified in favor of existing trees and vegetation on site and the additional trees and plantings as shown on the special permit amendment plat. A minimum of one-half (1/2) of the trees planted or replaced (if existing trees on site are dead or dying), shall have a planted height of eight (8) feet and no new trees shall have a planted height of less than six (6) feet.

6. The barrier requirement shall be waived.

7. All existing trees on site shall be preserved.

8. The seating capacity in the main worship area shall be a maximum of two-hundred fifty (250).

9. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DPWES and shall be a maximum of one-hundred fifty (150) spaces. All parking shall be on site as shown on the special permit amendment plat. The seventy-one (71) parking spaces approved in conjunction with SPA 85-C-023-1 may be of a gravel or other porous surface. Interior parking lot landscaping shall be provided as required by Article 13 of the Zoning Ordinance.

10. Stormwater management shall be provided as determined by DPWES and all findings and recommendations for stormwater management shall be implemented to the satisfaction and approval of the Director, DPWES.

11. All required accessible parking areas shall be paved with a dustless surface.

12. The approval of trailers on the site shall be limited to a term of twenty-four (24) months beginning from the final date of approval of this special permit amendment.

These development conditions incorporate and supersede all previous development conditions.

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

This special permit use shall become established with the Board of Zoning Appeals approval of this amendment.

Page 183, March 27, 2001, (Tape 1), CHANTILLY BIBLE CHURCH, SPA 85-C-023-3, continued from Page 182

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 183, March 27, 2001, (Tape 2), 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 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, 11/9/99 and 11/28/00).

Chairman DiGiulian noted that an intent to defer had been granted on March 20, 2001.

Mr. Hart made a motion to defer A 1999-HM-026 to September 25, 2001, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 183, March 27, 2001, (Tape 2), Scheduled case of:

9:30 A.M. SPRINGHILL DULLES GENERAL PARTNERSHIP, A 2000-PR-040 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that area previously dedicated for right-of-way purposes may not be utilized by appellant to calculate the Floor Area Ratio for the proposed construction of a fourth building on the property. Located at 1410, 1420 and 1430 Springhill Rd. on approx. 14.67 ac. of land zoned I-4 and C-1. Providence District. Tax Map 29-1 ((1)) 67A, 67C, 68 and 69.

Chairman DiGiulian noted that an intent to defer had been granted on March 20, 2001.

Mr. Hammack made a motion to defer A 2000-PR-040 to May 1, 2001, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 183, March 27, 2001, (Tape 2), After Agenda Item:

Approval of March 20, 2001 Resolutions

Mr. Hammack made a motion to approve the March 20, 2001 Resolutions. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 183, March 27, 2001, (Tape 1), After Agenda Item:

Approval of the Board of Zoning Appeals proposed meeting dates
for the latter six months of 2001
(Deferred from 3/20/01)

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the Board had requested additional dates in August be reviewed and said that the requested date of August 28, 2001, was available, if necessary.

Ms. Langdon stated that an additional date requested of September 6, 2001, was not available to meet. Ms. Langdon stated that the schedule could be changed to meet August 7, and August 14, and have the

following three weeks off for August 21, August 28, if needed, September 4, 2001.

Mr. Hammack made a motion to adopt the revised schedule. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Out-of-Turn Hearing Request
SPA 91-C-070-4, Golf Park, Inc. & Hunter Mill East, LLC

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the application was currently scheduled for June 19, 2001, and suggested June 5, 2001, if the Board so requested.

Barbara Byron, Director, Zoning Evaluation Division, stated that the new application requested several changes to at least 12 development conditions including, but not limited to, hours of operation, lighting and food service.

Mr. Hammack made a motion to approve the Out-of-Turn hearing request for June 5, 2001, at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:42 a.m.

Minutes by: Deborah Hedrick

Approved on: August 14, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 3, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 185, April 3, 2001, (Tape 1), Scheduled case of:

9:00 A.M. POTA G. KAPSIDELIS, VC 01-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 4.23 ft. from side lot line. Located at 1411 Pathfinder La. on approx. 19,144 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((31)) 193.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Pota Kapsidelis, 1411 Pathfinder Lane, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a carport 4.23 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 7.77 feet was requested.

Ms. Kapsidelis presented the variance request as outlined in the statement of justification submitted with the application. She said the carport would provide an even level for her elderly parents.

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

Mr. Hart moved to approve VC 01-D-019 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

POTA G. KAPSIDELIS, VC 01-D-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 4.23 ft. from side lot line. Located at 1411 Pathfinder La. on approx. 19,144 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((31)) 193. 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 April 3, 2001; and

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

1. The applicant is the owner of the land.
2. The statement of justification and the testimony presented, indicated compliance with the requirements for a variance.
3. The lot is fairly narrow.
4. The house is closer to the lot line on the garage side of the lot.
5. There is no objection from the neighbors.
6. There were similar variances granted 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 addition shown on the plat prepared by Laura Lee Scott Surveys, Inc., dated January 7, 2001 through January 8, 2001, 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.

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 April 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 187, April 3, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT J. BISHTON AND CHRISTINE H. BISHTON D/B/A JUNIPER LANE SCHOOL, SPA 77-M-332 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to amend SP 77-M-332 previously approved for child care center to delete the child care center and to permit nursery school, private school of general education, increase in enrollment, building addition, change in development conditions and reduction to minimum yard requirements based on error in building location to permit deck to remain 8.2 ft. from side lot line and shed to remain 2.3 ft. from rear lot line. Located at 3106 Juniper La. on approx. 33,304 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((23)) A1 and A2.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicant was requesting a deferral to allow more time to work with the Department of Public Works and Environmental Services for a shared parking agreement.

Mr. Pammel moved to defer SPA 77-M-332 to April 24, 2001 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 187, April 3, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-4 Appl. under Sect(s). 3-103 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 previously approved for a church and related facilities to permit building additions, increase in seating, site modifications and change in development conditions. Located at 8526 Amanda Pl. on approx. 12.38 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35A, 37, 38 and 38A. (Moved from 12/19/00, 1/30/01 & 3/6/01).

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 Mereness, CADCON Consulting, 10706 Vander Lane, Manassas, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to amend SP 83-P-057 previously approved for a church and related facilities to permit building additions, a freestanding sanctuary, and a multipurpose addition to the existing education building, an increase in seating, site modifications, and a change in development conditions on the subject property. Ms. Josiah noted that a revised plat was submitted subsequent to the publication of the staff report and was distributed to the Board. The applicant proposed a 27,500 square foot, 1,000-seat sanctuary to be located 50 feet from the southernmost property line. A proposed 18,425 square foot multipurpose addition to the existing 18,293 square foot education building was proposed to be located on the northwestern portion of the site. An existing 500-seat, 21,100 square foot sanctuary existed on the northern portion of the site and was proposed to remain as a children's chapel. The site contained 328 parking spaces, 160 of which were gravel. The applicant proposed to reconfigure the existing parking spaces and install 172 additional spaces for a total of 500 paved parking spaces on-site. Ms. Josiah stated that the total Floor Area Ratio (FAR) for the R-1 portion of the site was proposed at 0.14 while the total FAR for the R-4 portion of the site was proposed at 0.267. She said access to both building additions would be provided via Amanda Place. With the incorporation of the proposed development conditions dated April 2, 2001, staff believed the application was in harmony with the Comprehensive Plan. Ms. Josiah stated that staff recognized that there had been parking problems on the site in the past; however, with the additional parking spaces proposed under the subject application, the parking ratio would be one (1) space per three (3) seats which was below the 1 space per 4 seats ratio required by the Zoning Ordinance. She said additional parking would also be provided on the school site under an agreement the church had with the school. Staff recommended approval of the application subject to the proposed development conditions contained in the staff report revised through April 2, 2001. Ms. Josiah noted that a revised affidavit had been distributed to the Board.

Mr. Hammack asked which of the previous conditions the applicant was in non-compliance with. Ms. Josiah replied that it was the condition relating to stormwater management, but that the applicant had received additional time from the Board to July 15, 2002, to come into compliance with that condition.

continued from Page 187

Mr. Hammack asked whether there was any non-compliance with the conditions relating to parking. Ms. Josiah responded that the neighbors indicated that the applicant was in non-compliance with the condition relating to parking on Amanda Place; however, there had been no violations issued.

Mr. Hammack asked whether parking on the athletic fields on Thoreau was permitted under the shared parking agreement. Ms. Josiah stated that the applicant had a private agreement with the school to park on their site and staff did not review private shared parking agreements.

Mr. Hart asked whether the police officer directing traffic would be limited to Sundays. Ms. Josiah responded yes.

Mr. Hart asked on how many holidays would the bells be rung. Ms. Josiah said the Pastor of the church could answer that question.

Mr. Mereness, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said they had several meetings with the neighbors and they had moved the multipurpose use to the north side of Amanda place at the request of the neighbors. Mr. Mereness stated that the applicant had also moved the setbacks, the sanctuary, and parking lots. He said they had reduced the intensity from 1500 to 1000 seats as recommended by staff. He said after meeting with a member of the Planning Commission, the applicant eliminated the balcony, making the sanctuary a single story structure. Mr. Mereness said the applicant had also eliminated 15 parking spaces and increased the setbacks to 56 feet. He said staff recommended approval of the application. Mr. Mereness asked that a modification be made to Development Condition #15 to not mention the north side of the sanctuary, but to mention the northeast portion of parcel 35A on the mechanical equipment. He said it was their intention to put the mechanical equipment on the north side of the property away from the neighbors with screening and with landscaping. Mr. Mereness introduced the Senior Pastor Won Son Lee.

Mr. Hammack stated that the neighborhood alleged that the church parked on the ballfields of the Thoreau schools. He asked whether that was confirmed. Mr. Mereness responded that he had only seen photographs at meetings that were taken by the neighbors and it showed two vehicles parked on the ball fields, and he could not respond to anything else.

Mr. Hammack said the church currently had an extreme parking problem and asked how the applicant expected to park their cars and double or triple in size. Mr. Mereness replied that one of the problems were the amount of services they had to accommodate the people. He said with the increase in size of the sanctuary to 1000 seats, and with the additional parking provided on site, plus the original agreement with Thoreau School, they should be able to park appropriately.

Mr. Mereness stated that the present facility did not accommodate the current membership. He said they were not increasing the membership; they were only making the facility easier to use to reduce the number of worship services.

Mr. Hammack said if the number of services were reduced then everyone would have to come at once. Mr. Mereness replied not necessarily.

Mr. Hart asked if the applicant was agreeable to the conditions. Mr. Mereness replied yes.

Pastor Lee stated that they would try to reduce the number of cars and remedy the parking situation. He said they would encourage carpooling. Pastor Lee said they wanted to work with the community. He asked the people present in support of the application to stand.

Mr. Hart asked how many holidays would the bells be rung. Pastor Lee replied Easter, Christmas, the church's anniversary and New Years.

Mr. Hart asked if the reason for the expansion was to deal with the current members. Pastor Lee responded yes. He said they currently had 6 services and they would like to reduce the number of services to 3 or 4. Pastor Lee said the 1000-seat sanctuary would be separate from the 500-seat sanctuary. He said the 500-seat sanctuary would be used as a children's chapel, youth chapel or English speaking chapel and the 1000-seat sanctuary would have 3 services and there would be 2½ hours in between services.

Mr. Hart asked how would there be fewer cars at any one time. Pastor Lee said there would be no overlapping of cars between services.

Chairman DiGiulian called for speakers.

The following speakers came forward to speak in support of the application.

Grace Ha, Junior High Pastor, Jonathan Yoon, no address given, Janet Farley, no address given, David B. Kim, 2539 Villanova Drive, Hank Homid, English Pastor, no address given, Hae Son Lee, no address given, Jim Dowies, no address given, Kyl Young Paul Yoon, no address given, Peter W. Rim, 2968 Palmer Street, and Samuel Lee, no address given. They supported the application for the following reasons: the applicant was making good faith effort to alleviate issues; the property would be attractive; community service would be provided; the applicant would employ police officers to direct traffic; and the church wanted to be a better neighbor.

The following speakers came forward to speak in opposition of the application: Ken Quincy, 8225 Bucknell Drive, President Dunn Loring Civic Association; Linus Upson, 2601 Dennis Drive; Linda Ryan, 2623 Wooster Court; Ann Difiore, 2600 Dennis Drive; Harriet Epstein, 2602 Dennis Drive; and Steve Rother, 2616 Bolling Green Drive. They expressed concerns relating to the use being high intensity; the building being too large; the request not being in harmony with the neighborhood; the use being too close to neighbors' property; reduced property values; parking issues; proposal for the applicant and the neighbors going into mediation; and lack of transitional screening.

Mr. Mereness stated in his rebuttal that the applicant had reduced the intensity of the use; that there was a better parking ratio; the gross square footage had been reduced; the applicant had increased the landscaping; and that there was a tree save area. He said the applicant had tried to mitigate all the neighbors' concerns.

Mr. Pammel asked if the applicant would be willing to enter into a re-mediation process to improve the coordination and the relationship with the community. Mr. Mereness replied yes.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to defer decision for 6 months to allow the issues to be discussed between the applicant and the community.

Mr. Kelley seconded the motion. He said he could not get passed the parking issues.

Mr. Hammack said he did not object to the deferral because the church needed to do some outreach. He said he had serious reservations about the application whether they did the outreach or not. Mr. Hammack said it appeared to be a tripling of the size of the church and he did not accept the representation that the existing 500-seat sanctuary would remain unused during the period when the 1000-seat proposed sanctuary was utilized. He said there was currently a serious parking problem and a history of non-compliance with the parking. Mr. Hammack said the church had to prove that they satisfied the requirements.

Ms. Gibb said she agreed with Mr. Hammack. She said the application was premature.

Mr. Hart said the Board heard a lot of encouraging statements from the church members. He said 6 months would provide appropriate time for progress. Mr. Hart stated that he would like to see a shared parking agreement.

The motion carried by a vote of 7-0. The application was deferred to October 2, 2001.

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Page 189, April 3, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KHALIL SORBI, SP 00-M-068 Appl. under Sect(s). 3-203 and 8-914 of the Zoning Ordinance to permit a private school of special education and reduction to minimum yard requirements

based on error in building location to permit structure to remain 21.4 ft. from rear lot line. Located at 6477 Little River Tnpk. on approx. 13,950 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (A) 5. (Concurrent with VC 00-M-159). (Moved from 2/27/01) (Deferred for Decision Only from 3/20/01)

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 Thomas, Fagelson, Schoneberger, Payne and Deichmeister, Agent, replied that it was.

Chairman DiGiulian noted that the application was deferred for decision only.

Juan Bernal, Staff Coordinator, stated that the application was deferred to obtain information from the Department of Transportation regarding parking. He said a memo was distributed to the Board.

Mr. Hart moved to approve SP 00-M-068 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KHALIL SORBI, SP 00-M-068 Appl. under Sect(s). 3-203 and 8-914 of the Zoning Ordinance to permit a private school of special education and reduction to minimum yard requirements based on error in building location to permit structure to remain 21.4 ft. from rear lot line. Located at 6477 Little River Tnpk. on approx. 13,950 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((9)) (A) 5. (Concurrent with VC 00-M-159). (Moved from 2/27/01) (Deferred for Decision Only from 3/20/01) 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 April 3, 2001; 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).3-203 and 8-914 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, 6477 Little River Turnpike, 13,950 square feet, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), school of martial arts, structures and/or use(s) as indicated on the special permit plat certified by Zia U. Hassan dated, September 18, 2000, as revised through January 23, 2001, 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 four (4), including the applicant.

6. The maximum daily enrollment for the school shall be 25 students.

7. The hours of operation shall be limited to 11:00 a.m. to 5:30 p.m. and 7:00 p.m. to 9:00 p.m., Monday through Friday and Saturdays 10:00 a.m. to 2:00 p.m. No classes shall be held between 5:30 p.m. to 7:00 p.m.

8. The structure shall be the domicile of the principal instructor.

9. Twelve (12) parking spaces shall be provided on-site. All parking shall be on site as shown on the special permit plat.

10. The area utilized for the Karate School shall not exceed 2,666 square feet and shall be conducted in the "non-residential" portion of the structure as show on the special permit plat.

11. Landscaping and Transitional screening as shown on the special permit plat shall be provided to the satisfaction of the Urban Forester. The existing vegetation along the eastern lot line may be supplemented with evergreen trees or shrubs as determined by the Urban Forester where space is available. The species of additional trees and shrubs to be planted, along with planting locations, shall be subject to approval of the Urban Forestry Division.

    The barrier requirement shall be waived along the eastern lot line and the existing and proposed six (6) foot high solid wood fence as shown on the special permit plat shall satisfy the barrier requirements along all lot lines.

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

Mr. 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 April 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with an enrollment of

less than 100 students daily. Located in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A. (Def. From 11/28/00) (moved from 2/6/01) (cont'd from 3/13/01)

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 Farrell, Agent, McLandish and Lilliard, replied that it was.

Mr. Farell stated that the applicant requested a further deferral of one week in which staff concurred. He said they were continuing to resolve issues.

Mr. Hart moved to continue the public hearing to April 10, 2001 at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were not present for the vote.

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Page 192 April 3, 2001, (Tape 1), Scheduled case of:

9:30 A.M. HERITAGE CITGO, A 95-B-045 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Determination that the appellant is operating a heavy equipment and specialized vehicle sale, rental and service establishment (U-Haul vehicles) in violation of the Zoning Ordinance provisions. Located at 7824 Rectory Ln. on approx. 10.22 ac. of land zoned C-6. Braddock District. Tax Map 70-2 ((1)) 1D1. (DEF. FROM 11/28/95 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, 5/25/99 2/1/00 and 5/2/00). (RECONSIDERATION GRANTED 6/8/99) (Moved from 10/24/00- hearing cancelled) (moved from 10/17/00 and 12/19/00)

Jayne Collins, Zoning Administration Division, gave staff's presentation indicating that the appeal originally came before the BZA in 1995 as the result of Notices of Violation being issued to a number of service stations in the County for operating a U-Haul rental business in association with a service station use and in violation of then existing Zoning Ordinance provisions. She said subsequently, in 1997, the Zoning Ordinance was amended to permit truck rental establishments in the C-5 through C-8 Districts by special exception ancillary to a permitted use in the district. After repeated failures to satisfy the submission requirements for the special exception application, the public hearing for the subject appeal was held on May 25, 1999, in which the BZA upheld the Zoning Adminstrator's determination that the appellants' truck rental operation was in violation of the Zoning Ordinance provisions. On May 28, 1999, the appelants requested and were granted a reconsideration of that decision and that reconsideration was the subject of the current appeal. The reconsideration public hearing was deferred several times to allow time for the special exception process to take place. On March 1, 2001, the Planning Commission voted to recommend to the Board of Supervisors that the appellant's special exception be denied because they were not in conformance with Zoning Ordinance provision for parking, screening, barriers and certain bulk regulations. Ms. Collins stated that on March 5, 2001, the Board of Supervisors denied the special exceptions for those reasons. She said two issues had been raised with regard to this appeal; one was the appellants' contention that there was a nonconforming right to conduct a truck/trailer rental operation as an accessory use to the existing service station use on the property. Ms. Collins stated that the other issuse was what affect two Circuit Court rulings and a December 1969, BZA interpretation had on the nonconforming issue. She said staff evaluated the nonconforming rights issue and found no basis for it. She said staff's argument was presented in the summary update memorandum dated January 24, 2000, submitted to the BZA. Ms. Collins noted that the gas station use was there by special permit conditions. Although the appellants were claiming that the rentals had been taking place on the property since the late 1960s, it was staff's position that the 1959 Zoning Ordinance provisions and the way they were applied at that time did not permit truck rental as an accessory use to a gas station. She said the Circuit Court cases were discussed in detail in the January 24, 2000, summary update. Ms. Collins noted that staff relied on the Woodson case from 1972 where the judge found that it was not customary for gas stations to have truck rental as an accessory component and therfore he ruled that truck rental was not a permitted accessory use to a gas station. Staff believed that the ruling in the Woodson case, the 1969 BZA interpretation that trailer rental was not a permitted accessory use at a gas station, combined with the Zoning Ordinance provisions that were in effect at the time, clearly supported staff's position that the appellants had not satisfied their burden to prove that an accessory truck rental

operation was legally established on the subject property. Ms. Collins stated under current Zoning Ordinance provisions, the appellants use wa a truck rental establishment which could continue on the subject property with special exception approval. She said based on the fact that such approval was denied by the Board of Supervisors, the violation of the Zoning Ordinance provisions continued and staff asked tha the BZA uphold the original violation so that further enforcement action could be take to gain compliance.

Mr. Hart asked if the minutes provided to the BZA members were site specific to the appellant's property or were they examples to show that U-Hauls were not consistently approved when the filling station was approved. William Shoup, Deputy Zoning Administrator, stated he believed Mr. Hart was referring to the Minutes contained in the April 24, 2000, memorandum and those were provided to show the history, and the intent and the way the provisions were regulated under the 1959 Ordinance. He said the issue came before the BZA a number of times back then and that history clearly showed that truck rental as an accessory use to a service station, was something that was not permitted. Mr. Shoup said the Minutes were general examples and they were not about the property of the subject appeal.

Jane Kelsey, Jane Kelsey and Associates, Agent for the appellant, came forward stating that the landowner and the appellant agreed to provide additional plantings make improvements to the site to try to get the special exception approved by the Board of Supervisors and even reduce what they thought to be grandfathered from 3 trucks down to 2, but the application was denied. She said the other truck rental applications which she had processed had citizen opposition. Ms. Kelsey stated that she visited the site and visited the neighbors and they found no one who objected to the use. She said the neighbors found the use to be a needed service. Ms. Kelsey said she provided a petition signed by the neighbors in support of the use. She said the justification for the appeal is that they believed the truck rental establishment was a legal grandfathered use accessory to an approved gas station and not a primary use. Ms. Kelsey indicated that the fact that rentals could be permitted as a principal use with the special exception did not mean that there could not be an accessory use. She said they submitted affidavits in the Board 1999, package from Mr. Howser who said that he remembered the trucks being on the site since the early 1970s when he moved there. Ms. Kelsey stated that Mr. Costello, who was a Washington Post Distributor, said that he had been distributing newspapers for 30 years and he remembered the trucks. She said during the 1960s, 1970s, and 1980s the majority of all the trucks that were used for moving were rented from small businesses and primarily they were gas stations. Ms. Kelsey stated that was currently true throughout the country. She said she believed that the Zoning Administrator was wrong in defining the use under the current Ordinance since the definition did not exist in 1969 when it began. Ms.Kelsey stated that she believed there was a flaw in the Violation Notice that was issued in 1995 which was 26 years after the establishment of the U-Haul accessory use. She said that Notice called the use a heavy equipment use and specialized vehicle sales and rental establishment. Ms. Kelsey stated that definition was not in the Zoning Ordinance in 1969. She said the use did not fit the definition of heavy equipment and specialized vehicle sales and rental establishment because they were only 2-axle trucks. Ms. Kelsey stated that the use existed 2 years prior to the 1972 Circuit Court ruling. She said the owner was not Noticed until 1995. Ms. Kelsey asked the Board to reverse the decision of the Zoning Administrator.

Mr. Hart asked if there was any other evidence that the trucks were on the property other than the affidavits from the neighbors. Ms. Kelsey said U-Haul was not computerized at that time and they they did not have any records and the aerial photographs were unclear.

Mr. Hart asked Ms. Kelsey if she had any authority for the proposition that delay by the Zoning Administrator in pursuing a violation was a defense to the violation. Ms. Kelsey responded that she was not an attorney, but she knew of no legal authority and she could not speak to land use issues. She said she believed that a decision needed to be made whether there was a violation in 1969. Ms. Kelsey stated because it had been customarily accepted prior to 1969 then it seemed that if should be able to continue.

Ms. Collins stated that the definition for a gas station was amended in November of 1963 and it stated that the use of the property for a gas station property was solely for the retail sale and direct delivery to motor vehicles of motor, fuel, lubricating oil, and minor accessories, sale of cigarettes, candies, soft drinks and other related items for the convenience of the motoring public. She said it did not mention anything about an accessory use of a truck or trailer rental establishment. Ms. Collins said when the 1978 Ordinance became effective the definition of heavy equipment was the only definition that applied at the time that the Notice of Violation was written in 1995. She said the Board of Supervisors amended the Ordinance in 1997 to include a truck rental establishment which would allow the use as an accessory use to a gas station upon special exception approval. Ms. Collins stated that even though the gas station was established under a special

permit there was nothing in the history that showed that the truck rental establishment was a lawfully established accessory use.

Chairman DiGiulian closed the public hearing.

Mr. Pammel said that a long period of time had elapsed, but he thought that it was clear that the grandfathering aspects of the case did not stand the test because if the activity commenced in 1969, the service station activity was under the 1959 Ordinance with the amendment in 1963 which defined what was permitted on the site. He said he did not feel that the appellant had successfully argued their case. He moved to uphold the opinion of the Zoning Administrator.

Mr. Hart seconded the motion.

Ms. Gibb said she supported the motion based on the memorandum dated April 24th prepared by the staff. She stated that a nonconforming use was not established.

Chairman DiGiulian stated that he would support the motion, but he thought there was something wrong when the appellant could operate for so long and then all of sudden they were in violation.

Mr. Pammel said he shared the Chairman's concern. He noted that there was a legal opinion in 1972 which addressed the issue.

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

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Page 194 April 3, 2001, (Tape 1), Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23. (Def. from 12/5/00) (moved from 3/6/01).

Susan Epstein, Zoning Administration Division, stated that this was an appeal of the determination that the appellants had established a junkyard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. She said the property was located at 9100 Furnace Road, consisted of 7.67 acres and was developed with a single family detached dwelling. Ms. Epstein stated that the appeal was originally scheduled for December 5, 2000, but was deferred for 3 months to provide the appellants time to clean up the property. Due to a scheduling conflict, the appeal was then deferred for another month. At the December 5, 2000, public hearing the appellants' attorney indicated that 3 months would be enough time to clean up the property. She said a junk yard was defined in the Zoning Ordinance, in pertinent part, as the use of any space, for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles or other vehicle or machinery or parts thereof. Ms. Epstein stated that some progress had been made toward removing the junk yard items, as reflected in the photographs submitted to the Board, including the removal of some of the inoperable vehicles, but the property still met the definition of a junk yard. The following are items which were observed on the property during recent inspections: one inoperable trash truck; two other inoperable vehicles; three abandoned mobile home-type trailers; two trailer portions of a tractor trailer truck; tire rims; numerous discarded tires; a rusted generator; a boat motor; broken metal fence pieces; two rusted automobile engines; axles; other miscellaneous auto parts; a pile of bricks; a pile of stones; cut wood; concrete blocks; and other miscellaneous scrap metal and scrap materials. Ms. Epstein stated that the scope and nature of the items on the property still satisfied the criteria of a junk yard. She said given that fact and considering the extent of the junk yard items remaining on the property, it was requested that the BZA take action to uphold the Notice of Violation.

Roy Spence, Agent for the appellant, stated that the appellant was not able to clean up the property in the 3 months that was allowed. He said the appellant had done a lot of work to clean up the property such as removed a bus and several trucks. Mr. Spence requested additional time for the appellant to continue to work to clean up the property. He said it was concealed from the public. Mr. Spence addressed a letter

submitted by a neighbor stating that the gasoline was well secured and there was no danger to anyone. Mr. Spence indicated that there was no commercial activity taking place on the property, but that the appellant was using a backhoe to help remove some of the items. He said the appellant was moving as fast as he could to clean up the property.

Ms. Gibb asked how long would the appellant need to clean up the property. Mr. Spence responded 6 months.

William Shoup, Deputy Zoning Administrator, stated that there had been some clean-up that had taken place, but there was a long way to go on the property. He said when you compare that the extent of the progress that had already been made, he was not confident that 6 months would be enough time. Mr. Shoup stated that there was a significant junk yard on the property and staff would object to a deferral.

Chairman DiGiulian asked if staff felt deferral of a year would be appropriate. Mr. Shoup responded stating that this could be one of the cases where litigation might light the fire to get the property cleaned up.

Mr. Hart asked what would be gained by deferring the public hearing. Mr. Spence responded that the junkyard did not accumulate in a day and would take a period of time to remove.

Edmund Harris, appellant, came forward stating that he had made a mess and apologized and he assured the Board that he would be working diligently to clean up the property.

Mr. Ribble asked the appellant how long he thought it would take to clean up the property. Mr. Harris replied that 6 months should be adequate.

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

Mr. Ribble stated that in view of the fact that there had been some progress made on the property, and the appellant had made a commitment to cleaning up the property, he would move to defer the appeal for 6 months to October 2, 2001, at 9:30 a.m.

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

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Page 195, April 3, 2001, (Tape 1), After Agenda Item:

Approval of March 27, 2001 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:46 a.m.

Minutes by: Regina Thorn Corbett

Approved on: August 21, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 10, 2001. The following Board Members were present: Chairman John DiGiulian; John Ribble; Paul Hammack; Robert Kelley; James Pammel; James Hart; and Nancy Gibb.

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.

9:00 A.M. ROBERT L. HARLOW, JR., SP 01-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit storage structure to remain 2.7 ft. from rear lot line and 2.4 ft. from side lot line, deck to remain 15.2 ft. from street line of a corner lot and storage structure 1.9 ft. from side lot line. Located at 2843 Summerfield Rd. on approx. 7,709 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with VC 01-P-014).

9:00 A.M. ROBERT L. HARLOW, JR., VC 01-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less, a six foot high fence in front yard to remain and storage structure to exceed 200 sq. ft. Located at 2843 Summerfield Rd. on approx. 7,709 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with SP 01-P-002).

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 Harlow, Jr., 2843 Summerfield Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the requests 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 shed to remain 2.7 feet from the rear lot line and 2.4 feet from a side lot line, a deck to remain 15.2 feet from the street line of a corner lot and a second shed to remain 1.9 feet from a side lot line.

The minimum rear yard requirement for the first shed is 11.3 feet with a minimum side yard of 10 feet; therefore, modifications of 8.6 feet for the rear yard and 7.6 for the side yard were requested.

The minimum front yard requirement for the deck is 35 feet; therefore, a modification of 15.2 feet was requested.

A minimum side yard of 10 feet is required for the second shed a minimum side yard of 10 feet is required; therefore, a modification of 8.1 feet was requested.

The applicant also requested a variance to permit construction of a garage in the front yard of a lot containing 36,000 square feet or less. The second variance was to permit a six foot high fence in the front yard to remain and to permit an accessory storage structure to exceed 200 square feet to 206.04 square feet.

Mr. Harlow presented the requests as outlined in the statement of justification submitted with the application. He explained that the placement of the proposed garage so close to the side lot line was needed so as not to disturb the roots of a sixty-year-old oak tree in his yard. He said that the purpose of the proposed garage was to store his show car. He stated that it was his intention to remove the smallest shed on the property.

Mr. Hart asked where the driveway was proposed to be located. Mr. Harlow replied that the driveway would be on the right side of the property.

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

Mr. Pammel stated that the location of the garage was disturbing and he asked the applicant if he was willing to move the garage further back into the lot. Mr. Harlow replied that he could move the garage further back; however, he was concerned about disturbing the roots of the oak tree.

Mr. Pammel moved to approve SP 01-P-002 for the reasons stated in the Resolution. Mr. Pammel noted that the storage structure in the middle of the two sheds along the side lot line was to be removed.

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. HARLOW, JR., SP 01-P-002 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit storage structure to remain 2.7 ft. from rear lot line and 2.4 ft. from side lot line, deck to remain 15.2 ft. from street line of a corner lot and storage structure 1.9 ft. from side lot line. Located at 2843 Summerfield Rd. on approx. 7,709 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with VC 01-P-014). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2001; 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 storage structure(s) and deck as shown on the plat prepared by John D. Garrett, dated October 15, 2000, and revised through May 2, 2001, 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. Hart 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 May 8, 2001. 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 01-P-014 with an increased distance from Custice Drive of 2.0 feet for the proposed garage and for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. HARLOW, JR., VC 01-P-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less a six foot high fence in front yard to remain and storage structure to exceed 200 sq. ft. Located at 2843 Summerfield Rd. on approx. 7,709 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((5)) 375. (Concurrent with SP 01-P-002). Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a 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 accessory structure (garage), fence and 206.04 square foot storage structure as shown on the plat prepared by John D. Garrett, dated October 15, 2000, and revised through May 2, 2001, 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. Hart seconded the motion which carried by a vote of 5-0-2. Mr. Hammack and Mr. Ribble abstained from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 200, April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GERALD E. & EMMA MURRAY, VC 01-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. from rear lot line. Located at 3031 Steven Martin Dr. on approx. 5,957 sq. ft. of land zoned R-5. Providence District. Tax Map 48-3 ((37)) 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. Jim Garner, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the request as contained in the staff report. The applicant requested a variance to permit construction of a screened porch addition to be located 17.8 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.2 feet was requested.

Mr. Garner presented the variance request as outlined in the statement of justification submitted with the

application. He stated that the reason for the variance was because of the shape of the lot and the position of the house on the lot. He said that the enclosure would not be seen from the street or from the neighbor to the rear of the subject property. He informed the Board that the deck already existed upon the applicants' purchase of the home.

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

Mr. Hammack moved to approve VC 01-P-010 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERALD E. & EMMA MURRAY, VC 01-P-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.8 ft. from rear lot line. Located at 3031 Steven Martin Dr. on approx. 5,957 sq. ft. of land zoned R-5. Providence District. Tax Map 48-3 ((37)) 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 April 10, 2001; 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. The house is cited to the rear of the property to accommodate the garage on the front and it is also at an angle so it requires a small variance in order to complete a screened porch over an already approved deck.

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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, December 20, 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.

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 April 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 202 April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FRANK & HIKMET BATES, VC 01-P-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 8408 Wesleyan St. on approx. 10,944 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (J) 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. Frank Bates, 8408 Wesleyan Street, Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval to permit construction of a garage addition to the dwelling, to be located 6 feet from the east side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 6 feet was requested.

Mr. Bates presented the variance request as outlined in the statement of justification submitted with the application. He explained that the garage addition would be in character with the neighborhood as there was a similar variance granted to their neighbors. He illustrated the layout of the proposed garage. Mr. Bates stated that the proposed garage was needed to provide shelter for their automobile. He informed the Board that the construction of a similar garage was an option in which the builder gave to the original owners.

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

Mr. Ribble moved to approve VC 01-P-013 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK & HIKMET BATES, VC 01-P-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.0 ft. from side lot line. Located at 8408 Wesleyan St. on approx. 10,944 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (J) 7. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2001; 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. The placement of the house on the lot contributes to the need for a variance.
4. In 1963, a garage was an option that could have been chosen by the original owners at the time that the house was built.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 B.W. Smith and Associates, Inc., dated January 4, 2001, 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.

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 April 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 204, April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAN COFFING, VC 01-B-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line such that side yards total 22.0 ft. Located at 9500 BraddockRd. on approx. 11,636 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((4)) 7.

Chairman DiGiulian noted that the case was administratively moved to May 8, 2001.

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Page 204, April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHARLES F. SMITH, VC 01-D-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot and 1 outlot into 2 lots with proposed Lot 2B having a lot width of 60.76 ft. and permit accessory structure in minimum required front yard to remain. Located at 1334 and 1338 Ballantrae La. on approx. 2.63 ac. of land zoned R-1. Dranesville District. Tax Map 31-1 ((2)) 1B and 2. (Moved from 4/17/01)

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the applicant had requested a withdrawal of their application.

Mr. Hammack moved to withdraw VC 01-D-017. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 205 April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. HOSHANG DERAKHSHANDEH, VC 01-M-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft and eave 1.0 ft. 3 in. from side and rear lot lines. Located at 4013A Annandale Rd. on approx. 11,526 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kim and Hoshang Derakshandeh, 4013A Annandale Road, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator presented the variance request as contained in the staff report. The applicants requested the construction of an accessory structure consisting of a 10 foot high detached garage located 2.0 feet from the side and rear lot lines with an eave 1.3 from the side and rear lot lines. The Zoning Ordinance requires detached accessory structures to be located a minimum of 10 feet from the side and rear lot lines; therefore, a variance of 8.0 feet was requested for the garage. The Zoning Ordinance requires eaves to be located at a minimum of 7.0 feet from the side and rear lot lines; therefore, a variance of 5.9 feet was requested for the eave.

Ms. Derakshandeh presented the variance requests as outlined in the statement of justification submitted with the application. She explained that a tree had destroyed the existing garage and due to property boundaries a new garage could not be constructed at that site. She stated that the old garage was located half on their neighbor's property. She stated that the surrounding neighbors were in support of the application.

Mr. Hammack asked the applicants why they needed such a large garage. Ms. Derakshandeh replied that they intended to use the garage to house three vehicles and for storage.

Ms. Gibb asked the applicants why they couldn't relocate the garage farther away from the shared property line. Ms. Derakshandeh replied that there was a large tree in the middle of the backyard that they wanted to preserve.

Mr. Hammack stated that the proposed garage was very large and asked the applicants if they would be willing to move the garage closer in from the shared lot lines. Ms. Derakshandeh replied that it would be difficult because they also wanted to fabricate a turn around driveway located in front of the proposed garage so they would no longer have to back out of their driveway.

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

Ms. Gibb moved to approve VC 01-M-015. Mr. Kelley seconded the motion.

Mr. Hammack stated that he did not support the motion because the garage was too large for the configuration of the lot.

Mr. Pammel made a subsequent motion to defer VC 01-M-015 until May 8, 2001, to give the applicants time to present a smaller version of the garage to the Board. Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 205 April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. LINDA L. MCKEE, VC 01-Y-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 12106 Wayland St. on approx. 21,012 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 54.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda and Ed McKee, 12106 Wayland Street, Oakton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of an accessory structure consisting of an attached carport in a front yard of a lot containing 36,000 square feet or less. The Zoning Ordinance states that an accessory structure can not be located in any minimum required front yard or any front yard containing 36,000 square feet or less.

Ms. McKee presented the variance request as outlined in the statement of justification submitted with the application. She stated that the carport was needed to protect her vehicles from the sap from a neighbor's oak tree. She stated that due to a drainage easement in the rear of the yard and a septic field in the front yard, the proposed location was the only place feasible on the property for the construction of the carport.

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

Mr. Kelley moved to approve VC 01-Y-012 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDA L. MCKEE, VC 01-Y-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 12106 Wayland St. on approx. 21,012 sq. ft. of land zoned R-2. Sully District. Tax Map 46-1 ((8)) 54. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant's testimony and the statement of justification indicate compliance with the prescribed criteria for the granting of a variance.

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

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

all reasonable use of the subject property, or

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (carport) shown on the plat prepared by Stanmyre and Noel, dated January 15, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 207 April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with an enrollment of less than 100 students daily. Located in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A. (Def. From 11/28/00)(moved from 2/6/01)(cont'd from 3/13/01 and 4/3/01)

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 Farrell, 11350 Random Hills Road, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a Group 3 special permit to permit a church and related facilities and a nursery school with a maximum daily enrollment of 99 students daily. The applicant submitted a revised plat dated March 2001. It was staff's opinion that this proposal should be designed to minimize impacts on water quality, in the R-C District, by reducing the amount of impervious surfaces, minimizing the size of the structure, and retaining undisturbed open space at least to the point of a previously approved special permit (SP 97-Y-013, Victory Christian Church) on this same site.

Mr. Bernal said the revised plat did not show the construction of a 19 foot cross section of road way nor a 26 foot cross section for turn lanes as requested by the Department of Transportation in the staff report. As

noted in the staff report and the Addendum, Blue Spring Road is a substandard facility to which the applicant proposed to construct two points of access. He said Blue Spring Road should be improved to facilitate the movement of traffic anticipated with a church of this size on weekends and evenings as well as a nursery school that was proposed to operate five days per week. The construction of the two requested cross sections (19 feet and 26 feet) should alleviate negative traffic impacts at the intersection of Pleasant Valley Road and Blue Spring Road.

Mr. Bernal said the changes to the revised plat were minor in nature and did not alter staff's previous recommendation. Therefore, staff continued to recommend denial of the application for a Group 3, special permit for a church and related facilities with a nursery school for 99 students.

However, if it was the intent of the BZA to approve SP 00-Y-050, staff recommended that the BZA condition its approval by requiring conformance with the Revised Proposed Development Conditions dated April 10, 2001.

There was conversation between the Board and staff regarding whether or not there was a nexus between the proposed use and the transportation improvements that were requested with the application. It was staff's position that there was a nexus because the church, which would be utilized seven days a week, would generate approximately half of the traffic on Blue Spring Road.

John Farrell, agent for the applicants, discussed several proposed changes to the development conditions. He addressed Development Condition #15 by stating that the applicants were not prepared to go forward with the transportation improvements suggested by staff. He stated that the road was substandard and the need for the road improvements was substantially generated by the regional requirements for road improvement. He contended that if the Board required the applicants to abide by Development Condition #15 it would be a violation of their civil rights. He also noted that Loudoun County was proposing to cul-de-sac a part of Blue Springs Road and that would impact the proposed road improvements by Fairfax County.

Mr. Farrell addressed Development Condition #1 by stating that the condition limited the special permit to that particular owner. He contended that the condition was also unconstitutional because land use laws were meant to regulate the use of land and not the ownership of land and in any way restricting the ability to alienate property was a violation of the applicants' constitutional rights.

Mr. Farrell explained the applicants' opposition to the $15,000 cash deposit to be posted to the County for a period of five years. He said that the County had equitable enforcement powers to ensure that the trees would be planted without the cash deposit and that the applicants had every intention of planting all of the required trees.

Mr. Hart asked staff what the County procedure was regarding landscaping escrows. John Zuiker, Urban Forestry Division, replied that during the final inspection for the bond release, the landscaping was looked at and if a conservation deposit was still held, it would be released and another inspection was done associated with that conservation deposit.

Mr. Hart asked staff for an explanation of Development Condition #7 with relation to the landscaping deposit. Noel Kaplan, Department of Planning and Zoning, explained that the five year window was incorporated into that Development Condition to ensure that Phase 2 would be completed within a five year period. He stated that the County had no way to track duration oriented conditions when they were not linked to a development plan.

There was conversation between the Board and staff regarding whether or not there was any statutory authority for the Board to authorize landscaping deposits. It was staff's opinion that the Board was authorized to impose such deposits if the conditions were reasonable. Ms. Langdon explained that the purpose of Development Condition #7 was so the County would have the funds at hand to plant the required trees if the applicant failed to do so during the Phase 2 development.

Ms. Gibb asked what was the cost of the proposed transportation improvements. Mr. Farrell replied that the cost was somewhere in the six figure range.

Ms. Gibb asked staff what the development in Loudoun County would do to traffic on Blue Springs Road. Mr. Bernal replied that even if the cul-de-sac were constructed in Loudoun County, the church would still generate traffic onto Blue Springs. Ms. Gibb stated that if Loudoun County constructed single family homes on Blue Springs then that would increase traffic also it would lead to many unknowns about who was contributing more traffic. Mr. Bernal reiterated that because the church intended to operate seven days a week the majority of the traffic would be generated from that site.

Mr. Hammack asked what neighborhoods Blue Spring serviced other than the proposed application site. Mr. Bernal replied that the road served as a bypass to Route 50 into Loudoun County. Mr. Hammack asked where staff came up with the conclusion that the church generated 50% of the traffic on Blue Spring. Mr. Bernal replied that the Office of Transportation had done a traffic study and came up with that percentage. He stated that the church was the only new development on Blue Springs.

Mr. Hammack asked staff for more information as to the Nexus between the proposed use and the traffic improvements imposed by staff with relation to Pleasant Valley Road. Ms. Langdon explained that Development Condition #15 required either the construction or dedication on Pleasant Valley Road. She stated that all of the traffic from the church would exit onto Blue Spring Road and some would turn onto Pleasant Valley Road. Mr. Hammack asked if staff would be satisfied if the applicant only dedicated with regard to Pleasant Valley Road. Staff requested that the applicants construct the transportation improvements on Blue Spring Road. Mr. Hammack stated that the main issue was whether the Board would require the applicant to be responsible for the construction of traffic improvements on Blue Spring Road as opposed to dedication only. Ms. Langdon reiterated that all of the traffic from the church would enter and exit onto Blue Springs Road and that it was a very substandard road that needed improvement for that much traffic.

Mr. Farrell contended that the traffic study prepared by the County was incorrect by stating that the church generated 50% of the traffic on Blue Springs Road; therefore, the church should not incur cost of the transportation improvements of that road. Mr. Farrell addressed the landscape deposit by stating that the County had made similar arrangements for other applications without a deposit or a cash bond and the applicants were entitled to that same treatment. He noted that the applicants had agreed to provide the funds for a sidewalk to be installed on Pleasant Valley Road but not to actually construct the sidewalk themselves. He said the church was not experienced enough to make the transportation improvements that staff was asking for.

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

Mr. Hart stated that the case was difficult and explained the general standards for the granting of special permit applications.

Mr. Hart moved to approve SP 00-Y-050 with the following Development Condition changes; Development Condition #7, delete the sentence related to the cash deposit; Development Condition #12, insert "restoration areas"; Development Condition #15 insert that the applicant must be as optioned.

Mr. Hammack seconded the motion.

Ms. Gibb asked for clarification of the motion that the cash deposit was deleted. Mr. Hart replied that was correct. Ms. Gibb stated that the installation of the trees was part of the initial requirement.

Mr. Pammel clarified that the motion did hold the applicant liable for the transportation improvements on Blue Spring Road. He stated that he felt the condition posed a tremendous burden on the applicants.

The Board discussed at length whether or not to mandate that the applicant be responsible for the transportation improvements on Blue Spring Road.

Mr. Pammel amended the motion to delete the second paragraph in Development Condition #15 which mandated the applicants to dedicate frontage on Blue Spring Drive. Mr. Kelley seconded the amended motion. The motion failed for a lack of four votes.

Mr. Farrell stated that the applicants could not afford to make the proposed transportation improvements to Blue Spring Drive and they were willing to omit the proposed school from the application in order to have that condition waived.

Mr. Hammack stated that he did not have a problem deferring the application to give staff and the applicants time to amend the application and omit the school.

Mr. Hammack moved to defer the decision for SP 00-Y-050 until May 8, 2001, at 9:30 a.m. to give the applicants time to amend the application. Ms. Gibb seconded the motion which carried by a vote of 7-0.

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Page 210 April 10, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE APOSTLES (EPISCOPAL), SPA 99-Y-046 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-046 previously approved for a church and related facilities to permit increase in land area, building additions and site modifications. Located at 11814 & 11924 Braddock Rd. on approx. 22.79 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) pt. 33, 34A and 34B. (Moved from 3/27/01).

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.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicants requested approval of a special permit amendment for the addition of 12.9 acres of land, 32,605 square feet of building area, 330 foot by 250 foot play area and an additional 154 parking spaces. Construction would take place in six phases; Phase I- fellowship building (26,950 square feet); Phase II sanctuary and an open pavilion (17,300 square feet); Phase III portion of family life center (7,500 square feet); Phase IV administrative building (4,650 square feet); Phase V chapel (1,650 square feet); Phase VI balance of the family life center (11,455 square feet)

Staff received a revision on April 9, 2001, which addressed issues such as the timing of transitional screening. Staff concurred with the changes proposed and incorporated the proposed change into the revised proposed development conditions. However, staff believed that transitional screening along the western boundary should be provided with phase one development.
Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, recommended the approval of SPA 89-S-013 subject to the approval of the revised proposed development conditions dated April 10, 2001.

Lynne Strobel, agent for the applicant, presented the special permit amendment request as outlined in the statement of justification submitted with the application. Ms. Strobel stated that since the initial approval of the original special permit, the applicant had reevaluated their needs. She explained that the original application lacked a place for the youth members of the congregation; therefore, the applicants requested a multi-purpose building of approximately 32,000 square feet. She said that the building would include a basketball court, youth education classrooms, and an area for special events such as youth seminars and guest speakers. She said that the total improvements resulted in a floor area ratio (FAR) of .07, which was less than the .086 FAR that was previously approved. Ms. Strobel explained that the second aspect of the application was parking and that the applicants' original approval included 200 parking spaces, which was the minimum requirement for a facility of that size. She said this number was not sufficient and there was no opportunity for offsite parking at the application site. She stated that to make sure all parking was contained onsite the applicant requested a total of 425 parking spaces. She said that the applicants had agreed to phase the parking so it would only be constructed on an as needed basis in order to address staff's concern about the amount of impervious surface that was proposed.

Ms. Strobel submitted revised proposed development conditions that reflected the changes to Development Condition #9. The applicants requested deletion of the sentence regarding screening along the western boundary lines and the addition of "and western lot line as shown on the special permit plat" to the next

sentence. Ms. Strobel explained that there was existing screening along the western boundary line that would be adequate until the construction began.

Ms. Strobel informed the Board that the application had support from the existing neighbors and submitted a support letter from an adjacent neighbor. Ms. Strobel asked the members of the community that were present in support of the application to stand in the audience.

Mr. Hart noted that the development conditions did not contain language requiring all parking to be onsite. Ms. Strobel stated that the applicants had no problem with that.

Mr. Hart asked if there were any no parking signs located on the frontage of the church. Ms. Strobel replied that the applicants had not proposed that because they, with the approval of the special permit amendment, had provided ample parking onsite; however, the applicants would not have a problem with that but it would have to be provided by the Department of Transportation.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that the development conditions were worded somewhat differently and the onsite parking language had not been added. She stated that the language could be added to the end of Development Condition #27.

Mr. Hart noted that he had driven by the site and witnessed people parking in the median and asked staff to notify Zoning Enforcement. Ms. Langdon stated that staff would do that. She noted that one of the churches had been approved for a special permit amendment that included additional onsite parking.

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

Mr. Hammack moved to approve SPA 99-Y-046 with the applicants' revised 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

TRUSTEES OF THE CHURCH OF THE APOSTLES (EPISCOPAL), SPA 99-Y-046 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 99-Y-046 previously approved for a church and related facilities to permit increase in land area, building additions and site modifications. Located at 11814 & 11924 Braddock Rd. on approx. 22.74 ac. of land zoned R-C and WS. Sully District. Tax Map 67-1 ((1)) pt. 33, 34A and 34B. (Moved from 3/27/01). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 10, 2001; 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, 11814 Braddock Road (22.749 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 Adtek Engineers (Mahendra N. Shah) dated November 22, 2000, as revised through March 22, 2001, 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 total 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 provided in phases in conjunction with the parking and building phases subject to the review and approval of the Urban Forestry Division of DPWES in the following manner: in conjunction with parking phase A, Transitional screening Type 1 shall be provided as shown on the special permit plat along the northern limits of clearing and grading and shall consist of natural vegetation, supplemented with evergreen plant materials to provide an effective screen for the benefit of adjacent residents during the winter months and Transitional Screening Type 1 shall be provided along the southern property boundary in variable widths to accommodate existing drainage and utility easements, as shown on the special permit plat, subject to the review and approval of the Urban Forestry Branch of DPWES. Additional transitional screening will be provided as described above with parking Phase C to the north and parking Phase E to the south. Transitional screening Type 1 shall be added to the northern lot line and the western lot line as shown on the special permit plat at such time as the Family Life Phase 3 or 6, parking Phase D, or play area 2 is developed. However, if during construction of building development Phases 1 and 2, or parking area Phase A, existing vegetation is cleared, transitional screening shall be provided along the southern lot line west of the Phase A parking area.

   At a minimum, evergreens shall be provided along the rear of the northernmost parking lot and the north and east sides 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 Division of DPWES. Said landscaping shall be reviewed with owners of the two adjacent parcels to the north at the time of site plan submission. If development is phased, said landscaping shall be provided as a part of Phase 1.

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 amendment plat 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.

Trees located within dedicated "tree save areas", as depicted on the special permit amendment plat, within the limits of clearing and grading, which subsequent to approval of the special permit require removal, due to safety concerns or poor health, shall be replaced by the applicant upon the recommendation of the Urban Forestry Division. Replacement shall follow guidelines in the Fairfax County Public Facilities Manual for replacement trees or an alternative approach determined to be acceptable by the Urban Forestry Division.

11. In order to restore native tree cover to areas of the Environmental Quality Corridor (EQC) that are not wooded and that do not contain the pond or wetlands, the applicant shall allow the natural regeneration/succession of vegetation to occur. If the Urban Forestry Division of DPWES determines that the natural regeneration/succession of vegetation must be supplemented by planting to address a specific deficiency, the applicant shall submit and implement an EQC restoration plan for such areas. This plan, which shall be subject to the review and approval of the Urban Forestry Division prior to site plan approval for the first phase of the development, shall, to the extent feasible, incorporate restoration approaches that minimize disturbances to soils within the EQC. Where it is determined that plantings will be needed, the species that are selected for planting shall be native to the area, be well adapted to the existing soil, hydrologic, and microclimatic conditions of the area(s) being planted, and be of high value for wildlife, subject to the approval of the Urban Forestry Division. The planting approach (e.g., use of a woody seed mix; planting of bare-root seedlings) and density of plantings shall be subject to Urban Forestry Division approval.

    With the exceptions of the activities listed below, there shall be no disturbance to the EQC and no mowing of grasses in the EQC. The following activities are permitted within the EQC:

    - The establishment and maintenance of the "Dam Maintenance Access" as shown on the Landscape, Grading and Phasing Plan;
    - The maintenance of the pond and its embankment in a manner that will minimize disturbance to the EQC, subject to the approval of the Urban Forestry Division;
    - The conveyance of drainage from the proposed development in a manner that minimizes disturbance to the EQC, subject to the approval of the Office of Site Development Services (OSDS) in coordination with the Urban Forestry Division;
    - The provision of a fence around part or all of the pond that will serve to block human access to this pond. This fence shall be constructed in a manner that minimizes the use of vehicles and mechanical equipment and shall be designed in a manner that will provide, to the extent feasible, for wildlife movement to and from the pond, subject to the approval of the Urban Forestry Division;
    - The implementation of the EQC restoration plan; and
    - The control/removal of invasive vegetation (as defined by the Virginia Native Plant Society), subject to a management plan that is reviewed and approved by the Urban Forestry Division. If such a management plan is developed, it shall incorporate an approach that minimizes applications of fertilizers, pesticides, and herbicides and disturbance to native vegetation within the EQC.

12. If warranted by the results of the completed Phase I Environmental Site Assessment, and 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 Fire and Rescue and Heath Departments (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. Petroleum contaminated soils, dumped material/debris piles, 55-gallon drums, storage tanks and containers shall be removed and disposed of properly in a manner approved by DPWES in coordination with the Fire and Rescue and Health Departments.

13. 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.

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

15. All signage on the property shall be in accordance with Article 12 of the Zoning Ordinance.

16. 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 it is determined that those easements have not been obtained 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 others, 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 the first Non-Residential Use Permit (Non-RUP) up for the church.

17. Right-turn lanes into the church driveways shall be constructed to VDOT standards.

18. Sidewalks and other pedestrian access shall be provided at site plan review and approval as determined by DPWES at the time of site plan review.

19. 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.

20. Drainage from impervious surfaces on the property shall be conveyed to best management practice (BMP) facilities to the maximum extent feasible, as determined by the Office of Site Development Services (OSDS) of DPWES. BMP facilities may be installed in phases appropriate to the individual parking/building phase submitted with a site plan. Biofiltration areas proposed adjacent to Phase A parking areas shall be constructed in conjunction with these parking areas.

21. At the time of site plan review, the applicant shall submit to DPWES, for review and approval, a final design for the biofiltration areas. Maintenance of the biofiltration areas shall be accomplished consistent with the standards set forth in Attachment A ("Specifications for Maintenance of Rain Gardens") or other equivalent document as may be approved by DPWES.

22. 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 Division, 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 Non-RUP for each phase, areas disturbed with the clearing and grading for one phase 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.

23. 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.

24. 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 DPWES, through the provision of super silt fences and/or other innovative measures determined to be appropriate by the Special Projects Branch of DPWES.

25. 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.

26. In order to reduce the maximum interior noise level to a level of approximately 45 dBA Ldn, for any building façade that is directly exposed to noise from Braddock Road (with the exception of the administration building), 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 shall have the same laboratory STC as walls.
    - Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

27. Subsequent parking phases (Phases C, D and E) shall only be permitted on an as needed basis as demonstrated by a parking study based on data collected from the site, as submitted to and approved by DPWES. All parking associated with the use of this property shall be onsite.

28. The existing meadow grasses in play area phase 2 are to remain in a natural state until such time as the play area is graded. In order to minimize the runoff of nutrient, herbicide, and pesticide pollutants and to minimize infiltration of such pollutants into groundwater resources, a turf establishment and maintenance plan (to include both nutrient management and pest management components) for the play area shall be developed, provided to DPWES for approval, and implemented as approved. This plan shall be implemented in accordance with the best management turf grass practices for athletic fields developed by the Virginia Polytechnic Institute or other alternative approach determined to be acceptable by Virginia Cooperative Extension, Fairfax County. The plan shall include regular on-site monitoring of its major components to allow for ongoing adjustments and improvements. The plan shall be subject to approval by the Virginia Cooperative Extension, Fairfax County, and shall include provisions ensuring that records of applications of fertilizers, herbicides, and pesticides shall be maintained and be made available to the County upon request.

29. Use of the family life center and the play area shall be limited to church members only.

30. Construction of the church shall be in substantial conformance with the architectural elevation

contained in Attachment B.

31. Prior to the issuance of a Non-RUP, the applicant shall obtain approval of the septic system from the Health Department. If such approval is not received, this Special Permit Amendment shall be null and void. If final approval of the septic system requires a relocation of that system from that depicted on the special permit amendment plat, such relocation may occur provided that it causes no reduction in landscaping buffers or open space.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 18, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 216, April 10, 2001, (Tape 1) After Agenda Item:

Approval of April 3, 2001 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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As there was no other business to come before the Board, the meeting was adjourned at 11:02 a.m.

Minutes by: Lori M. Mallam

Approved on: October 9, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 17, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 217, April 17, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARHSALL B. LYTLE, III, VC 01-V-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 7.9 ft. from side lot line. Located at 1106 Gladstone Pl. on approx. 15,000 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((14)) (A) 10 and 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. Marshall B. Lytle, II, 1105 Gladstone Place, Alexandria, Virginia replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit construction of a garage addition to be located 7.9 feet from the side lot line. The minimum side yard requirement is 15 feet; therefore, a variance of 7.9 feet was requested for the garage addition.

Mr. Lytle presented the variance request as outlined in the statement of justification submitted with the application. He expressed that several options had been explored, but found that the carport extension was more conducive to the home and neighborhood design. He explained that two other variances in the neighborhood of similar nature had been approved in the past and the neighbors were supportive of this change in extension.

Mr. Hart asked how much wider the garage would be than the carport. Mr. Lytle responded that the garage would be five feet wider than the carport.

Mr. Hart noted that there seemed to be some question on the actual lot number of Mr. Lytle's property. He questioned the staff about verification of accurate advertising regarding the lot number.

Susan Langdon, Chief, Special Permit and Variance Branch, confirmed that proper advertising had been done. She pointed out that the map inside the report reflected both Lot 10 and Lot 11.

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

Mr. Hart moved to approve VC 01-V-011 for the reasons noted in the Resolutions subject to the development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARHSALL B. LYTLE, III, VC 01-V-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 7.9 ft. from side lot line. Located at 1106 Gladstone Pl. on approx. 15,000 sq. ft. of land zoned R-2. Mt. Vernon District. 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 April 17, 2001; and

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

1. The applicant is the owner of the land.
2. The applicants presented testimony and the statement of justification indicated compliance with the required standards for the granting of a variance.
3. There were two other variances in the immediate 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 an addition shown on the plat prepared by Kenneth W. White, dated December 18, 2000, as revised through December 29, 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.

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 seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained from the vote and Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 25, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 219, April 17, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JUAN F. CADENA, SP 01-D-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.0 ft. from side lot line. Located at 1908 Griffith Rd. on approx. 14,639 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((2)) 58.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Juan F. Cadena, 1908 Griffith 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 reduction to the minimum yard requirements based on an error in building location to permit a laundry room addition to remain 5 feet from the side lot line. The minimum side yard requirement is 10 feet; therefore, a modification of 5 feet was requested for the laundry room addition.

Ms. Cadena came forth to speak on behalf of her father. She stated that the family had a small patio in the backyard of the home, which they enclosed to make a laundry room. Her father had been unaware of the building codes and regulations imposed on private residences, so a building permit was not secured prior to enclosing the room.

Mr. Hammack asked if the family was extending electricity and plumbing to the laundry room addition. Mr. Cadena replied that it already had electricity due to outdoor lighting, but the addition currently did not have plumbing. However, he did anticipate extending water to that room.

Mr. Hammack questioned whether or not this room was to be considered part of the house, and if there was insulation in the walls. Ms. Cadena explained that this room was not intended to be part of the house. She said that only three walls had been put up on the existing patio area and insulation had not yet been installed.

Upon viewing photographs of the structure, Mr. Hammack questioned the use of only cinderblocks supporting the corners of the room. He also noted that a letter had been presented to the Board stating that Mr. Cadena had not used proper footings under the house to support it properly.

Mr. Cadena said that footings had been used, but he did not have any papers to verify that. Ms. Cadena added that she was also aware of the letter. She stated that the family had done a few renovations in the past few years and had recently refinanced the house. At that time a home inspection was done and no problems had been found.

Mr. Hammack referred back to the photographs and asked for clarification as to whether or not the proper footings had been used. Mr. Cadena stated he used poles in the ground. He said that he and his brother-in-law, who both did construction work, made the room.

Mr. Pammel stated that he understood from Mr. Cadena that the addition had been put on top of the existing patio. Mr. Cadena stated that this was incorrect. He clarified that he had removed the existing concrete patio and dug holes to put in poles to sustain the laundry room.

Mr. Kelley questioned if a County Inspector had been out to the location.

Mr. Bernal stated that a Notice of Violation had been sent from the Zoning Inspector, so he believed that an Inspector had been there. However, he could not confirm whether a Building Inspector had been out to see if the footings had been properly installed.

Susan Langdon, Chief, Special Permit and Variance Branch, pointed out that the staff report stated that an approval did not relieve the applicants of meeting the requirements of any standards or Ordinances. The applicant would have to get a building permit, electrical permit, etc. as needed before the County would sign off on the structure.

Following a brief discussion, the Board decided that a County Building Inspector would go out to the property and inspect the structure.

Mr. Hart questioned staff regarding a letter from a neighbor, Ms. Brown, dated November 4, 2000, about a violation of a deck.

Ms. Langdon said that there was not a deck shown on the plat, but a stoop, which was attached to the front of the house and the stoop met yard requirements and was not in violation.
Mr. Hart established that the second violation was not part of the present hearing.

Mr. Hart referred to the applicant's statement of justification. He asked Mr. Cadena if he had originally intended to make an enclosed patio, but then decided to make a laundry room instead. Mr. Cadena said that was correct.

Mr. Hart further clarified that the floor of the laundry room was elevated off the ground and not on the patio itself, and asked if there were any architecture or engineering plans for the room.

Mr. Cadena confirmed that the laundry room floor was elevated. He also told the Board that there were no engineering or architectural drawings since he and his brother-in-law were doing the work themselves.

Mr. Ribble questioned if Mr. Cadena's brother-in-law's construction company had plans to finish this job. Mr. Cadena said no, that he planned to get a professional to finish the job.

Mr. Hart inquired if the letter from Ms. VanRochle, the applicant's next door neighbor, who had complained of debris in Mr. Cadena's yard, was an independent issue.

After a short discussion, the Board decided that the County Inspector would also be asked to inspect the property for debris.

Mr. Kelley inquired of staff as to how long it would take before such an inspection could take place, and get a report back to the Board. Mr. Bernal stated that it would take a couple of weeks to get someone out to inspect the property, and Ms. Langdon noted that the Board could schedule a new hearing for Mr. Cadena on May 1, 2001.

Mr. Kelley moved to continue the hearing until May 1, 2001, at which time a full report from the Inspector should be received. Mr. Hammack seconded the motion, expounding on the laundry room addition and the requirements that needed to be met.

The motion carried by a vote of 7-0.

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Page 220, April 17, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ELIAS C. GALLARDO RAMIREZ, SP 01-B-001 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 accessory structure to remain 2.0 ft. from rear lot line. Located at 4407 Alta Vista Dr. on approx. 15,813 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 147.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elias Gallardo Ramirez, 4407 Alta Vista Drive, Fairfax, Virginia, replied that it was. Maria Quintero, the daughter of Elias Gallardo Ramirez, came forward and stated that her father had named her as his agent because of his limited English and she had worked through the application process on his behalf.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a special permit to allow reduction to minimum yard requirements based on an error in building location to permit a concrete block shed to remain 2 feet from the rear lot line. Section 10-104 of the Zoning Ordinance stated that no accessory structure or use which exceeded 7 feet in height shall be located closer than a distance equal to the height to the rear lot line. Therefore, the minimum rear yard established by the structure is 13.1 feet, the height of the structure, and the amount of error was 11.1 feet.

Mr. Hart stated that in the photographs, there were two sheds and he questioned the status of the height of the second shed. Ms. Stanfield said that the second shed was not in violation.

Ms. Quintero stated that the family originally had a small storage area for the house; however, it was falling down. She called the County three times to check if a building permit was needed, and was told that as long as the structure was within a certain size, a building permit would not be needed. Ms. Quintero said she gave her father the information from the County, but he apparently lost it. Since he decided to go forward and construct his shed in accordance with the measurements of his neighbor's shed. He had 30 years of construction experience, and therefore, built his own shed with the help of family members. He chose to use cinderblocks to make it solid. Mr. Ramirez stated that he was unaware of setback requirements, and noted that varying sheds in the neighborhood were all about 2 feet away from adjoining properties.

Mr. Hart questioned if any electricity would be hooked up to the shed and Mr. Ramirez said no, that he had put windows in because he only anticipated using it during the day. He stated that he also intended to paint the outside of the cinderblocks.

Mr. Hart noted that in a related photograph, he saw a third shed on lot 148, Mr. Ramirez' neighbor, that was about the same size as the one Mr. Ramirez had been cited for and questioned if the Inspector had cited that owner. Ms. Stanfield said she did not have any information regarding the adjacent lot.

Ms. Gibb questioned what materials were used for his personal home and Ms. Quintero answered that the house was built with siding and brick.

There were no speakers and Chairman DiGiulian closed the hearing.

Mr. Ribble moved to approve SP 01-B-001 for reasons stated in the Resolution.

Mr. Hammack stated that he could not support the motion due to the large size of the structure, just 2 feet off the property line. The measurements show it to be 19.3 feet long and 10 feet deep. Mr. Hammack also found that after Mr. Ramirez had lost the information from the County, he proceeded to build without measurements or setback requirements. He noted that Mr. Ramirez had worked in construction for 30 years and questioned why Mr. Ramirez didn't follow-up on County requirements.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ELIAS C. GALLARDO RAMIREZ, SP 01-B-001 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 accessory structure to remain 2.0 ft. from rear lot line. Located at 4407 Alta Vista Dr. on approx. 15,813 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 147. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 17, 2001; 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:

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

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 limitations:

1. This Special Permit is approved for the location of an accessory storage structure as shown on the plat prepared by Cervantes and Associates, dated January 24, 2001, submitted with this application and is not transferable to other land.

2. The accessory structure shall be finished in such a way to be harmonious and compatible with the dwelling and shall be painted and/or finished with siding.

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 was 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 April 25, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 222 April 17, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TERRELL F. & VIVIAN M. WATERS, SP 01-D-003 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit storage structure to remain 3.2 ft. from rear lot line and 3.1 ft. from side lot

line. Located at 12036 Sugarland Valley Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 421. (Concurrent with VC 01-D-018).

9:00 A.M. TERRELL F. & VIVIAN M. WATERS, VC 01-D-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.8 ft. from rear lot line. Located at 12036 Sugarland Valley Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((4)) 421. (Concurrent with SP 01-D-003).

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 Garner, Agent, Patio Enclosures, contractor, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of a special permit for a reduction in minimum yard requirements based on an error in building location to permit an accessory storage structure to remain 3.2 feet from the rear lot line, and 3.1 feet from the southeast side lot line. In the R-3 Cluster district, a minimum 9.5 foot rear yard and 8 foot side yard are required. Therefore, modifications of 6.3 feet and 4.9 feet were requested respectively for the existing shed.

The applicant also sought approval to permit the construction of a sunroom addition to the dwelling to be located 16.8 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 8.2 feet was requested for the addition. Mr. Gardner asked to waive the eight-day waiting period if the variance was approved.

Mr. Garner stated that the variance was required for the sunroom because of the exceptional shallowness of the rear backyard. He said the applicants had been the owners of their home for 13 years. He stated that at the time they originally erected their shed, they had called the County and were told that the setback was required to be a minimum of 3 feet for the shed. He said at that time, Fairfax County Parkway was not in existence. However, since the Parkway was built, the property had been rezoned and the location was considered to have two front yards and no rear yard. That, he said, required the applicants to obtain a variance approval for their shed. Mr. Gardner said the size of the shed is 8.2 feet by 11.9 feet. He stated that the homeowners had a privacy fence on the rear yard by the side rear of Fairfax County Parkway.

Mr. Garner said that one of the reasons for the proposed sunroom was for a sound barrier from the Parkway traffic, which could be heard inside the home. He said the applicants were told that a noise barrier was not going to be erected by the County in the area of their property. He stated that the sunroom was proposed to be built on top of the existing deck and would not protrude any further than the deck.

Mr. Hart asked Mr. Garner if he was familiar with the plat showing a 25-foot storm drainage easement in the back 25 feet of the house next door and if that easement continued along the back of lot 421. Mr. Garner stated that he did not know, but that everything was graded toward the neighboring lot.

Ms. Gibb asked staff if the property actually had two front yards. Ms. Josiah stated that since the rear yard abutted with Fairfax County Parkway, which was arterial, it was determined to be a rear yard.

There were no speakers and Chairman DiGiulian closed the hearing.

Ms. Gibb moved to approve SP 01-D-003 for reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TERRELL F. & VIVIAN M. WATERS, VC 01-D-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.8 ft. from rear lot line. Located at 12036 Sugarland Valley Dr. on approx. 8,800 sq. ft. of land zoned R-3 (Cluster). Dranesville District. (Concurrent with SP 01-D-003). Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 17, 2001; 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;
. 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 limitations:

1. This Special Permit is approved for the location of an accessory storage structure (shed) shown on the plat prepared by Alexandria Surveys, Inc., dated November 4, 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 ordinances, regulations or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 7-0. Ms. Gibb moved to waive the eight day waiting period. Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 17, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. MICHAEL J. ROMANELLI, II, VC 01-P-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from side lot line. Located at 3011 Woodlawn Ave. on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((6)) 172.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael J. Romanelli, II, 3011 Woodlawn Avenue, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit the enclosure of a screened porch to be located 5.1 feet from the south side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, a variance of 4.9 feet was requested for the addition.

Mr. Romanelli stated that the porch was in existence when he purchased the home. He said that the house had no basement and was basically a 1½ story structure. Since the porch did not get used much due to the weather in this area, he would prefer to enclose the area and be able to use it as a room. He stated that the neighbors were supportive of the enclosure.

There were no speakers and Chairman DiGiulian closed the hearing.

Mr. Kelley moved to approve VC 01-P-021 for reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL J. ROMANELLI, II, VC 01-P-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from side lot line. Located at 3011 Woodlawn Ave. on approx. 7,200 sq. ft. of land zoned R-4. Providence District. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 17, 2001; 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 applicant's statement of justification explains the situation satisfactorily.

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 (enclosed screened porch) shown on the plat prepared by Alexandria Surveys, Inc., dated December 13, 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.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 25, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 226, April 17, 2001, (Tape 1), After Agenda Items

Approval of April 10, 2001 Resolutions

Mr. Pammel made a motion to approve the April 10, 2001 Resolutions. 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 9:50 a.m.

Minutes by: Judith A. Gobbi

Approved on: September 18, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, April 24, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 229, April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JONATHAN P. SINGER, SP 01-P-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. from side lot line. Located at 2446 Shenandoah St. on approx. 11,545 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 147.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jonathan P. Singer, 2446 Shenandoah Street, Vienna, Virginia replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 8.9 feet from the side lot line. A minimum side yard of 12 feet is required; therefore a modification of 3.1 feet was requested.

Mr. Singer presented the special permit application request as outlined in the statement of justification submitted with the application. He said that the distance from the side lot line was the same distance as the garage side lot line. He explained that the error in building location was discovered after construction had begun and that the neighbors had no complaints with the structure.

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

Mr. Hammack moved to approve SP 01-P-006 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JONATHAN P. SINGER, SP 01-P-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.9 ft. from side lot line. Located at 2446 Shenandoah St. on approx. 11,545 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 147. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2001; 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 addition as shown on the plat prepared by John W. Veatch, Land Surveyor, dated November 10, 1994, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 230 April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. NICHOLAS ROUSOS, VC 01-V-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7920 Flint St. on approx. 26,206 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((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. Nicholas Rousos, 7920 Flint Street, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought approval to permit construction of a detached garage in the front yard of a lot containing 26,206 square feet. The Ordinance does not permit accessory structures in any front yards of lots containing 36,000 square feet or less.

Mr. Rousos presented the variance application request as outlined in the statement of justification submitted with the application. He stated that due to storm water easements running through his property, it was prohibitive for him to attach a garage to the house and also noted that the house was setback very far on the property, which made it impossible for him to build behind the house. He said this left only the side yard as an option for a garage. Mr. Rousos said that when he bought the property, there were three existing sheds, all which were closer to the property line. He said two had been removed and he wanted to take down the remaining shed, and have it replaced by the proposed garage.

Mr. Rousos asked the Board for permission to relocate his driveway. He proposed that he would exit his property onto Redmond Street, which was safer, had a more shallow grade, and greater visibility. He stated that because of the way the house was situated on the property, he wanted to close the driveway on Flint Street and be allowed to open a new driveway onto Redmond. His plans included placing a fence all the way across the old driveway. Mr. Hart asked what was the height of the proposed structure. Mr. Rousos replied that the structure would be 12 feet high at the ridge, which was one story-high.

Mr. Hart confirmed his understanding that the structure would be one level and have no upstairs. He also asked if there would be any plumbing to the garage and if there were any other functions for the structure. Mr. Rousos assured him that there was no plumbing planned and that it would be used solely as a garage and storage for lawnmowers, tools, etc.

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

Mr. Pammel moved to approve VC 01-V-023 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NICHOLAS ROUSOS, VC 01-V-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7920 Flint St. on approx. 26,206 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 98-1 ((3)) 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 April 24, 2001; and

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

1. The applicant is the owner of the land.
2. There are constraints because of the easement and a safety factor having the driveway on Flint Street.
3. The applicant proposes to relocate driveway.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 William Basil Rousos, dated June 7, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 May 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 232, April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM STAGE & GLORIA MOROTE-STAGE, VC 01-V-022 Appl. under Sect(s). 18-401 of the Zoning Ordinanceto permit construction of addition 31.0 ft. from front lot line. Located at 1927 Marthas Rd. on approx. 24,022 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((5)) 147.

Chairman DiGiulian stated that this case had been administratively moved to May 29, 2001.

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9:00 A.M. VULCAN MATERIALS COMPANY, SPA 82-V-091-4 Appl. under Sect(s). 3-103, 3-C03 and 5-603 of the Zoning Ordinance to amend SP 82-V-091 previously approved for stone quarrying, crushing, sales and related sssociated quarrying activities to permit renewal, modification of development conditions and site modifications. Located at on the W. side of Route 123 and N. of the Occoquan River on approx. 305.40 ac. of land zoned R-1, R-C, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) pt. 4B; 106-4 ((1)) pt. 1B, pt. 20B, pt. 23, pt. 54, pt. 56; 112-2 ((1)) pt. 8, pt. 9 and pt. 11, 12 and 13. (Moved from 2/6/01 and 3/6/01) (Def. From 3/27/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mike Giguere, Agent, McGuire, Woods, 1750 Tysons Boulevard, McLean, Virginia, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a renewal of the five-year operating term. The site had been the subject of special permits granted since 1972 and the applicant had requested the same conditions as had previously been approved. She said this included hours of operation, blasting standards, transitional screening, operational details, and transportation methods and access. Ms. Josiah stated that the staff recommended approval of the application

Mr. Pammel noted that in the materials from the applicant, there were two documents from Prince William County. The first issue was a request for a notification, similar in manner to what the applicant had provided to Fairfax County before they do blasting. He pointed out that the closest residences to the facility were located in Prince William County and complaints had been received from them. He said he believed more could be done on behalf of their community. Mr. Pammel said the second issue was that of traffic problems and he felt that staff had dealt with the traffic issues satisfactorily.

Mr. Hammack stated that since the development conditions required Vulcan to notify the Fire Prevention Emergency Center and the Zoning Administrator of Fairfax County, that this same provision should also be added for Prince William County. Mr. Hammack suggested that Vulcan contact Prince William's Fire Prevention Public Safety Communications Center by phone using the telephone number given in the letter as had been done with Fairfax County.

Mr. Hart stated that he was concerned with the language in Development Condition 39, and asked that more precise wording be used in that Development Condition. After a brief discussion, it was decided to let the applicant address the previous issues.

Mr. Giguere presented the variance application request as outlined in the statement of justification submitted with the application. He first addressed blasting concerns but states that when new residents had come into the county, they heard blasting sounds and became concerned. Vulcan was often blamed for blasts that were not done by them. He explained that the applicant only blasted during the day, on the average of 150 times per year, and tried to only blast around the lunch hour, as stated in the Development Conditions.

Mr. Giguere said that evening blasts were being blamed on Vulcan. However, the blasts had actually been artillery pieces being shot from Quantico, Virginia, and usually the only time people felt them was when there had been a low overcast evening. He also said that recently variances had been given to Water Authority contractors, and they had done some blasting in the evening which had caused a lot of calls and complaints in the last two to three months, and he wanted to emphasize that Vulcan was not responsible for evening blasts.

Mr. Giguere referred back to Mr. Hart's question regarding Development Condition 39 stating that over the last 10 years Vulcan had made major improvements in the roadwork to help with traffic and Vulcan had a long-range plan to move its entrance. The plan was to combine the entrance with the Water Authority and add a traffic signal.

Mr. Hart stated that he appreciated the cooperation of Mr. Giguere and his client in deleting requests for expanding the hours and blasting in the Development Conditions. He then addressed the issue of notification to Prince William County. Mr. Hart said he had a letter from Prince William County in which they gave a phone number to be notified before the blasting. He asked if Mr. Giguere's client would be willing to

call Prince William County four (4) hours prior to blasting and Mr. Giguere agreed on behalf of his client.

Mr. Hart then referred back to Development Condition Number 39. He asked Mr. Giguere if it would be acceptable to change the language by deleting the word 'approximately' in the first sentence and Mr. Giguere also agreed to that on behalf of Vulcan.

Mr. Hart questioned the last sentence of Development Condition Number 39. He asked who would be paying for the traffic signal at the proposed new entrance. Mr. Giguere stated that VDOT would pay for part of the signal; however, Vulcan was working along with the Water Authority to put in the new entrance and would share costs.

Mr. Hammack asked if Mr. Giguere had reviewed the lengthy Development Conditions dated April 23, 2001, and whether he found them acceptable. Mr. Giguere replied that he had read them. He also stated that staff consistently did a good job and that is why there was so little need for debate.

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

Mr. Hart moved to approve SPA 82-V-091-4 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VULCAN MATERIALS COMPANY, SPA 82-V-091-4 Appl. under Sect(s). 3-103, 3-C03 and 5-603 of the Zoning Ordinance to amend SP 82-V-091 previously approved for stone quarrying, crushing, sales and related associated quarrying activities to permit renewal, modification of development conditions and site modifications. Located at on the W. side of Route 123 and N. of the Occoquan River on approx. 305.40 ac. of land zoned R-1, R-C, I-6 and NR. Mt. Vernon District. Tax Map 106-3 ((1)) pt. 4B; 106-4 ((1)) pt. 1B, pt. 20B, pt. 23, pt. 54, pt. 56; 112-2 ((1)) pt. 8, pt. 9 and pt. 11, 12 and 13. (Moved from 2/6/01 and 3/6/01)(Def. From 3/27/01) 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 April 24, 2001; and

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

1. The applicant has presented testimony showing that they have met the required standards and have a favorable staff report.

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, 3-C03 and 5-603 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 only and is not transferable without further action of this Board, and is for the location indicated on the application, (approximately 305.4 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 CTI Consultants, Inc. and Stevenson and Stewart, Inc. dated January 4, 2001 and approved with this application, as qualified by these development conditions.

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

4. This special permit is granted for a period of five (5) years from the approval date of SPA 82-V-091-4 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

5. 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.

6. Prior to the issuance of a Non-Residential Use Permit for the 75.3 acre expansion area, Tax Map 106-3 ((1)) pt. 4B, the following submissions shall be made to the Department of Public Works and Environmental Services:

   A grading plan shall be submitted for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance. This grading plan shall be engineered so as to preserve existing drainage patterns outside the pit area to the greatest extent possible and shall also reflect phasing of clearing and grading to preserve the existing vegetation and prevent excessive erosion.

   A landscape plan shall be submitted to the Urban Forestry Branch, DPWES, for review and approval for the area of the property that is outside the limits of clearing and grading as shown on the special permit plat. This landscape plan shall also contain a tree preservation plan reflecting an intent to preserve existing vegetation to the greatest extent possible along the northeastern and eastern lot lines. The proposed berm as shown on the special permit plat along the northeastern lot line shall be relocated as far to the south within the area of the 200 foot buffer area as feasible. A minimum of 100 feet of existing vegetation shall be preserved between the berm and the northeastern lot line. If any of the vegetation within the 100 foot buffer or beyond the limits of clearing and grading for the berm along the eastern lot line is lost during clearing and grading for the berms, replacement vegetation and/or replacement trees shall be provided. The number, species and location of these trees shall be as determined by the Urban Forestry Branch, DPWES. This plan shall detail proposed plantings on the berms which are reflected on the approved special permit plat. The density and species of plantings shall be substantially as shown on the special permit plat subject to approval by the Urban Forestry Branch, DPWES. All evergreen trees placed on the berm, at a minimum, shall have a planting height of four (4) feet.

7. The existing berm east of the approved expansion area shall be maintained. Prior to excavation of stone from the expansion area of the property, the berm north of Penniwill Drive shall be constructed as shown, except as qualified previously, on the special permit plat (west of Parcel 23). All berms shall have a minimum height of fifteen (15) feet as shown on the special permit plat. The Zoning Administrator, in consultation with DPWES, may permit modifications, changes or adjustments to the berm size, height, width or location if justified by sound engineering, environmental or safety reasons.

8. The EQCs shall be as shown on the special permit plat subject to final delineation at the time of grading plan approval. The boundaries of the EQC shown on the special permit plat may be adjusted subject to the approval of DPWES and the Environment and Development Review Branch, DPZ, based on factors such as actual field survey, drainage issues, tree or vegetation preservation concerns. The areas denoted as EQCs on the special permit plat shall be permanently marked with orange fencing to ensure grading and earth moving equipment does not disrupt the EQ. There shall be no clearing, grading or structures in the areas identified as EQCs in the final delineation shown on

the approved grading plan.

9. The vegetation preserved in the EQCs and to be provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening and shall be maintained in a healthy condition. Species and exact location of any replacement trees shall be as determined by the Urban Forestry Branch, DPWES. The chain link fence surrounding the site shall be deemed to fulfill the barrier requirement.

10. Landscaping and screening shall be provided in accordance with the master reclamation plan submitted with this application subject to the approval of the Urban Forester

11. The bond of $2,000 per acre to insure restoration of the property shall be continued for the duration of this operation. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.

12. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 232 acres as is shown on the approved special permit plat.

13. A stormwater management and erosion and sediment control plan shall be prepared and implemented for the expansion area as approved by DPWES.

14. The applicant shall coordinate with the Code Analysis Branch of the Environmental and Facilities Review Division of the Department of Public Works and Environmental Services (DPWES) regarding best management practices (BMP) requirements of the Chesapeake Bay Preservation Ordinance. The applicant shall comply with those standards as determined by DPWES.

15. Drilling or crushing shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m., Monday through Friday and all blasts shall be adjusted to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately-owned occupied dwellings. The Zoning Enforcement Branch of the Fairfax County Department of Planning and Zoning (DPZ) and the Prince William County Public Safety Communications Center, at 703-792-6810, shall be notified at least four (4) hours prior to each blast. Work on Sundays shall be confined to repairs on the processing plant, items of equipment and the operation in general.

16. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more than 0.6. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.

17. The peak overpressure from any blast shall be limited to 0.0092 psi (130 dB) at any privately owned occupied structure not on quarry property.

18. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned occupied structure not on quarry property.

19. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBa in residential areas or 65 dBa in commercial areas.

20. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines. The applicant shall indicate the location of all explosives magazines to the Zoning Enforcement Branch of the Department of Planning and Zoning. No magazine shall be stored within the northern expansion area.

21. No blasting, drilling or extraction shall be permitted on the parcel leased from the United States of America and known as Tax Map 112-2 ((1)) 13.

22. The crushing equipment may be located at the discretion of the applicant, provided it is located within the pit area and is operated pursuant to these conditions. An adequate dust suppression system shall be provided on the crusher to prevent point source emissions from the crusher, screens, shakers and the various conveyors during all periods of operation including, but not limited to: testing; maintenance; and the actual crushing of extracted materials, stone and concrete and/or re-crushing of the same.

23. In the event any new feasible equipment or means of controlling the dust from blasts becomes available to the industry, these shall be installed and used.

24. Dust control equipment shall be installed, maintained and operated on all portions of its processing plant so as to adequately control dust.

25. All conveyors shall continue to be covered, if necessary, to meet applicable standards.

26. Paved roads and other paved areas within the confines of the quarry shall be watered and cleaned with heavy duty cleaning equipment to prevent dust or mud from entering the public street.

27. All trucks transporting material excavated from the site to any off site location shall be covered.

28. Vulcan Materials Company, Inc. will take all steps appropriate or as required for deadening sounds of vibrating screens and plat operations during all periods of plant operation.

29. This approval includes the barge loading facilities and the operation thereof located on the north side of the Occoquan River adjacent to the site.

30. Two-way communication equipment shall be provided for use by zoning inspectors while conducting site inspections.

31. The Zoning Administrator, or designated agent, shall be permitted to inspect the premises monthly to determine that the quarry is being operated in compliance with all the foregoing restrictions.

32. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Department of Planning and Zoning on an annual basis.

33. Prior to the commencement of operations in the expansion area, an additional air quality monitoring station shall be provided by the applicant and installed as necessary and as required by the County Health Department to demonstrate the attainment and maintenance of ambient PM10 and TSP air quality standards.

34. The applicant shall provide the Department of Planning and Zoning with a record of any complaints or violations related to State and Federal permits for air quality compliance and water quality control.

35. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator. As monitoring equipment is shared between Luckstone Quarry and Vulcan Quarry, the applicant shall be responsible for fifty percent (50%) of the cost of the maintenance of all seismographic and noise monitoring equipment required in previous approvals of this use.

36. Penniwill Drive shall only be used for emergency vehicle access.

37. SEA 82-V-046, APAC-Virginia, Inc., leasee of Tax Map 112-2 ((1)) 12, is not a part of this application and a change in this use or corresponding SEA would not necessarily require a change to this special permit.

38. Revised Master Reclamation Plan reflecting existing and proposed conditions shall be submitted to the Urban Forestry Branch, DPWES within twelve (12) months of the date of this special permit amendment approval.

39. Trucks leaving the site shall be restricted from turning left on to Route 123 from the existing point of egress from the site between the hours of 7:00 a.m. and 9:00 a.m. and 4:00 p.m. and 6:00 p.m., Monday through Friday. This condition shall not be implemented for a period of 24 months from the date of approval of SPA 82-V-091-4, unless the 24 month period is extended by VDOT. At such time, Vulcan shall relocate, at its cost, if said new entrance is not already in included as part of the VDOT Route 123 widening project, the existing Vulcan entrance on to Route 123 to a new entrance to be shared with the Fairfax County Water Authority. Said new entrance shall be designed and located in accordance with plans approved by VDOT which may include signalization.

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, the portion of this application which is for renewal of the quarry use shall become valid upon the date of approval by the BZA. The portion of the special permit amendment for the relocation of the berm 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 and Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 238, April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SANTIAGO G. CISNEROS, SP 01-P-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 1.1 ft. from side lot line. Located at 2817 Bolling Rd. on approx. 7,327 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((6)) 440.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was accurate and correct. Charlie Choe, Agent, 7206 Poplar Street, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought to allow a minimum yard reduction based on an error in building location to permit a carport to remain 1.1 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 5.0 feet; therefore the amount of error was 78%.

Mr. Choe presented the variance application request as outlined in the statement of justification submitted with the application. He stated that the applicant had not known the County regulations when he erected his carport without a building permit. Mr. Choe acknowledged that the carport had apparently created problems with run-off water and caused damage to the neighboring yards. He stated that if this permit was approved, he recommended that Mr. Cisneros channel the run-off water to flow onto his own property.

Mr. Hammack asked if the applicant constructed the carport himself and if the carport met building code requirements. He noted that the carport did not look structurally sound. Mr. Choe responded that Mr. Cisneros had erected the carport over the existing driveway, attaching the roof to the existing fence posts. Mr. Choe agreed that the carport appeared to be unstable because the applicant had not been aware of the

County building codes. However, he explained, that Mr. Cisneros had agreed to get a building permit to make sure that the structure would be architecturally sound.

Mr. Ribble inquired if the applicant had planned to restructure the carport. Mr. Choe explained that the owner had not wanted to change the carport, but had agreed that he would reinforce the beams and columns. Mr. Choe said that Mr. Cisneros had not known about County restrictions, and unknowingly, built it too close to the lot line.

Ms. Gibb asked for some clarification on the position of the fences and boundary line. She also questioned if the roof of the carport was going to remain the same and if there was any shrubbery along the fence. Mr. Choe replied that he needed to verify the building codes before any plans would be made for the carport. He added that there was currently shrubbery on the property.

Mr. Hart noted that in the photos of the structure, the carport appeared to be incomplete. He further inquired if there were plans in the future to paint and improve the structure. Mr. Choe stated there were no plans to change the carport unless necessary.

Mr. Hart asked staff if a neighbor had complained about the structure. Mr. Paul McAdam, Zoning Inspector, explained that a neighbor had complained. Mr. McAdam submitted his own photos of the carport and shrubs to the Board.

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

Mr. Ribble moved to deny SP 01-P-005 based on the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANTIAGO G. CISNEROS, SP 01-P-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 1.1 ft. from side lot line. Located at 2817 Bolling Rd. on approx. 7,327 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((6)) 440. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2001; and

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

1. The applicant is the owner of the land.
2. The error does exceed 10% of the property.
3. The testimony is that the applicant did not know the Zoning Ordinance when he built the carport, and it appears that it won't be difficult to take down.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

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

Mr. 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 May 2, 2001.

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Page 240 April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CLIFFORD T. MASSA, III, VC 01-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line. Located at 1935 Franklin Ave. on approx. 21,792 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 32B and 41-1 ((8)) 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. Cliff Massa, III, 1935 Franklin Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a variance to permit construction of a second-story addition to be located 11.8 feet from the north side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a variance for 3.2 feet was requested.

Mr. Massa presented the variance application request as outlined in the statement of justification submitted with the application. Mr. Massa stated that he purchased his home in 1980 and he wanted to considerably increase the size of his house by taking the existing house up to a full second floor. He also wanted to construct a two-story addition off the other side of the house, which was the reason for the variance request.

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

Ms. Gibb moved to approve VC 01-D-025 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLIFFORD T. MASSA, III, VC 01-D-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.8 ft. from side lot line. Located at 1935 Franklin Ave. on approx. 21,792 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((1)) 32B and 41-1 ((8)) 22. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented written testimony that they meet the required standards.
3. The house was constructed 2.1 feet from the side lot line.
4. The proposed addition is over the existing footprint.

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

1. That the subject property was acquired in good faith.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 10, 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.

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.

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 May 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 241, April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. EINER R. NIELSON, VC 00-D-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 outlot into 3 lots and 1 outlot with proposed Lots 1 and 2 having a lot width of 8.08 ft. and proposed Lot 3 having a lot width of 8.07 ft. Located at on the W. side

of Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. Moved from 1/30/01 for notices) (Moved from 3/13/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Einer R. Nielson, 8704 Park Street, Vienna, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested permission to subdivide one outlot into three lots plus one outlot. The proposed lots one and two would have a lot width of 8.08 feet, and proposed lot three would have a lot width of 8.07 feet. A minimum lot width of 70 feet was required by the Zoning Ordinance for the R-4 zoning district. Therefore, a variance of 61.92 feet was requested for lots one and two, and a variance of 61.93 feet was requested for proposed lot three. She said that the applicant also proposed to provide for an outlot for a possible storm water management facility.

Ms. Stanfield stated that staff did not believe that the application met all nine standards for variances as set forth in the Zoning Ordinance. However, she asked that if the Board did approve the application, that it should be conditioned by the revised development conditions that had been distributed before the hearing.

Mr. Hart asked if the property was zoned R-4 in 1983 and what was the frontage requirement on the street prior to the subdivision. Susan Langdon, Chief, Special Permit and Variance Branch, told the Board at the time that the property was subdivided in 1983, the frontage included all of Mr. Nielson's property, including a lot that Mr. Nielson had sold. Ms. Stanfield said that, according to the 1983 plat, the frontage along the original property was at least 103 feet, which would have met the requirement at that time. She also noted that the old plat illustrated that the property was zoned R-4.

Mr. Hart said it was unclear who would be responsible for the maintenance of Outlot A. He suggested that possibly a Home Owners Association would own and maintain it. Ms. Langdon confirmed that an HOA, consisting of the three proposed houses, would be responsible for the maintenance of Outlot A.

Ms. Gibb asked for an explanation of the difference between a bio-retention system and a storm water retention pond in the removal of trees and the effect of each on the land. Mary Ann Welton of the Environmental and Development Review Branch of the Department of Planning and Zoning explained that bio-retention involved layering of gravel, sand, and soil with plants on the top. A storm water pond also involved clearing of the land. She said that in either instance, substantial clearing of the land would be required.

Ms. Stanfield said that she had spoken to the property owner of Lot 39, and confirmed that they were unable to identify any access to the property. The lot owners were, however, very interested in obtaining access to Lot 39.

Mr. Nielson presented the variance application request as outlined in the statement of justification submitted with the application. He stated that when he originally bought the acreage, it was rundown due to neglect. He said that he and his family had worked for 11 years to clean-up the land and they had lived there for a number of years. However, due to his wife's bad health, the doctor recommended they move to a one floor home, which they did.

Mr. Nielson said that he had hired an engineer in 1983 to come up with a plan to sell Lot 44A and to protect him for the future development of the back property, now called 44B of the Outlot to the Phillips estate. Mr. Nielson stated that he really believed the previous engineer 'hornswaggled' him at that time. Especially now since he had been told by staff and the McLean Citizens Association that he willfully caused the subdivision problem when he sold the first property.

Mr. Neilson said that he had asked for a variance because he wanted to build three houses on his property. Originally he had wanted to build five houses, because that was what the engineer back in 1983 proposed he could do. At the recommendation of the staff, he had reduced the amount to three houses. He stated that he wanted to build three houses on this site for he and his wife, his son and his daughter.

Mr. Nielson said he had offered to repair the storm water drainage on the property as well as the retaining

wall that actually extended into Four-Mile-Run. Mr. Nielson introduced his current engineer, Kaiwan Jaboori, who was present to explain the technical aspects of Mr. Nielson's plans.

Mr. Jaboori stated that he did not have any knowledge about Mr. Nielson's previous engineer. He said he had prepared the plans as requested by Mr. Nielson, which originally had five lots. He then found that there were environmental issues such as storm water management requirements and wetlands being near Four Mile Run which would not allow the density that Mr. Nielson had wanted.

Mr. Jaboori explained that he had read the concerns of the McLean Citizen's Association regarding the property and the proposed development and he had met with them on March 27, 2001. He said they came to an agreement pertaining to certain requirements of Chapter 101 Fairfax County Code.

Mr. Jaboori stated that he fully intended to follow all of the requirements and satisfy the Fairfax County Environmental Services and DPW as well as any restrictions that the Board may put upon the development of this property. He acknowledged that the development was not necessarily in harmony with the rest of the development. He said they provided an average of 16,400 square feet and an average of 22,000 square feet, which appeared to be fairly compatible with the lots in that area.

Mr. Jaboori added that improvements were planned regarding the storm sewer, the exposed sanitary sewer run and its encasement along Four Mile Run. He said that the two retaining walls that were on Mr. Nielson's property on the north side and the one along Four Mile Run Creek were intended to be repaired. He said that the removal of some greenery, vegetation and trees, which were very important to the neighbors, were intended to be replaced by Mr. Nielson. Mr. Jaboori expressed that he wanted to ask for at least a water management waiver, which would result in disturbing less land and preserving more trees on the site.

Ms. Gibb asked if he thought the applicant believed that he would have been able to develop the remainder of his land when he sold off his first parcel in 1983. Mr. Jaboori reiterated that he had never spoken to the previous engineer but believed that it was probably known that a variance would eventually be needed; however, it was probably thought that this would not be a big problem.

Mr. Nielson then stated that he had to give up 10,000 square feet of his frontage to Fairfax County for road-widening in the past. At that time, the State put in a 50 feet curb cut to the left of the house, which was to be used as an access to the back of the property. Mr. Nielson said that he could have built 50 feet on the other side, but now has only 30 feet.

Ms. Gibb clarified that Mr. Nielson had planned to put in a 50 feet wide street along the entire length of his properties had the County not widened the road and Mr. Nielson confirmed that had been his intention.

Mr. Hart asked staff if there was an outlot between the existing house and the pipestem drive, and did that side yard become a front yard. Ms. Langdon replied that the side yard did become a front yard, which required a significant difference in the setback. She said that this was addressed in the staff report and found to be an important issue.

Mr. Hammack briefly discussed with staff the status of the easement by the owner of Lot 44B and how this variance would affect them.

Chairman DiGiulian asked for speakers.

Adrienne Whyte, spokesperson for the McLean Citizen's Association, came forward to speak in opposition. She read a letter that stated the multiple reasons that the group opposed the variance, and respectfully requested that the Board deny the variance.

Mr. Pammel asked Ms. Whyte what other options were available to the applicant for use of the land. Ms. Whyte stated that a single house could be built on the land and it would have much less impact on the environment.

Mr. Pammel offered a second solution to Ms. Whyte. He asked what she thought of an option that would allow the applicant to purchase some of the land from the owner of Lot 44B and the easement. He said that would allow Mr. Nielson to have the acceptable land for a street, and be able to put in a subdivision, which

would cause even more disruption to the environment. Ms. Whyte deferred answering to the owner of Lot 44B, Mr. Schule, who was present.

Frank Crandall introduced himself as the Dranesville representative of the County's Environmental Quality Advisory Council and Environment Committee Chairman of the McLean's Citizens Association came forward to speak in opposition. He discussed the Four Mile Run waters which runs through Mr. Nielson's property, and how any changes to it actually goes against the County's philosophy on stream protection. He stated that no floodplain studies had been done, and believed that it would be environmentally unsound. He respectfully asked that the Board deny the application.

Jim Schule, 2312 Westmoreland Street, Lot 44B, came forward to speak in opposition. He said that when he and his wife purchased their home two years ago, it was noted on the plat of the property that Outlot A did not meet Fairfax County requirements for development and that was a selling point for them. He noted that if the variance was approved, any changes he may want to make on his property would require him to get a variance, which he stated was very unfair.

Mr. Hart asked Mr. Schule to show him on the overhead projector, the location of his well, which was done. Mr. Schule also showed the location of his house and pool in conjunction with the applicant's property.

Debra Schule, 2312 Westmoreland Street, Lot 44B, came forward to speak in opposition. She spoke of the disruption to her 100-year old home and yard due to the anticipated tree removal. She said that the applicant's request was contrary to the public interest and the harmony of the neighborhood. She respectfully asked that the Board deny the request.

Susan Szwicki, 2309 Whitcomb Place, Lot 21, came forward to speak in opposition. She expressed that she ad many objections, such as the environmental impact to Four Mile Run, but would keep her comments based on just two other outstanding issues. Ms. Szwicki said the variance would impact their ability in the future to build onto their house and the second issue was the removal of the forty trees. She stated that a variance should not be granted to Mr. Nielson because the hardship he was proclaiming was self-imposed.

Kevin Fitzgerald, of 2307 Whitcomb Place, owner of Lot 22, came forward to speak in opposition. He said he strongly opposed the development. He said that the variance was based on a self-imposed hardship and if it were granted, it would transfer the hardship from the applicant to all of the adjoining neighbors. He felt that the variance would limit any expansion on his property and would affect the ultimate property value of his home and that of his neighbors. He respectfully requested that the application be denied.

Michael Commar, 2308 Whitcomb Place, came forward to speak in opposition expressing that he and his wife strongly opposed the granting of the variance. He said they had lived in their current home for over 40 years and the proposed subdivision would be less than 100 feet from their property. Mr. Commar said their house was surrounded by woods, and their closest neighbor's house was obscured by woods. He stated that the proposed houses would be within 100 feet of their backyard patio and would definitely impact their privacy. He said Four Mile Run produced many mosquitoes and believed that the storm water management facility in the plans would just add to the mosquito problem. He requested that the application be denied.

Mr. Nielson stated in his rebuttal for the Board to consider whether he would have paid money to create a self-imposed hardship for himself. He stated that the stream the others spoke of was nothing more than a sewer, and the trees that had to be removed would be replaced by him with specimen trees. He said that if a floodplain study was required, he would pay to have it done. Mr. Nielson noted that the well Mr. Schule spoke about was a decorative well and that Mr. Schule got his water from Falls Church and not from the well. He stated that he had 1.63 acres of land and all he was asking for was a variance to allow him to build three houses for his family.

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

Mr. Kelley moved to deny VC 00-D-148 based on the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

EINER R. NIELSON, VC 00-D-148 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 outlot into 3 lots and 1 outlot with proposed Lots 1 and 2 having a lot width of 8.08 ft. and proposed Lot 3 having a lot width of 8.07 ft. Located at on the W. side of Westmoreland St. on approx. 1.63 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 44A. (Admin. Moved from 1/30/01 for notices)(Moved from 3/13/01) Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 24, 2001, and

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

1. The applicant is the owner of the land.
2. The application does not meet required Standards 4, 7, 8 and 9.
3. This is a self-imposed hardship.
4. It would change the character of the area.
5. It would be environmentally unsound.

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 2001.

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Page 246, April 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT L. LOVE, MORTIMER C. LOVE AND BETTY P. LOVE, A 2000-DR-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants are maintaining two dwelling units on the property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 7712 Georgetown Pi. on approx. 2.61 ac. of land zoned R-E. Dranesville District. Tax Map 20-2 ((1)) 29A. (moved from 9/19/00, 11/7/00, 1/2/01 and 3/20/01).

Chairman DiGiulian stated that he had a request for a withdrawal of the application.

Mr. Hammack moved to withdraw A2000-DR-013. Mr. Pammel seconded the motion which carried with a vote of 7-0.

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Page 246, April 24, 2001, (Tape 1), After Agenda Item:

Additional Time Request
John R. and Janie L. Fish, Trustees
VC 99-D-143

Mr. Ribble moved to approve six months of additional time, until August 15, 2001. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 246, April 24, 2001, (Tape 1), After Agenda Item:

Additional Time Request
Mount Vernon Church of Christ
SPA 84-L-046

Mr. Ribble moved to approve an additional time of 18 months until June 22, 2002. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 246, April 24, 2001, (Tape 1), After Agenda Item:

Consideration of Acceptance
Application for Appeal
Woodlake Towers Condominium Unit Owners Association

William Shoup, Deputy Zoning Administrator, stated that the issue of this appeal was the timeliness. He said the appeal was filed on March 28, 2001, in response to a February 26, 2001, letter which went to the attorney for Woodlake Towers Condo Unit Owners Association. At issue was a proposed activity by one of the residents of Woodlake Towers, which involved the placing and receiving of orders for sporting goods and firearms. The activity was deemed to be a hobby and did not require a home occupation permit. That decision was made on September 20, 2000. The February 26, 2001 letter responded to the Association's

request that the September 20th determination be reconsidered.

Mr. Shoup pointed out that an appeal must be made within 30 days of the date of the decision. The grounds were actually challenging the September 20th decision that allowed the activity to take place. Since the appeal was not filed within the allowed thirty days, it was found to be untimely and staff recommended that the BZA not accept the appeal.

Mr. Hart queried how the appellant would know of the September 20, 2000 letter since they were not copied or sent a letter. Mr. Shoup stated that this problem had come up in the past; however, the Code required that an appeal be filed within thirty days of the decision. He explained that there would never be finality to decisions if individuals were allowed to appeal decisions after 30 days.

Brendan Bunn, the attorney representing the Woodlake Towers Condominium Unit Owners Association, asked for the appeal to be accepted. He said he believed that this was a remedial statute which provided an opportunity for those who were aggrieved to get some redress associated with the decision made by the Zoning Administrator. He stated there was no notice given to the Association regarding this issue and that the activity was significant in the context of a condo association. He noted that the building was a high-rise with a proposed use involving the sale of firearms, which involved foot traffic to the unit, storage of stock and trade in the unit, and various things that would affect the common elements of the Association property.

Mr. Bunn said that the Association was only apprised of the activity when it was contacted by the Bureau of Alcohol, Tobacco and Firearms. In response, they submitted a very detailed challenge which raised many new factors and believed that it was not a determination from the September 20, 2000, hearing, but in fact, a new determination.

Ms. Gibb asked Mr. Shoup if the applicant was different than the owner and what requirement was there for notification. Mr. Shoup replied that, when there was a request for a determination, he was unaware of any provisions that specified who had to be notified. He said that staff responded to whoever made the request. Mr. Shoup said ordinarily, if someone asked a question regarding a piece of property they did not own, staff would send a copy to the property owner.

Ms. Gibb stated that she believed that the Condo Association was the owner of the common elements that were part of this individual unit, and as an owner, had a right to a notice.

After a brief discussion, Chairman DiGiulian asked if there was anyone else to speak to the acceptance of the appeal.

Faroque Fatahi stated that he was the unit owner in the building 3101 South Manchester Street, Unit 905, Falls Church, Virginia, the unit in question.

Chairman DiGiulian requested that Mr. Fatahi give reason whether or not this appeal should be accepted or not.

Mr. Fatahi initially stated that the appeal should be accepted. He stated he had not been copied on the letters from the Association until after the determination had been made. He said his privacy had been invaded and that he was being singled out for the type of legal business that he was running.

Mr. Hammack made a motion that the appeal be accepted due to the parties not having notification, which was completely contrary to due process.

Mr. Shoup asked for the Board to allow Mr. Fatahi to clarify his stand on this hearing, as he had been confused. Mr. Fatahi then stated that he would like this appeal to not be accepted based on the reasons stated by Mr. Shoup.

Mr. Ribble seconded the motion. Mr. Hart stated that he supported the motion stating that this was a unique situation. The motion carried by a vote of 6-1. Mr. Pammel did not support the motion.

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Approval of April 17, 2001 Resolutions

Mr. Kelley moved to approve the Resolutions and Mr. Ribble seconded the motion which carried with a 7-0 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: Judith A. Gobbi

Approved on: September 18, 2001

Regina Thorn Corbett, 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, May 1, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 249, May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GOVERNOR'S HILL, L.L.C., VC 01-L-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an increase in dwelling heights. Located at 3117 and 3201 Franconia Rd. on approx. 4.76 ac. of land zoned R-8. Lee District. Tax Map 82-2 ((1)) 55A and 57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael J. Giguere, McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Jennifer Josiah. The applicant requested a variance to permit an increase in the building heights of seven attached single family homes to 38 feet. The Ordinance requires a maximum building height of 35 feet; therefore, a variance of 3.0 feet was requested for Units 80 through 86.

Mr. Giguere, the applicant's agent, came forward, stating that Commissioner Jack Kelso, Lee District Planning Commissioner, requested that the Board of Zoning Appeals defer decision on the application to May 15, 2001. He said Mr. Kelso wanted an opportunity to work with the applicant and the citizens. Mr. Giguere said the request was simple. He said the three property owners that fronted Telegraph Road did not realize that the application was coming before the BZA and requested an opportunity to work with the developer. Mr. Giguere said the request had nothing to do with the variance request, but rather some earth moving activity, truck traffic, dust and debris that was coming off the frontage of the property on Telegraph Road. He said because of that concern, the citizens had asked Commissioner Kelso to get involved. Mr. Giguere said the variance request was for 3.0 feet for seven units. He said the request was not for all the other units in the development, but just one row of townhouses. Mr. Giguere said the properties met the requirements for a variance.

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

Mr. Hammack moved to defer decision for VC 01-L-030 to May 15, 2001. 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 249, May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JOHN B. & KAREN M. FOLEY, VC 01-S-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.9 ft. from side lot line such that side yards total 17.6 ft. Located at 9108 Rockefeller La. on approx. 10,880 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 135.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Garner, Patio Enclosures, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom addition 2.9 feet from a side lot line. A minimum side yard of 8 feet is required; therefore, a variance of 5.1 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 narrow and the house was unusually shaped. Mr. Garner submitted photographs and stated that the slope of the yard prevented building in any other location on the lot. He stated that there had been other variances granted in the neighborhood.

Mr. Hart asked if the addition was wider than the existing deck. Mr. Garner replied yes.

Mr. Hart asked staff if the lot had double front yards. Ms. Stanfield replied yes.

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

Mr. Pammel moved to approve-in-part VC 01-S-027 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. & KAREN M. FOLEY, VC 01-S-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.9 ft. from side lot line such that side yards total 17.6 ft. **(ADDITION OF 4.4 FEET FROM SIDE LOT LINE WAS APPROVED.)** Located at 9108 Rockefeller La. on approx. 10,880 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 135. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2001; and

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

1. The applicants are the owners of the land.
2. The topographical conditions warrant the location of the addition.
3. The addition needs to be restricted to the current size of the porch.
4. The applicant has presented evidence that a variance is justified, but not to the maximum extent as requested.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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, **(ADDITION OF 4.4 FEET FROM SIDE LOT LINE WAS APPROVED)** shown on the plat prepared by Kenneth W. White, dated January 23, 2001, 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 251, May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24.

Chairman DiGiulian noted that the application had been administratively moved to July 10, 2001.

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Page 251, May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JANET L. BRADFORD, VA 72-D-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.4 ft. from rear lot line. Located at 1800 Monza Rd. on approx. 18,926 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((1)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Janet Bradford, 1800 Monza Road, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to a previously approved variance to permit the extension of the dining room area to be located 20.4 feet from the rear lot line. He said that a previously approved variance to enclose an existing patio was granted by the Board on May 24, 1972. The permitted enclosure was 21.0 feet from the rear lot line.

A minimum rear yard of 25 feet is required; therefore, a variance of 4.6 feet was now requested.

Ms. Bradford presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to renovate the existing structure. Ms. Bradford stated that the addition would be architecturally compatible with the existing dwelling. She requested a waiver of the 8-day waiting period.

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

Mr. Hart moved to approve VA 72-D-076 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JANET L. BRADFORD, VA 72-D-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.4 ft. from rear lot line. Located at 1800 Monza Rd. on approx. 18,926 sq. ft. of land zoned R-3. Dranesville District. Tax Map 31-3 ((1)) 46. 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 May 1, 2001; 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 strangely shaped and the house is pushed back to the side.
4. The variance request is minimal.
5. The BZA previously approved a variance within inches of the requested variance 30 years prior.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Kenneth W. White, dated, January 30, 2001, 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. Pammel seconded the motion which carried by a vote of 7-0. Mr. Hart moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 1, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 253, May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTINE F. CHAISSON, VC 01-B-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 4610 Quarter Charge Dr. on approx. 13,039 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 148.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christine Chaisson, 4610 Quarter Charge 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 variance to permit the construction of a two-story garage addition with additional living space to be constructed in the second-story and to be located 5.7 feet from a side lot line. A minimum side yard of 12 feet is required; therefore a variance of 6.3 feet was requested.

Ms. Chaisson presented the variance request as outlined in the statement of justification submitted with the application. She said the neighbors were in support of the application. Ms. Chaisson said the enclosure of the deck and carport would increase her property value. She stated that the variance was necessary because the property had an exceptional shape and topography. Ms. Chaisson submitted photographs to the Board.

Chairman DiGiulian called for speakers.

Jerry Healy, an adjacent neighbor, came forward to speak in support of the application. He said the request would increase the property values of other homes in the neighborhood.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-B-028 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTINE F. CHAISSON, VC 01-B-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line. Located at 4610 Quarter Charge Dr. on approx. 13,039 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 148. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot has an unusual shape, exceptional topographical conditions and double front yards.
4. The proposed location is the only place for the addition.

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

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

not be contrary to the public interest.

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 Charles J. Huntley, Jr., dated, February 1, 2001, 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.

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 May 9, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 255 May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PRAKASH M. & SUNANDINI P. AMBEGAONKAR, TRUSTEES, VC 00-D-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 10.0 ft., accessory structure 2.0 ft. and eave .5 ft. from side lot line and stairs 25.0 ft. from front lot line. Located at 1105 Waverly Way on approx. 43,560 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((1)) 60. (Def. From 1/2/01 and 2/13/01) (Reconsideration Granted)

Chairman DiGiulian noted that the applicant requested a withdrawal of the application. Mr. Ribble moved to withdraw VC 00-D-141. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 255 May 1, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JUAN F. CADENA, SP 01-D-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.0 ft. from side lot line. Located at 1908 Griffith Rd. on approx. 14,639 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((2)) 58. (continued from 5/1/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Juan Cadena, 1908 Griffith Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, stated that the application was continued from April 17, 2001, at the request

of the Board in order for the applicant to obtain a footer inspection. He said according to Mr. Paul Lynch, Branch Chief for Combination Inspections, Department of Public Works and Environmental Services, the applicant could not obtain a County inspection until he obtained a building permit. Mr. Bernal indicated that Mr. Lynch suggested that the applicant obtain a third party inspection from a licensed engineer. He said as a result of that inspection, Maiden and Associates of Silver Spring, Maryland, submitted a structural foundation and construction certification for the proposed addition, which had been distributed to the Board. Mr. Bernal stated that under the heading of Foundation Inspection, it stated that the depth of the piers were well below the frost line and complied with the requirements of all current Codes for single family residential structures, including BOCA and CABO. He also noted that a letter in opposition had been received from Ms. Malcolm and had been distributed to the Board.

Mr. Cadena stated that he did not know what the complaint was about, but that he had lived there since 1968 and felt that the letter was for another reason.

Ms. Gibb asked Mr. Cadena if he agreed with the report from the engineer recommending a list of items needing to be done to complete the addition. Mr. Cadena replied yes.

Ms. Gibb asked staff whether the eave was 5 feet from the property line. Mr. Bernal replied that the plat read that 5 feet would be the edge of the gutter.

Mr. Hart said the photographs made the fence appear at the property line and the structure appeared to be much closer to the fence than 5 feet. Mr. Bernal replied the fence was located inside the property line.

Chairman DiGiulian called for speakers.

Ann Malcolm, 1924 Leonard Road, came forward to speak in opposition of the application. She said there was sufficient space on the right side of the subject property for the addition and the addition would be larger than the living space. Ms. Malcolm requested that the Board deny the application.

Mr. Cadena stated in his rebuttal that he was simply enclosing a room with a washing machine.

Chairman DiGiulian closed the public hearing.

Ms. Gibb said this was a tough case. She said based on the photographs submitted she was uncomfortable with the length of the addition. Ms. Gibb said in the past the Board had allowed additions when a mistake had been made when it was 5 feet from the side lot line. She said she felt the mistake was made innocently. Ms. Gibb told the applicant that no one was obligated to inform him that he could not build without a permit or that he had to comply with the Zoning Ordinance. She said the engineer's report indicated that the foundation and the quality was acceptable and in general in compliance with applicable Codes, and it was built better than she thought.

Ms. Gibb moved to approve SP 01-D-004 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUAN F. CADENA, SP 01-D-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 5.0 ft. from side lot line. Located at 1908 Griffith Rd. on approx. 14,639 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((2)) 58. (continued from 4/17/01) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 1, 2001; 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 room addition as shown on the plat prepared by William E. Ramsey, Land Surveyor, dated December 8, 2000, submitted with this application and is not transferable to other land.

2. The applicant shall install 4" of foil face fiberglass insulation between the studs in the exterior walls. (The foil shall face the exterior of the building)

3. The applicant shall install 10" of foil face insulation between the roof rafters.

4. The applicant shall install the roofing shingles over 15 lbs. (minimum weight) roofing felt.

5. The applicant shall install double pane insulated glass, thermally broken windows.

6. The applicant shall install a fully weather stripped entrance door with a thermally sealed threshold.

7. The applicant shall install at least two 3 square feet attic vents.

8. The applicant shall install a pressure treated wood skirt at the exterior perimeter of the floor extending below grade with at least two vent (24" wide X 16" high) to enclose the crawl space area.

9. The applicant shall install a siding material of a type and color to match and blend into the adjacent areas existing house.

10. All electrical, plumbing, and heating and cooling and ventilation air conditioning work shall be performed by a licensed, certified and registered electrician, plumber and air conditioning sub contractor, respectively.

11. The applicant shall obtain all required Fairfax County Building Inspections and Approvals for the various phases of the work.

12. All remaining work shall comply with applicable Fairfax County Codes, Regulations and Requirements.

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 5-2. Mr. Hart and Mr. Hammack voted against the motion.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 258, May 1, 2001, (Tape 1), Scheduled case of:

9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((20)) 9. (Def. From 2/13/01 and 2/27/01)

Maggie Stehman, Zoning Administration Division, stated that the appeal of a violation that the appellant should have a special exception for a Vehicle Light/Vehicle Major Special Exception. The Board deferred the subject appeal from February 27, 2001, so that the appellant could obtain a special exception application filed. Ms. Stehman stated that the appellant had made great progress toward getting an application filed, but there had been some transportation improvement questions that had arose and staff felt they needed to be addressed before the application was submitted. She said staff supported a short deferral to May 29, 2001, in which the appellant concurred.

Dorothy Reilly, appellant's wife, came forward stating that a meeting with the Angela Rodeheaver, Department of Transportation and Kris Abrahamson, Department of Planning and Zoning was scheduled for May 1, 2001. Ms. Reilly requested a deferral to allow time to resolve transportation questions.

Mr. Hammack moved to defer A 2000-MA-034 to May 29, 2001, at 9:30 a.m. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 258, May 1, 2001, (Tape 1), Scheduled case of:

9:30 A.M. CESC TYSONS DULLES PLAZA L.L.C., A 2000-PR-040 Appl. under Sect(s). 18 -301 of the Zoning Ordinance. Appeal of determination that area previously dedicated for right-of-way purposes may not be utilized by appellant to calculate the Floor Area Ratio for the proposed construction of a fourth building on the property. Located at 1410, 1420 and 1430 Springhill Rd. on approx. 14.67 ac. of land zoned I-4 and C-1. Providence District. Tax Map 29-1 ((1)) 67A, 67C, 68 and 69. (MOVED FROM 3/27/01).

Jerry Emrich came forward indicating that he represented the appellant.

Diane Johnson-Quinn, Zoning Administration, stated that the appeal was of a determination that land area dedicated in 1986 for right-of-way purposes could not be used in calculating FAR (floor area ratio) for a

proposed 4th building to be built on the site. The property was located at 1410, 1420, and 1430 Springhill Road and contained approximate 14.67 acres. She said the details were outlined in the staff report, but the highlights of the circumstances of the site included in 1986 a site plan was approved for development of office buildings on a site in two phases; two buildings in the first phase, a second phase with a third building. Ms. Johnson-Quinn said at that time right-of-way for road improvements on the surrounding road was dedicated and that development for the buildings would have been 0.7 FAR which was the maximum permitted at the time and currently. She said in1988, a second site plan was approved for the details of the second phase of the third building to be constructed. In 1998, the Board of Supervisors amended the Comprehensive Plan to raise the land use recommendation FAR from 0.7 to 0.85 for the subject site. Ms. Johnson-Quinn said in the fall of 2000, the appellant filed a rezoning to take advantage of that, to rezone the property to the C-4 District so that they could build a 4th building at a maximum FAR of 0.85. In July of 2000, prior to filing the rezoning application, the appellants wrote to the Zoning Administrator inquiring whether or not they could include the land that was dedicated in 1986 in their FAR calculations. She noted that in 1995 the Board of Supervisors amended the Zoning Ordinance, specifically Sects. 2-308, which dealt with maximum density and at that time it included the current perpetuity language for density intensity credits that resulted from dedications recorded after February 28, 1995. She said prior to that there was no perpetuity language. Ms. Johnson-Quinn stated that based on that, staff's determination was based on a long-standing administrative interpretation, that intensity credits for dedicated areas was a one-time opportunity. Since the credit was utilized in the 1980s it was no longer available for expansion on the site. As noted in the staff report, the longstanding interpretation was upheld by the BZA in two previous appeals, which were considered about the same time that the appellant's site plans were being approved.

Mr. Emrich stated that it was important to note that if the Board of Zoning Appeals upheld the appeal or reversed the Zoning Administrator, the additional density could not be employed or used until the Board of Supervisors approved a rezoning. He said during that rezoning process the Board could determine how much density would be allowed. Mr. Emrich said the subject appeal was substantially different from the other cases that had been considered by the Board of Zoning Appeals. He said the effect of the Zoning Administrator's determination was not that the density could not be used twice, but the fact that the density would be lost. Mr. Emrich used a chart to explain the appellant's position to the Board. He said the prior Zoning Ordinance did not limit the period for density credit and administrative interpretations could not change an Ordinance. Mr. Emrich stated that the 2 decisions of the Board of Zoning Appeals cases referred to by the Zoning Administrator were different from the subject appeal.

Mr. Hammack asked whether the definition of a lot was the same definition today as back when the original site was developed. Ms. Johnson-Quinn said she believed it was the same.

Mr. Hammack asked was the site under common ownership when Phase I and Phase II were approved. Ms. Johnson-Quinn replied yes.

Mr. Hammack asked whether the whole 15 acres was considered a lot. Ms. Johnson-Quinn replied yes for the purposes of the site plan. He said the site plan included the residue that was currently being developed and he was curious to know how staff could take that out and say it was not part of the original site plan and subject it to the original density credit. Ms. Johnson-Quinn said staff believed that the original density at that time consisted of 15 plus acres in 1986. She said prior to the dedication, the plan for development at that time were for 3 buildings which maxed out the FAR to 0.7. She stated that there wasn't a proposal for a 4th building at that time because it wouldn't have fit on the 15 plus acres at that time. Ms. Johnson-Quinn stated that in order to build a 4th building would require rezoning of the property and the area that they would have rezoned did not include the area dedicated. She said it was no longer a part of the lot as the term lot was defined in the Zoning Ordinance.

Mr. Emrich said the very nature of density credit anticipated that that area to be considered. He said all the density credit was not used in Phase I of the site plan. He said as part of the site plan process, the appellant dedicated 1 point. Mr. Emrich said when they came in with the second site plan, the lot area did not include that area.

Mr. Pammel asked whether at any point in time in the mid 80s were there any plans for a third phase, a 4th building. Mr. Emrich said there was nothing submitted to the County.

Mr. Pammel asked the appellant whether the full density credit was used for Phases I and II. Mr. Emrich

replied yes. He said it was used and they were given credit of 0.7 for the area that was dedicated. Mr. Emrich said the Zoning Administrator was saying that if you received a rezoning for a 0.85, that could only be applied to what you currently owned, so in effect, they were losing what they previously had.

Mr. Hammack asked the appellant if they were built out at 0.7 in 1986, how had they lost anything. Mr. Emrich said that what was bargained for in the 80s was that they would get density credit, at a 0.7 for that property and they were currently seeking a rezoning which would, if approved, grant greater density, but they would not get the benefit for that 0.7.

Mr. Hammack said when the property was originally developed in the 80s, the appellants could have put a Phase III on the property, but instead chose to use all the density under the then existing zoning. Mr. Emrich said that was correct. Mr. Hammack said they received a density credit for that, at that time. Mr. Emrich replied yes but what they bargained was that would count for density purposes and would not be lost.

Mr. Hammack said he was concerned with the correctness of the Zoning Administrator's interpretation under the existing Ordinance compared with the earlier Ordinance.

Art Walsh, Walsh, Colucci, et al., came forward stated that the problem was that they did a permanent dedication and got temporary density back. He said that if the project was redeveloped and the buildings were torn down and raised and they were to redevelop the site, they would lose the 0.7 FAR that they thought they had for the portion that was dedicated to the County

Mr. Hammack asked staff why they felt that the credits should be carried forward since the original Ordinance did not limit it in any way. Ms. Johnson-Quinn stated that it was the long-standing interpretation of the Sect. 2-308 at that time that was in effect, and that was a one time opportunity. She said when you submit your site plan and showed the lot size and dedicated area that was the only time you got to use it. Ms. Johnson-Quinn noted that in 1995, the Zoning Ordinance was amended to encourage people to dedicate and allowing the density to go into perpetuity but the language in that Zoning Ordinance amendment said only dedications after February 28, 1995.

Mr. Hammack said if there was no limitation under the earlier Ordinance, why wouldn't it go forward and asked if that was the nature of a vested right.

William Shoup, Deputy Zoning Administrator, introduced David Stoner, County Attorney's office, to address the vesting issue.

Mr. Stoner said the question was what right was conferred at the time of the dedication.

Mr. Hammack asked Mr. Stoner whether he agreed that the Ordinance did not have any limitation. Mr. Stoner replied that he would agree that it does not expressly address the issue but said it doesn't say there is or is not the limitation. Mr. Stoner said it did not say as does the current Ordinance, that there is density credit in perpetuity and so it would seem that the Zoning Administrator was reasonable in interpreting the Ordinance to say, if the Board of Supervisors has not said that this density credit is to be in perpetuity, then it's not unreasonable to rate it as, not granting that right in perpetuity. He said the Board of Supervisors action in 1995 was consistent with that view if indeed the Board had considered the Ordinance to have created some perpetual right to density credit, then there would have been no need to specify in the new Ordinance that dedications made after a particular date would give rise to perpetual density credit.

Chairman DiGiulian asked if the longstanding interpretation was a written interpretation. Mr. Shoup responded that it was not a formal written interpretation but there were several interpretations made in the 1980s setting forth that position, that there was no unending right to previously dedicated right of way. He said there were interpretations in answer to specific questions and two of them ended up before the BZA.

Mr. Stoner stated that the two decisions that Mr. Shoup referred to by the BZA affirming the Zoning Administrator's interpretation, both occurred before the dedication of the property issue here or at least before approval of the site plan.

Mr. Hart discussed with the appellants about which part of the parcels was the part dedicated. Mr. Walsh said there were 3 frontages that were taken. He said that the Zoning Administrator had typically said if the

property was zoned as one parcel, that you could take the density from any portion of that parcel and allocate it to any individual parcel, as long as the entirety does not exceed a 0.7 FAR.

Mr. Pammel said that the issue of land banking density or Floor Area Ratio was used extensively with Reston. He said the entire process was based on land banking.

Ms. Gibb said when you have a minimum lot size issue can you use the street that's been dedicated in front of your property as part of the lot. Mr. Shoup said for density purposes, if they dedicate, for instance with a subdivision, they could use that dedicated right of way for density calculations, but I he didn't believe they could use it for lot area.

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

Mr. Hammack said this was a confusing case because of the way the development process takes place in Fairfax. He said the issue before the Board was narrow. Mr. Hammack said the appeal was of a determination that the area previously dedicated for right of way purposes may not be used by the appellant to calculate the FAR for proposed construction of a fourth building on the property. He said the applicant owned the parcels under common ownership and it was a lot under the definition that seemed to exist in 1986 as well as presently. Mr. Hammack said he thought that you had to allow the applicant credit for the previously dedicated right of way to treat it as a lot under the definition of the Ordinance for density purposes. He moved that the Board overrule the determination of the Zoning Administrator.

Mr. Pammel seconded the motion.

Mr. Hammack added that in terms of some of the way development was done many subdivisions were constructed before streets were dedicated. He said if the streets were then dedicated, the developments would be in non compliance and they would not meet density. Mr. Hammack said you have to add the land area in the original density calculation in order to treat it consistently throughout. He said if this was on a different set of facts, maybe a different decision would be reached, but this was still being treated as a single lot for development purposes as it was in 1986.

Mr. Hart said this was a difficult case and he though it would be fairer to go Mr. Hammack's way. He said that under the terms of the Ordinance that the Zoning Administrator has interpreted, we look at the lot now at the time of the application and the lot is smaller. Mr. Hart said it was unfair in some respects, but that's what the Ordinance said and whether it's fair or not, the Zoning Administrator reached the correct determination, if not the fair one. He said he would vote against the motion.

The motion carried by a vote of 6-1 and the determination of the Zoning Administrator was overruled. Mr. Hart voted against the motion.

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Page 261, May 1, 2001, (Tape 1), After Agenda Item:

Approval of January 9, 2001 and February 27, 2001 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 261, May 1, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration
Einer R. Nielson, VC 00-D-148

Mr. Hammack moved to deny the Request for Reconsideration. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 262 May 1, 2001, (Tape 1), After Agenda Item:

Approval of April 24, 2001 Resolutions.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Minutes by: Regina Thorn Corbett

Approved on: September 11, 2001

Regina Thorn Corbett, 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, May 8, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 263 May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PETER W. & LESLIE L. BERK, VC 01-D-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed Lot 7B having a lot width of 31 ft. Located at 10616 Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 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. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, Agent, 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 subdivision of one lot into two lots. Proposed Lot 7B would have a minimum lot width of 31 feet, less than the minimum required by the Zoning Ordinance. Lot 7A was proposed to have a lot width of 154 feet, which met the required minimum lot width of 150 feet for the R-1 district. Therefore, a variance of 119 feet for Lot B was requested.

Ms. Strobel stated that on May 7, 2001, a letter had been submitted to the BZA which raised some new issues regarding the application. She said that since there were people present to testify in relation to those issues, she would like to continue with the public hearing, but requested a deferral of decision from the Board to allow the applicant to review the new issues.

Chairman DiGiulian agreed to her request.

Ms. Strobel presented the variance application request as outlined in the statement of justification submitted with the application. She stated that the applicant's property contained approximately 4.1 acres and was zoned R-1. Proposed Lot 7A would contain 1.4 acres and Lot 7B would contain approximately 2.7 acres, with a density less than .5 dwellings per acre. Ms. Strobel said that certain environmental features had been identified on the property and development conditions had been proposed to address adverse impacts. Ms. Strobel stated that an environmental assessment was done on the property by the Environmental Division and staff, and that conditions and resolutions as contained in the staff report were agreed to by the applicants.

Ms. Strobel stated that the proposed subdivision would be reviewed by the Department of Public Works and Environmental Services and the Health Department prior to approval. She said the Health Department would review the capacity of the proposed septic fields to ensure that there would not be any adverse impact on adjacent properties.

Chairman DiGiulian called for speakers.

C. Irvin Brown, 10608 Good Spring Avenue, came forward to speak in opposition and presented a written endorsement of eight homeowners on Good Spring Avenue. He said that he lived in his home for 26 years and was familiar with Lot 7B, as he had explored purchasing it. He stated that he had worked as a research geologist for the U.S. Geological Survey for 33 years and that he believed the only issue addressed by this variance was the narrow 31 foot wide panhandle for Lot 7B.

Mr. Brown stated that another issue was that Lot 7B was topographically low and very wet because of a near surface ground water table. He said if topographical contours had been shown, it would reveal that Lot 7B included most all of the valley floor of the floodplain of the original four-acre lot. He said 12 of the 13 houses on Good Spring Avenue got their water from wells, and that there was a fine balance between drainfields and potable water from wells. He said he viewed the proposal as a serious encroachment on the community's water supply and urged the BZA to deny the request.

Mr. Hart asked staff if the floodplain boundaries on the plat would be verified and Mr. Bernal replied that a grading plan would be submitted and verified by the County.

Mr. Hart asked about the Zoning Ordinance provision and the establishment of a floodplain. Mr. Bernal stated that staff had delineated the Resource Protection Area and no construction would be located within that area, as proposed on the plat. Mr. Hart clarified that if the Health Department did not approve a septic field on that land, a house could not be built. Mr. Bernal said that was correct.

Ms. Gibb clarified with staff that the exact location of the frontage of the property was at the setback line for the front yard.

Walt Zubba, 1125 Riva Ridge Drive, came forward to speak in opposition. He addressed the good faith requirement and demonstrable hardship requirement issues. He said the applicants acquired the property less than one year ago and that the Berks had never lived on the property. He said he believed that the house was not acquired in good faith, but for the express purpose of making a quick profit, which eliminated a demonstrable hardship for the applicants.

Ms. Strobel asked the BZA for a two week deferral before a decision was made.

After a brief discussion of date availability, Mr. Hammack moved that the BZA continue VC 01-D-026, Peter W. and Leslie L. Berk, until May 22, 2001. The motion was seconded by Mr. Pammel which carried by a vote of 7-0.

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Page 264, May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with an enrollment of less than 100 students daily. Located in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A. (Def. From 11/28/00) (moved from 2/6/01) (cont'd from 3/13/01 and 4/3/01) (def. for decision only from 4/10/01)

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 Farrell, McCandlish & Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, Agent, replied that it was.

Mr. Farrell stated that the matter was for decision only. He referred to a letter that was handed out to the Board confirming the statement made on April 10, 2001, withdrawing the Nursery School as part of the original application

Mr. Hart moved to approve SP 00-Y-050, Grace Covenant Church, Inc., withdrawing the nursery school for 99 students. Mr. Farrell stated that he had confirmed with Mr. Hart that the pending motion included a change in proposed Development Condition Number 15. He said the first paragraph should read "At the option of the applicant" and the third paragraph, which addressed construction of road improvements, should also read "At the option of the applicant". The amended motion was approved for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GRACE COVENANT CHURCH INC., SP 00-Y-050 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a church and related facilities and nursery school with enrollment of less than 100 students only. Located in the 4300 block of Pleasant Valley Rd. on approx. 8.64 ac. of land zoned R-C and WS. Sully District. Tax Map 33-2 ((1)) pt. 12A. (Def. From 11/28/00) (moved from 2/6/01) (cont'd from 3/13/01 and

4/3/01) (def. for decision only from 4/10/01). **(THE NURSERY SCHOOL WAS WITHDRAWN.)** 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 May 8, 2001; 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.
3. With the deletion of the nursery school, the conflict with existing traffic on Blue Springs was essentially eliminated.

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 IN PART** with the following limitations:

1. This approval is granted to the applicant only, and is not transferable without further action of this Board, and is for the location indicated on the application, 4300 Block of Pleasant Valley Road (8.64 acres) and is not transferable to other land.

2. This Special Permit is granted only for the church and related facilities as indicated on the special permit plat prepared by Burgess & Niple, dated April, 2000 as revised through March 2001, 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 600 at completion of Phase I and 800 at the completion of Phase II.

6. A maximum of two hundred and seventy-six (276) parking spaces shall be provided. All parking for the use shall be on site as shown on the Special Permit Plat.

7. The open space around the picnic pavilion shall be landscaped as shown on the special permit plat. At least fifty percent (50%) of this area shall be landscaped contemporaneously with the first phase of development; a minimum of fifty (50%) of the trees to be planted in this area during this phase shall be large deciduous trees. The remainder of this area shall be landscaped contemporaneously with the construction of the picnic pavilion or within five (5) years of the first site plan approval, whichever occurs first. A management plan shall be developed and submitted with the site plan for this area that will provide for the long-term viability of the landscaping in this area while allowing for the use of the picnic pavilion and the passive use of the surrounding area. The management plan

shall incorporate an approach that minimizes applications of fertilizers, pesticides, and herbicides and shall be subject to the review and approval of the Office of Site Development Services (OSDS) in coordination with the Urban Forestry Division prior to site plan approval.

8. The stormwater management pond shown on the special permit plat shall be designed as a best management practice facility in accordance with the Fairfax County Public Facilities Manual. Drainage from the impervious surfaces on the property shall be conveyed to this facility to the maximum extent practicable, as determined by the Office of Site Development Services (OSDS) of DPWES. The applicant may design this facility as a wet BMP pond or as a dry BMP pond.

   a) If the pond is developed as a dry BMP facility, the applicant shall plant trees and shrubs in the area SWM/BMP ponds, using the species that are shown on the special permit plat and such other species that are well-suited to soil, hydrologic, and microclimatic conditions of the area(s) being planted, subject to approval of OSDS in coordination with the Urban Forestry Division. If determined to be practicable by OSDS in coordination with the Urban Forestry Division, the density of plantings shall be greater than that shown on the special permit plat; additional plantings of trees at least two (2) inches in caliper or equivalent plantings of smaller trees and/or shrubs shall be provided to maximize plantings consistent with aforementioned DPWES policy.

   b) If the pond is designed as a wet BMP facility, the applicant shall provide a shallow bench of emergent wetland vegetation around at least half the perimeter of the pond. This wetland bench shall be at least five feet in width, shall be located between zero (0) and twelve (12) inches below the normal pool surface elevation of the pond (the applicant shall have the discretion to determine precise depths within this range), and shall be planted with a minimum of four (4) emergent wetland plant species selected from Table 13 of the Metropolitan Washington Council of Governments (MWCOG) "Design of Stormwater Wetland Systems" (October, 1992) or other equivalent reference approved by DPWES. All species provided shall be native to the area and shall have a high value for wildlife, as set forth in the MWCOG document or as otherwise determined by DPWES. A wetland construction and planting plan shall be shown on the first site plan and shall be subject to the approval of OSDS in coordination with the Urban Forestry Division.

9. In order to minimize disturbance to existing tree cover in the EQC, no clearing or grading shall occur within the existing tree line of the EQC as shown on the special permit plat except to provide for the conveyance of drainage from the SWM facility, to provide a sanitary sewer line crossing of the EQC. No portion of the SWM pond structure or associated clearance area pursuant to Sect. 6-1605.3A of the Public Facilities Manual (excepting measures for the conveyance of drainage from the pond) shall be located within the EQC. Any area of encroachment into the EQC for clearing and/or grading associated with the SWM pond shall be restored to a natural wooded condition to the maximum extent practical as determined by OSDS in coordination with the Urban Forestry Division. Notwithstanding the size and location of the proposed spillway area shown on the special permit plat, the conveyance of drainage from the SWM pond shall occur in a manner that will provide for adequate drainage while minimizing disturbance to the EQC, as determined by the Office of Site Development Services (OSDS), with the goal that the extent of disturbance for the spillway shall be reduced from that shown on the special permit plat, if practical. The sanitary sewer line shall be located, designed, and constructed such that disturbance to the EQC will be minimized to the extent practical, as determined by OSDS.

10. The EQC shown on the special permit plat and shall remain as perpetually undisturbed open space. There shall be no clearing or grading of any vegetation within the EQC except for dead or dying trees shrubs and clearing and/or grading associated with the SWM pond (as set forth in Condition 9), and clearing and/or grading associated with a sanitary sewer line crossing, (also set forth in Condition 9). There shall be no structures or fences located within the EQC.

11. The tree preservation and restoration plan shown on the sheet 3 of the Special Permit plat shall be implemented as part of the construction of the church.

12. All areas identified as "preservation areas or restoration areas" on sheet 3 of the Special Permit plat

(the "tree preservation/restoration Plan") and any other area within the EQC that is not needed for the conveyance of drainage from the SWM pond or a sanitary sewer line pursuant to development condition #9 shall remain as perpetually undisturbed open space. After the installation of the vegetation shown on the tree preservation and restoration plan, maintenance of the perpetually undisturbed open space shall consist only of removal of undesirable vegetation such as brambles and vines with the intention of maintaining the planted tree cover until such time as natural secession takes over. There shall be no mowing of grasses in the perpetually undisturbed open space.

13. Existing vegetation shall be preserved and maintained along the western lot line and shall be supplemented with landscaping to the extent possible. The applicant shall minimize grading work in the area near the western boundary to the extent practical in order to maximize the preservation of trees in this area, as determined by OSDS. A minimum width of 25 feet of transitional screening shall be maintained along the western lot line.

    The existing vegetation within the EQC shall satisfy the transitional screening requirement along the southeastern and central portion of the eastern lot lines. Full Transitional Screening I shall be provided as depicted on the approved special permit plat along the eastern lot line, outside of the EQC.

    The barrier requirement shall be waived along all lot lines.

14. Prior to site plan approval, the applicant shall record a conservation easement among the land records of Loudoun County to the benefit of Fairfax County to ensure that the portion of the property in Loudoun County will remain undisturbed in perpetuity, allowing for the landscaping efforts shown on the SP Plat or other planting and/or management efforts that may be determined to be appropriate by the Urban Forestry Division.

15. At the applicant's option, the applicant shall construct half of a four lane divided facility along the site's Pleasant Valley Road frontage. If full frontage improvements are not provided, the applicant shall dedicate 56 feet from centerline to property line with ancillary easements.

    The applicant shall dedicate 26 feet from centerline to property along the site's Blue Spring Drive frontage.

    At the intersection of Blue Spring Drive and Pleasant Valley Road, the applicant shall dedicate 35 feet from centerline to property line. The additional pavement at the intersection shall be striped for use as turn lanes, subject to VDOT approval.

    All dedication shall be conveyed to the Board of Supervisors in fee simple and be dedicated upon demand by Fairfax County or VDOT or at the time of site plan approval, whichever occurs first.

    Sidewalks and/or trails shall be provided along the site's frontage, to be determined at the time of site plan approval by DPWES.

16. Approval of this special permit in no way obligates DPWES to determine that the proposed site entrances on Blue Spring Drive, are consistent with Chapter 118 of the Fairfax County Code (the Chesapeake Bay Preservation Ordinance), either as an allowed use pursuant to Article 2 of that Ordinance or as a use allowed by an exception pursuant to Article 6 of that Ordinance. Approval of the special permit in no way obligates DPWES to determine that the proposed entrances are consistent with the Ordinance or that an exception to allow for these entrances should necessarily be granted. If DPWES determines that the proposed entrances are not consistent with Chapter 118 and that an exception to allow for these entrances would not be appropriate, and that determination is upheld after all appeals that are pursued by the applicant are exhausted, a modification to the Special Permit plat pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance or an amendment to this special permit may be necessary.

17. 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.
- The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
- 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.

18. A sign permit shall be obtained and all signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

19. In the event blasting is necessary, before any blasting occurs on the Property the Applicant shall: (i) ensure that the Fairfax County Fire Marshal has reviewed the blasting plans; (ii) follow all safety recommendations made by the Fire Marshal; and (iii) provide independent qualified inspectors approved by DPWES to inspect wells and dwellings located within 500 feet of the blasting site (the "Inspected Wells"). The inspector shall check the flow rate for each of the Inspected Wells before and after blasting and the foundation of dwellings. If allowed by County or State regulations, the Applicant shall [either (i)] repair any damage to the dwellings, or at its sole discretion, may replace the Inspected Well(s) determined by the inspector to have been damaged as a result of blasting on the Property, or the Applicant shall [(ii)] pay for hook-up of public water to serve any house whose well has been damaged by blasting on the Property.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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 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 May 16, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 268, May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SHARON M. ENTSMINGER, VC 01-L-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.9 ft. from side lot line. Located at 4802 Eubank St. on approx. 10,987 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((4)) 58.

Chairman DiGiulian stated that VC 01-L-031 had been administratively moved to July 3, 2001, at 9:00 a.m.

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9:00 A.M. JOSEPH S.C. SMITH, JR. & JULIE CAROLYN FANBURG-SMITH, VC 01-D-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from side lot line. Located at 1042 Dead Run Dr. on approx. 20,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((15)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. & Mrs. Joseph Smith, Jr., 1042 Dead Run Drive, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicants sought approval to construct a two-story garage addition to the dwelling to be located 12.9 feet from the west side lot line. She said the Zoning Ordinance required a minimum side yard of 15 feet; therefore, a variance of 2.1 feet was requested.

Mrs. Smith presented the variance application request as outlined in the statement of justification submitted with the application. She stated they would like to add the addition as a functional garage, and the 2.1 feet was advised by their architect. She stated that it was not feasible to place the garage in any other location on their lot and the variance requested was less than others that had been approved in their district. Mr. Smith added that all of their neighbors supported the addition.

Mr. Hart asked if the dimension of 25.3 feet on the drawing was the width of the garage. Mr. Smith replied that it was the external width of the garage which included the two structural walls.

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

Mr. Pammel made a motion to approve VC 01-D-038 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOSEPH S.C. SMITH, JR. & JULIE CAROLYN FANBURG-SMITH, VC 01-D-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from side lot line. Located at 1042 Dead Run Dr. on approx. 20,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((15)) 16. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 8, 2001; 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 that they complied with the prescribed criteria for the granting of a variance.
3. The variance is of a very minimal 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 **APPPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 8, 2001, 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 seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 270, May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DAN COFFING, VC 01-B-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line such that side yards total 22.0 ft. Located at 9500 Braddock Rd. on approx. 11,636 sq. ft. of land zoned R-2 (Cluster). Braddock

District. Tax Map 69-3 ((4)) 7. (Admin. moved from 4/10/01 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. Dan Coffing, 9500 Braddock Road, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to construct a two-story addition to the dwelling, to be located 10 feet from the southeast side lot line with side yards to total 22 feet. She said the Zoning Ordinance required a minimum total side yards of 24 feet; therefore, a variance of 2 feet was requested.

Mr. Coffing presented the variance application request as outlined in the statement of justification submitted with the application. He said he had considered what type of addition would be most consistent with the shape and layout of the lot and house, along with the adjoining property. He stated that he would like to construct upon the area of a steep hill in his backyard, which was consistent with the neighboring homes. Mr. Coffing stated that other considerations had been to spare mature trees and stabilize an erosion area and that this request was consistent with other variances that had been approved in the past for this area. He also submitted letters from neighbors who supported his addition.

Mr. Ribble noted that the statement of justification reflected that the alignment of the house was somewhat irregular when it was originally built. Mr. Coffing replied that was because the tapering of the land caused the house's alignment to be off by 2 feet.

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

Mr. Ribble made the motion to approve VC 01-B-016 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAN COFFING, VC 01-B-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line such that side yards total 22.0 ft. Located at 9500 Braddock Rd. on approx. 11,636 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-3 ((4)) 7. (Admin. moved from 4/10/01 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 May 8, 2001; 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 all nine of the required standards.
3. Variance was needed based on topography and siting of the house on the lot.

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

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

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

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

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

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

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

1. This variance is approved for the location of the two-story addition shown on the plat prepared by Harold A. Logan Associates, P.C., dated through January 10, 2001, 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.

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 May 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 272 May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JEFF KOENIG, VC 01-L-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from rear lot line. Located at 7225 Wesley Rd. on approx. 23,340 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((6)) 1

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Jeff Koenig, 7225 Wesley Road, Springfield, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit an addition to the house in the rear yard of his property. The Zoning Ordinance required a 25 foot setback and the proposed location of the addition would be 13.6 feet; therefore a variance of 11.4 feet was requested.

Mr. Koenig presented the variance application request as outlined in the statement of justification submitted with the application. He stated that the house had been abandoned for eight years before he purchased it in July 1999. He added that the house had sustained substantial damage over that time, and most noticeably, a staircase had collapsed due to water damage. Mr. Koening stated that the house was to become his primary residence and he had considered different options for a staircase to the second level. He said he had concluded the best way to do this was to enclose the existing stoop and staircase that ran down the back of the house. He noted that the house had been built in an upper corner of the property that was irregularly shaped. Mr. Koening stated that the proposed addition would enhance the dwelling in accordance with the neighboring houses and that the neighbors had expressed gratitude and support in his work.

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

Ms. Gibb made the motion to approve VC 01-L-032 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFF KOENIG, VC 01-L-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.6 ft. from rear lot line. Located at 7225 Wesley Rd. on approx. 23,340 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((6)) 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 May 8, 2001; and

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

1. The applicant is the owner of the land.
2. The lot is shallow and unusually shaped.
3. Easements preclude an addition to side of the house.
4. The house is located on a corner.
5. Staff concurs with applicant's statements.

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

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

adjacent to the subject property.

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 27, 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.

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 May 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 274 May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. LEWIS L. VANDYKE, VC 01-L-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.2 ft. from side lot line. Located at 3100 Franklin St. on approx. 15,000 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((20)) (3) 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. Lewis VanDyke, 3100 Franklin Street, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant requested a variance to permit construction of a garage to be located 5.2 feet from the side lot line. The Zoning Ordinance allowed a minimum yard of 15 feet; therefore, a variance of 9.8 feet was requested.

Mr. VanDyke presented the variance application request as outlined in the statement of justification submitted with the application. He stated that he wanted to expand his one-car garage into a two-car garage, and because of the existing location of his garage, it would be impractical to expand it in any other direction. Mr. Van Dyke said he had included a letter of support from his next door neighbor with his application and that other variances within his neighborhood had been granted.

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

Mr. Kelley mad the motion to approve VC 01-L-032 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEWIS L. VANDYKE, VC 01-L-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.2 ft. from side lot line. Located at 3100 Franklin St. on approx. 15,000 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((20)) (3) 9. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 8, 2001; and

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

1. The applicant is the owner of the land.
2. 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 accessory structure (garage), shown on the plat prepared by Larry N. Scartz, dated February 7, 2001, 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.

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 May 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 276 May 8, 2001, (Tape 1), Scheduled case of:

9:00 A.M. HOSHANG DERAKHSHANDEH, VC 01-M-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. and eave 1.0 ft. 3 in. from side and rear lot lines. Located at 4013A Annandale Rd. on approx. 11,526 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2A1. (Def. From 4/10/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. and Mrs. Hoshang Derakhshandeh, 4013A, Annandale Road, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, stated that at the April 10, 2001, BZA meeting, the Board heard the above referenced variance application to permit construction of an accessory structure. She stated that the applicants requested a variance to permit construction of a garage 2 feet from the rear lot line and 2 feet from the side lot line. She said that the BZA expressed concerns regarding the close proximity to the lot lines and overall size of the garage and requested that the applicant return with a revised application to address those concerns. Ms. Stanfield stated that the applicants made the changes, and the garage on the revised application was located 4 feet from the side lot line and 4 feet from the rear lot line. She said that the garage dimensions were 20 feet by 25 feet.

Mrs. Derakhshandeh presented the revised variance application as outlined in the statement of justification. She stated that because of the mature trees in their yard, this was the only place for a garage. They made

the changes that had been requested by the BZA by doubling the setback from 2 feet to 4 feet and reduced the size of the garage by 100 square feet. She presented written affidavits from the closest neighbors indicating their support of the variance.

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

Mr. Hammack made the motion to approve VC 01-M-015 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOSHANG DERAKHSHANDEH, VC 01-M-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.0 ft. and eae 1.0 ft. 3 in. from side and rear lot lines. **(THE BZA APPROVED THE ACCESSORY STRUCTURE 4.0 FEET FROM SIDE AND REAR LOT LINES).** Located at 4013A Annandale Rd. on approx. 11,526 sq. ft. of land zoned R-4. Mason District. Tax Map 60-3 ((14)) 2A1. (Def. From 4/10/01). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 8, 2001; and

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

1. The applicant is the owner of the land.
2. The lot has an irregular shape.
3. The garage will not adversely impact neighbors
4. It would be hard to find an alternative location on this site.

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

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

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

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

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

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

1. This variance is approved for the location of an accessory structure (garage), shown on the revised plat prepared by Arcon Ltd., dated May 2, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 278, May 8, 2001, (Tape 1), Scheduled case of:

9:30 A.M. JOSEPH N. LEWIS, A 2001-MV-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has established a storage yard and a heavy equipment and specialized vehicle sale, rental and service establishment on property in the C-3 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located on Metroview Pkwy. on the E. side of Huntington Ave. on approx. 5.77 ac. of land zoned C-3. Mt. Vernon District. Tax Map 83-1 ((1)) 42.

Chairman DiGiulian stated that this case had a request for withdraw.

Mr. Kelley moved to approve the withdrawal of A 2001-MV-002. Mr. Ribble seconded the motion which carried with a vote of 7-0.

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Page 278 May 8, 2001, (Tape 1), After Agenda Items:

Approval of December 19, 2000, January 2, 2001,
January 16, 2001, and January 30, 2001 Minutes

Mr. Kelley moved to approve the Minutes for December 19, 2000, January 2, 2001, January 16, 2001, and January 30, 2001. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 279 May 8, 2001, (Tape 1), After Agenda Items:

Approval of Revised Plat
SP 01-P-002 Robert Harlow, Jr.

Mr. Hammack moved to approve the revised plat. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:08 a.m.

Minutes by: Judith A. Gobbi

Approved on: June 11, 2002

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 15, 2001. The following Board Members were present: Chairman John DiGiulian; John Ribble; Paul Hammack; Robert Kelley; James Pammel; James Hart; and Nancy Gibb.

Chairman DiGiulian called the meeting to order at 9:00 a.m. The Chairman outlined the policies and procedures of the Board of Zoning Appeals.

Mr. Hart explained that he had heard some comments regarding the Board's decision making process with regard to the Grace Covenant Church, which the Board had previously heard. He clarified for the record that the Board had no prearranged motion regarding that case.

Mr. Hart informed the Board that he was present at the most recent Planning Commission meeting and said that there was some discussion about moving the Category 3 and 6 Special Permit uses to Special Exceptions. He suggested that there be some facilitation of citizen input in additional ways with further interaction between the Board and the Planning Commission.

Mr. Hammack stated that a letter had been submitted on behalf of Grace Covenant Church which gave a misleading characterization of the decision making process. He stated for the record that his support of the application was not based on what was characterized in the letter but on his review of the record, the presentations made by the applicant, other speakers at the hearings and his personal visit to the site.

There was discussion between the Board and Pat Taves, County Attorney, regarding why Mr. Taves felt it was inappropriate for him to be present in an Executive Session pertaining to the Golf Park special permit amendment application and the applicant John Thoburn. The Board was concerned that while Mr. Thoburn was currently incarcerated, he would not be able to be present to represent himself at the upcoming June 5, 200, hearing. Mr. Taves explained that the County Attorney's Office represented staff and not the Board and they were currently in the process of litigation with Mr. Thoburn. Mr. Taves explained that there was no provision in the Zoning Ordinance that prohibited the Board from going forward with a hearing without the applicant present. The Board decided to consult an outside attorney for further counsel on the matter.

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Chairman DiGiulian called for the first scheduled case.

Page 281, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 previously approved for a church and related facilities to permit building addition, site modifications and increase in land area. Located at 1020 Balls Hill Rd. on approx. 7.50 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 21-3 ((1)) 50, 50A, 51, 53 and 21-3 ((15)) A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. 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 applicant requested approval of a special permit amendment for a previously approved church and related facilities to permit the construction of a fellowship hall addition to the existing sanctuary building, to increase the number of parking spaces from 275 spaces to 328 spaces, and to add Lot 53 to the subject property. Lot 53 consisted of 19,137 square feet and contained a single family dwelling which would be removed to allow an additional 53 parking spaces. The sanctuary building contained offices, classrooms, and a sanctuary with 736 seats. The applicant proposed to construct the fellowship hall addition along the western side of the sanctuary. The proposed fellowship hall contained 22,200 square feet and would be comprised of additional classrooms and office space, resulting in a total of 57,607 square feet for the entire site, with an FAR of 0.076 upon completion. The only other proposed modification to the site was to the existing stormwater management pond located at the western corner of the site which was proposed to be expanded to meet current Chesapeake Bay requirements and 1996 Dam Standards. The two existing trailers would be removed upon completion of the fellowship hall addition. The church proposed no changes to the total seating capacity of 736. Staff recommended approval of the application.

Mr. Hart referred to the memo from the Department of Transportation, (DOT), which requested that curb and gutter be provided on the application site however the development conditions did not address that issue. Mr. Bernal explained that the curb and gutter would be addressed at the time of site plan.

Ms. Strobel presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the Floor Area Ratio (FAR) of the application was .076, which was well within what was permitted by the County. She said that the proposed improvements would enhance the use of the existing facilities and compliment the existing building. She stated that the applicant was in agreement with the proposed development conditions suggested by staff.

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

Mr. Hammack moved to approve SPA 85-D-034-3 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 FOR MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-4 Appl. under Sect(s). 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 previously approved for a church and related facilities to permit building addition, site modifications and increase in land area. Located at 1020 Balls Hill Rd. on approx. 7.50 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 21-3 ((1)) 50, 50A, 51, 53 and 21-3 ((15)) A1. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2001; 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 only and is not transferable without further action of this Board, and is for the location indicated on the application, 1020 Balls Hill Road (7.5 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Frederick D. Neal, dated December 11, 2000, as revised through February 1, 2001, 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 736 seats.

6. The maximum number of parking spaces shall be 328 spaces as show on the special permit plat. All parking associated with this use shall be contained on-site as shown on the special permit plat.

7. The limits of clearing and grading shall be maintained as shown on the Special Permit plat.

8. The existing vegetation shall be maintained along all lot lines to the maximum extent possible and shall satisfy the Transitional Screening I requirement.

   Landscaping as shown on the submitted Special Permit Amendment Landscape Plan shall be provided added along the frontage of Lot 53 adjacent to Balls Hill Road and along the western side of the new parking area to the satisfaction of the County Urban Forester.

9. Barrier F shall be maintained along Lots 21-3 ((15)) 4, 5, 6, and 21-3 ((1)) 50B where the property is adjacent to the church's southern property line, except along 21-3 ((15)) A1. The barrier requirement shall be waived along all other lot lines except as stated above.

10. The existing interior parking lot landscaping shall be maintained and interior parking lot landscaping shall be provided in the new parking area on Lot 53 in accordance with the Zoning Ordinance.

11. The right turn deceleration lane shall be maintained at the southern entrance from Balls Hill Road. If it is determined by the Department of Transportation at any time that the signs indicating exit only provided to prevent ingress movements into the northern exit are not effective, the applicant shall construct a standard right-turn lane at this access point to Virginia Department of Transportation (VDOT) standards.

12. 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 glazing constitutes 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.

    As an alternative, an acoustical engineering study may be submitted at the time of site plan approval to DPWES which will specify those building materials to be used to ensure that building interior sound levels will not be in excess of 45 dBA Ldn. The study methodology shall be acceptable to the Department of Planning and Zoning.

13. The two trailers shall be removed from the site within thirty (30) days of obtaining the Non-RUP for all improvements associated with the fellowship hall.

14. Any new 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.

    - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.

- 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.

15. Signs shall be permitted provided they are erected in accordance with the provisions of Article 12. Signs shall be located as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.

These conditions incorporate and supercede all previous conditions.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 284, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GOVERNOR'S HILL, L.L.C., VC 01-L-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an increase in dwelling heights. Located at 3117 and 3201 Franconia Rd. on approx. 4.76 ac. of land zoned R-8. Lee District. Tax Map 82-2 ((1)) 55A and 57. (Moved from 5/8/01). (Def. from 5/1/01 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. Meagan E. Micozzi, McGuire Woods, LLP, 1750 Tysons Blvd, Suite 1800, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, informed the Board that on May 1, 2001, the Board deferred decision until May 15, 2001, based upon the Planning Commission's request to allow an opportunity to review some associated issues raised by neighboring residents. On May 10, 2001, the Planning Commission held an administrative review of the case and all of the issues had been resolved.

Mr. Hammack moved to approve VC 01-L-030 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GOVERNOR'S HILL, L.L.C., VC 01-L-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit an

increase in dwelling heights. Located at 3117 and 3201 Franconia Rd. on approx. 4.76 ac. of land zoned R-8. Lee District. Tax Map 82-2 ((1)) 55A and 57. (Moved from 5/8/01). (Def. from 5/1/01 for Decision only). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2001; 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 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 height of Units 80-86 shown on the plat prepared by Christopher Consultants, Ltd., dated December 1, 2000 and signed February 12, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 286, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. VIRGINIA L. BROWN, SP 01-D-009 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 1084 Utterback Store Rd. on approx. 24,200 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((2)) 5B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Virginia Brown, 1084 Utterback Store Road, Great Falls, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator made staff's presentation as contained in the staff report. The applicant requested approval for a home child care facility with a maximum of 10 children on site at any one time. The applicant currently operated a home child care facility on the site. The hours of operation were proposed to be 6:00 a.m. to 6:00 p.m., Monday through Friday, and a total of 1 employee in addition to the applicant would be involved in the operation of the facility. Staff recommended approval of the home child care facility, subject to adoption of the proposed development conditions.

Ms. Brown presented the special permit request as outlined in the statement of justification submitted with the application. She stated that her facility had been in existence at the current location for the previous nine years without any complaints. She explained that the children arrived and departed on a staggered basis; therefore, there were no traffic problems. She said that her driveway had been widened and parking spaces had been implemented to allow cars to enter and exit in an efficient manner.

Ms. Gibb asked if the applicant was aware of the development condition, which mandated that a vehicle turn around was to be installed in the driveway. Ms. Brown stated that she was in agreement with that development condition.

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

Mr. Pammel moved to approve SP 01-D-009 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

VIRGINIA L. BROWN, SP 01-D-009 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home child care facility. Located at 1084 Utterback Store Rd. on approx. 24,200 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((2)) 5B. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2001;

and

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

1. The applicant is the owner of the land.
2. The applicant presently has a childcare facility for seven students, which is permitted by right and the increase to 10 children is nominal.
3. The facility is compatible with the character of the area and does comply with the standards for a special permit 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). 3-103 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, 1084 Utterback Store Road (24,200 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 plats prepared by Merlin F. McLaughlin, dated December 24, 1962, revised by the Fairfax County Department of Planning & Zoning, Zoning Permit Review Branch, through April 6, 2001, and prepared by John W. Veatch, undated, revised by Virginia L. Brown, through February 9, 2001and approved with this application, as qualified by these development conditions.

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

4. The hours of operation of the home child care facility shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday.

5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time.

6. The number of staff for the home child care facility shall not exceed one (1) employee in addition to the proprietor.

7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.

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

9. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), a six (6) foot tall solid wood fence shall be erected or plantings consisting of evergreens with a minimum height of four (4) feet, placed ten (10) feet on center, shall be installed, species and size as determined by the Urban Forestry Branch, Department of Public Works and Environmental Services (DPWES), along the north, south and west property lines in the rear yard in order to visually screen the child care use from the adjacent properties.

10. Prior to the issuance of a Non-Residential Use Permit (Non-RUP), a vehicle turnaround shall be installed in the driveway, as determined by the Director, DPWES in order to facilitate improved vehicular circulation on the site and to eliminate the need for backing up on to Utterback Store Road.

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.

Ms. Gibb 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 May 23, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 288, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GEORGE A. & MONA LEE COUPE, SP 01-S-012 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11112 Devereux Station La. on approx. 5.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-2 ((10)) 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. Darren Coupe, 11112 Devereux Station Lane, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants sought approval to permit a second-story, 2,592 square foot detached accessory dwelling unit to be located over an existing detached garage west of the existing 6,994 square foot home. In staff's evaluation there were no land use, transportation, or environmental issues associated with the request. Staff recommended approval of the application.

Mr. Coupe presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the purpose for the accessory dwelling was to house an ailing relative and it would never be sold or used as a rental.

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

Mr. Ribble moved to approve SP 01-S-012 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 A. & MONA LEE COUPE, SP 01-S-012 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 11112 Devereux Station La. on approx. 5.00 ac. of land zoned R-C and WS. Springfield District. Tax Map 95-2 ((10)) 13. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2001; 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.

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, 11112 Devereux Station Lane (5.00 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 Harold A. Logan Associates, P.C., dated January 12, 2001, revised through February 23, 2001, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Residential Use Permit (RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

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

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

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

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

9. Should the property sell, the only use for the accessory dwelling is that of an accessory dwelling unit in accordance with Sect. 8-918 of the Fairfax County Zoning Ordinance, or the range shall be removed and the structure no longer used as an accessory dwelling unit.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. 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 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 May 23, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 290, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MILL CREEK PARTNERS LLC, VC 00-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots and four outlots with proposed Lots 1, 2 and 3 having lot widths of 6.0 ft. Located at 3806 Mill Creek Dr. on approx. 6.13 ac. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) (2) A (formerly known as 59-4 ((1)) 1); 59-4 ((2)) 79, 80. (Moved from 12/5/00) (Def. from 12/19/00) (Admin moved from 2/13/01 for notices) (Decision only from 3/27/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. H. Kendrick Sanders, 3105 Railroad Avenue, Fairfax, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to permit the subdivision of three parcels into four lots and four outlots with proposed Lots 1, 2 and 3 having a lot width of six (6) feet each at the point where they connected to Hillcrest Road. A minimum lot width of 100 feet is required by the Ordinance for the R-2 zoning district; therefore, a variance of 94 feet each was requested for proposed Lots 1, 2, and 3.

The applicant also proposed to resubdivide Lots 79 and 80 into one lot, identified as Lot 79A on the plat. The BZA deferred decision on the subject application on March 27, 2001, in order for the case to be readvertised and the plat to be revised to reflect an outlot to be conveyed to the Park Authority. The BZA also deferred for; review by staff of the revised development conditions submitted by the applicant at the public hearing; for the incorporation of a non-severability clause for the outlots in the development conditions; for revision of the development condition relating to the conservation easement to pertain to the appropriate outlots; for the by-right subdivision option and any obvious deficiencies; and, for the status of the Independent Line Railroad on the site. Staff believed that the application did not meet all nine standards for variances as set forth in the Zoning Ordinance.

The Board reviewed a plat, which reflected a by-right subdivision of the property in question. Mr. Hart suggested that the Board hear public testimony because the application had been readvertised.

Chairman DiGiulian called for speakers.

Jim Bruett, (no address given for record), came forward to speak. He stated that he lived directly abutting the property would be directly affected by the variance. He explained that the community felt that the by-right alternative was the worst solution for the both them and the developer. He said that the developer had worked extensively with the community to address as many concerns as possible.

Mr. Sanders, agent for the applicant, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the proposed variance request was the best development for the site. He explained that the applicant had requested several changes to the development conditions and staff was in agreement with all but two and asked the Board to consider the implementation of the following changes; a waiver of stormwater management on the site to eliminate any further disturbance and the addition of language which allowed the future homeowners to be able to remove dead, diseased, damaged or hazardous trees, shrubs or vines or noxious weeds.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 00-M-132 with the addition of the applicant's proposed development conditions and for the reasons stated in the Resolution. //

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MILL CREEK PARTNERS LLC, VC 00-M-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots and four outlots with proposed Lots 1, 2 and 3 having lot widths of 6.0 ft. Located at 3806 Millcreek Dr. on approx. 6.13 ac. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) (2) A (formerly known as 59-4 ((1)) 1); 59-4 ((2)) 79, 80. (Moved from 2/5/00)(Def. from 12/19/00) (Admin moved from 2/13/01 for notices)(Decision only from 3/27/01) 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 May 15, 2001; 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. The variance request was a better plan than the by-right option because the area of pavement and disturbance would be significantly lessened.
4. The property is irregularly shaped with tremendous topographic problems.
5. The property is conveyed to the Park Authority in the environmentally sensitive area of Accotink Creek.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 79, 80, Outlot A into four (4) lots and four (4) outlots as shown on the plat prepared by Huntley, Nyce & Associates, Ltd. dated July 21, 2000, revised through March 28, 2001. 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 limits of clearing and grading shall be no greater than shown on the variance plat. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for 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. 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. All of the site outside the limits of clearing and grading shall remain as perpetually undisturbed open space, excepting the installation of necessary utility lines. Any such utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible, duly considering the cost and engineering feasibility of their installation.

3. Prior to approval of either a grading plan or subdivision plan, whichever occurs first, a tree preservation and restoration plan shall be submitted to the Urban Forestry Branch of DPWES for review and approval, for the preservation and revegetation of the areas which currently contain natural vegetation on Lots 1, 2, 3 and 79A, to the maximum extent feasible, with emphasis on those areas located on slopes in excess of 15%. The tree preservation plan shall include a tree survey that describes the location, species, size, accurate dripline, and condition of all trees twelve (12) inches in diameter and greater, twenty-five (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 plan, including methods to be implemented to ensure preservation. The plan shall be developed with the intent of maintaining the existing vegetation within the tree save area depicted outside the limits of clearing and grading as shown on the variance plat. The undisturbed open space shall be maintained by hand as needed to remove only undesirable vegetation such as brambles and vines, or dead, diseased, damaged or hazardous trees, shrubs or vines or noxious weeds, and there shall be no fertilizing or mowing of weeds or grass within the open space areas. Subject to the approval of the Urban Forestry Branch/DPWES, the applicant shall perform the following measures relating to tree preservation on the property:

   - Perform a pre-construction evaluation of the existing vegetation to determine the condition of the trees designated to be saved.

   - The trees designated to be saved shall be marked on the ground with a filter fabric fence or equivalent demarcation prior to clearing and grading and at all times during construction.

   - Signs reaffirming "restricted access" shall be provided on the temporary fence highly visible to construction personnel.

   - As a result of final engineering, in the event the trees designated for preservation cannot be preserved, equivalent tree save areas or equivalent areas of revegetation shall be substituted on the site as determined by DPWES.

The restoration plan shall be developed with the intent of revegetating and restoring portions of Lots 1, 2, 3 and 79A to habitat consistent with those species found within the Environmental Quality Corridor for areas within the Accotink Creek Watershed. The size (saplings or seedlings) and species of plant materials used for revegetation may be dependant on market availability, but shall be subject to review and approval of the Urban Forestry Branch of DPWES. The Urban Forestry Branch shall also review and approve the proposed location of the plant materials.

4. A conservation easement shall be recorded among the land records of Fairfax County over the northern portion of the site as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the areas in proposed Lots 1, 2 and 3 and Outlots "A" and "B" located within the Environmental Quality Corridor (EQC) and outside the limits of clearing and grading, as shown on the submitted variance plat. The conservation easement shall ensure that areas within the EQC remain in undisturbed open space, and shall prohibit the construction of any structures. The easement shall specify that undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Initial prospective purchasers of homes on proposed Lots 1, 2 and 3 shall be advised of these requirements in writing prior to contract execution. Initial prospective purchasers of proposed Outlots "A" and "B" shall also be advised of these requirements prior to conveyance. Said purchasers shall be required to acknowledge receipt of this information in writing. Each deed of conveyance for a lot or outlot shall expressly contain these disclosures, as well as the location of RPA and EQC boundaries on the subject property and the need for an Exception from DPWES pursuant to the Chesapeake Bay Preservation Ordinance (Chapter 118 of the Fairfax County Code) for any land disturbing activity within an RPA. Outlot A is to be conveyed to the owner of Lot 3, Outlot B is to be conveyed to the owner of Lot 77 and Outlot C is to be conveyed to the owner of 79A. In the event that any of the outlots are not conveyed as provided herein they may not be developed in the future.

5. Prior to approval of a subdivision plan or grading plan for the property, the applicant shall submit a soil survey and geotechnical study for the review and approval by DPWES, if determined necessary by DPWES, to determine soil limitations in advance of any development of the property.

6. Unless waived or modified by DPWES, Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided outside of the specified limits of clearing and grading in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as approved by DPWES.

7. At a minimum, erosion and sedimentation controls shall be provided in accordance with the Public Facilities Manual (PFM). If determined by the Department of Public Works and Environmental Services (DPWES), at the time of subdivision plan review, that additional erosion and sedimentation control measures beyond PFM standards are desirable, additional measures shall be provided to the satisfaction of DPWES.

8. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 1, 2 and 3 over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement to be recorded at time of subdivision plat approval for the Application Property. Initial purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

9. The applicant shall install an historical marker, commemorating the site as part of the Independent Line Railroad, in a location and of a content that is mutually acceptable to the applicant and the Park Authority. The marker shall be installed prior to the issuance of the first residential use permit.

10. Outlot D shall be conveyed without cost to the Fairfax County Park Authority at final subdivision plat approval, provided that Outlot D shall be included in the Property for purposes of density and storm water management calculations.

11. The applicant shall install nine (9) evergreen trees, six (6) to eight (8) feet in height and species as determined by the Urban Forestry Branch, DPWES, within the tree save area in the easternmost portion of proposed Lot 1 as a buffer between Lot 3 of the First Addition to Mill Creek Park and

proposed Lot 1. The applicant shall also install six (6) evergreen trees, six (6) to eight (8) feet in height, species as determined by the Urban Forestry Branch, DPWES, along the north property line of Outlot 81A to serve as a visual screen between Lot 81A and proposed Lot 3.

12. Outlots A, B and C shall be noted on the subdivision record plat as follows and subject to a restrictive covenant reciting same: No building or structure (including sheds, doghouses and the like) shall be permitted on Outlots A, B or C. The area of the outlots shall not be added to any adjoining property for development density or subdivision purposes.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 May 23, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 294, May 15, 2001, (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 to remain 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. (moved from 1/18/00) (moved from ind. def.)

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 Bacon, 11350 Random Hills Road, Fairfax, Virginia, replied that it was. Mr. Bacon stated that Michael Peck would be making the presentation.

Mr. Hart made a disclosure but he did not feel that it would interfere with his ability to participate in the case.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a variance to allow a 6.0 foot high fence to remain in the front yard of a corner lot. The Zoning Ordinance permits a maximum fence height of 4.0 feet in a front yard; therefore, a variance of 2.0 feet was requested.

Mr. Peck presented the variance request as outlined in the statement of justification submitted with the application. He informed the Board that the woman who filed the complaint could not see their fence from her home. He stated that the property had double front yard requirements that he was not aware of at the time of the construction of the fence. He said that the fence was needed for privacy for his home office and several bedroom windows that a four-foot fence could not provide. Mr. Peck submitted photographs of the fence and several letters of support from surrounding neighbors.

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

Ms. Gibb moved to approve VC 99-D-172 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

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 to remain 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. (moved from 1/18/00) (moved from ind. def.) Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 15, 2001; and

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

1. The applicant is the owner of the land.
2. The fence does not impair sight distance.
3. Based on the photographs it appears that the fence is set back with landscaping in front of it and it does not give a fortress like appearance.
4. The property has double front yard requirements.
5. The fence provides needed privacy for the bedrooms in the home.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Curtis McAllister, L.S., dated September 29, 1997, as revised through June 22, 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. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 23, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 296, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JULIA DEASSUNCAO GUALDINO MATONDO, SP 01-M-008 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 3912 Victoria Oaks Tl. on approx. 19,647 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((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. Julia Deassuncao Gualdino Matondo, 3912 Victoria Oaks Trail, Fairfax, Virginia, replied that it was. Ms. Matondo requested that Juan Bernal, Staff Coordinator, provide translation assistance.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to allow the operation of a home child care facility with a maximum of 10 children on site at any one time. The proposed hours of operation were between 7:30 a.m. and 6:00 p.m., Monday through Friday. The application proposed a fence 4.0 feet in height to be located along the southern and western property lines. Additionally, the applicant had agreed to extend the fence along the northern property line. Staff recommended approval of the application subject to adoption of the proposed development conditions.

Ms. Matondo presented the special permit request as outlined in the statement of justification submitted with the application. She explained that because her facility was located off of a service road and because the children arrived and departed on a staggered basis there would be no traffic problems. She requested to have two additional employees not including herself to be present at the facility.

Mr. Pammel asked the applicant if she had acquired a Virginia State license to operate a child care facility and if so, the Board would like a copy. Ms. Matondo stated that she had obtained a license and she would provide it to the Board.

Mr. Hart suggested a change to the development conditions to allow the applicant to have two teachers, not including her, present at the child care facility.

Ms. Gibb asked the applicant if she agreed with all of the proposed development conditions, especially the requirements to install a fence and landscaping. Ms. Matondo stated that she did.

Chairman DiGiulian called for speakers.
Randall Borden, (no address given for record), came forward to speak. He stated that he had lived in the neighborhood for many years. He said that there was a nursing home that also utilized the service road and that the additional children would increase the already problematic traffic problems in that area.

Ms. Matondo, in her rebuttal, submitted two letters of support to the Board from surrounding neighbors. She said that she currently had operated a by-right home child care with seven children and such a minimal increase in enrollment would not instigate a significant increase in traffic.

Mr. Hart asked the applicant if there was a main entrance to the nursing home on another road. Susan Langdon, Chief, Special Permit and Variance Branch, replied that there was a median break into the nursing home off of Columbia Pike.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 01-M-008 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JULIA DEASSUNCAO GUALDINO MATONDO, SP 01-M-008 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 3912 Victoria Oaks Tl. on approx. 19,647 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 60-4 ((10)) 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 May 15, 2001; and

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

1. The applicant is the owner of the land.

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

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

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 3912 Victoria Oaks Trail (19,647 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 Charles E. Janson, dated March 5, 1990, revised by Julia De Assuncao Gualdino Matondo, dated February 6, 2001, and approved with this application, as qualified by these development conditions.

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

4. The hours of operation of the home child care facility shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.

5. The maximum number of children on site associated with the home child care facility shall not exceed 10 at any one time.

6. The number of staff for the home child care facility shall not exceed two (2) employees in addition to the proprietor.

7. This home child care facility shall be conducted on the application property and shall be the primary residence of the child care provider.

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

9. The proposed four foot fence, as depicted on the subject application plat, shall extend along the southern and western lot lines. Additionally, the four foot fence shall be extended within the northern lot line, on the south side of the existing trees.

10. The trees shown on the plat along the northern lot line shall be maintained in good condition and additional evergreen trees shall be planted to provide a continuous screen along the northern lot line. All trees shall be replaced with like kind if dead or dying.

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.

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Page 298, May 15, 2001, (Tape 1) Scheduled case of:

9:00 A.M. ROBERT J. BISHTON AND CHRISTINE H. BISHTON D/B/A JUNIPER LANE SCHOOL, SPA 77-M-332 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to amend SP 77-M-332 previously approved for child care center to delete the child care center and to permit increase in land area, nursery school, private school of general education, increase in enrollment, building addition, change in development conditions and reduction to minimum yard requirements based on error in building location to permit deck to remain 8.2 ft. from side lot line and shed to remain 2.3 ft. from rear lot line. Located at 3106 Juniper La. on approx. 33,304 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((23)) A1 and A2. (Def. from 4/3/01 and 4/24/01).

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 Bishton, 3106 Juniper Lane, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval of an amendment to the previously approved special permit for a child care center to delete the child care center use, to change the use to reflect the actual use of the site, which is a nursery school and private school of general education, to increase enrollment from 50 to 99 children, to provide for a 1,580 square foot building addition, increase staff members from 4 to a maximum of 10, to change the hours, from 8:30 am to 4:00 pm, to 8:00 a.m. to 5:00 p.m. and to permit an increase in land area to include the 10,701 square foot adjacent abandoned right-of-way acquired by the applicant. The application also included a reduction to minimum yard requirements based on error in building location to permit a deck to remain 8.2 ft. from a side lot line and a shed to remain 2.3 ft. from the rear lot line.

The subject application would require approximately 19 parking spaces, based on an enrollment of 50 nursery school students and 49 private school of education students. The original plat submitted with the application depicted only 4 spaces provided on-site and therefore, the application did not meet the minimum Zoning Ordinance requirements for parking. Subsequent to the publication of the staff report, a revised plat was submitted depicting 14 additional parking spaces located on-site. This plat was being reviewed by County staff and the Virginia Department of Transportation. A full staff analysis of the revised plat had not been completed.

The applicant was pursuing approval of a parking reduction through the Department of Public Works and Environmental Services. Upon approval, this agreement would allow parking for the school use on the adjacent commercial property to the northeast, leased by Sears. As of May 15, 2001, no parking agreement had been approved.

Without full staff review and support of the revised plat depicting a parking lot on-site or approval of a shared parking agreement, staff did not believe that the application met all the General Standards for special permit uses or the requirement of the Zoning Ordinance for parking. Staff recommended approval of the application in part, only for the increase in land area and the reduction to minimum yard requirements based on an error in building location to permit a deck to remain 8.2 feet from a side lot line and a shed to remain 2.3 feet from the rear lot line.

If the Board approved the application in its entirety, staff recommended that the Board subject the approval by requiring conformance with staff's Revised Proposed Development Conditions. The Board approved only the increase in land area and the building in error, staff recommended the Board subject its approval by requirement conformance with the Proposed Development Conditions contained the Staff Report.

Mr. Hart asked how long staff needed to review the revised plat. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the application needed to be re-staffed to address the issues; therefore, it would need to be deferred at least several weeks.

Mr. Pammel suggested a deferral of one month to allow staff time to review the revised plat.

Mr. Bishton presented the special permit amendment request as outlined in the statement of justification submitted with the application. He gave the Board a brief overview of the history of the school and how he came to request an amendment to the original special permit. He explained that many parents had urged him to expand the school to educate children from nursery school to fifth grade. He stated that he had full community support of the application.

He referred to the parking issues by informing the Board that he had obtained a parking agreement with Sears Department Store, which was a very short walking distance from the school. He stated that he had dedicated Lot A2 for onsite parking should that need ever arise.

Mr. Hart referred to a 30 day termination clause in the parking agreement with Sears and he suggested that the applicant provide the Board with a copy of a solid parking agreement at the next meeting. Mr. Bishton replied that he had submitted a signed parking agreement to the County but it had not yet been approved.

Chairman DiGiulian called for speakers.

Don Macelvein came forward to speak in support. He stated that he represented the lessee of Sears Department Store. He stated that the store had maintained an informal parking agreement with the school for a number of years and there had never been any problems. He stated that he was in support of the application.

Jeff Brown, 3118 Juniper Lane, came forward to speak. He stated that he represented the Ravenwood Citizens Association. He stated that the Association had submitted a letter of support of the application. He stated that the applicant worked diligently with the Association to address all community issues.

Alfred Team, 3273 Juniper Lane, came forward to speak in support. He said the school was excellent and recommended approval of the application.

John Jolley, 3115 Juniper Lane, came forward to speak in support. He stated that he was in support of the application and submitted a petition of support.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to continue SPA 77-M-332 until June 19, 2001, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. //

9:30 A.M. TRACY A. FOX AND SUE A. FOX, A 2001-LE-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an accessory structure (detached garage) which exceeds 7 feet in height has been erected on the appellants' property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 8421 Leaf Rd. on approx. 25,000 sq. ft. of land zoned R-2. Lee District. Tax Map 101-3 ((4)) 42.

Dolores Kinney, Zoning Administration, made staff's presentation as contained in the staff report. The appeal was of a Notice of Violation that an accessory garage, which was located in the rear yard of the property in question, did not meet the 15 foot minimum side yard requirement. This was a violation of Par. 6 of Sect. 2-302 of the Ordinance as well as Sect. 10-104 of the Ordinance. The appellants maintained that the garage was constructed prior to the establishment of the current Zoning Ordinance; therefore, it was a nonconforming use. Staff could not locate any building permits or receipts that supported with the appellants' claim. It was staff's opinion that the appellants had not proven that the structure was a nonconforming use; therefore, it was in violation of the Zoning Ordinance.

Mr. Fox contended that the garage was built in 1978 prior to the current Zoning Ordinance. He stated that he had spoken with Fairfax County and was informed that it was permitted to build 4 feet from the property line; however, the Ordinance was going to change in the near future. He said he applied for and obtained a building permit in the spring of 1978; however, he could not locate it after so many years had passed and the County could not locate any proof that he had obtained it. He said that he had obtained a permit for every other structure that had been constructed on his property; therefore, he maintained that he had also applied for one for the garage in question. Mr. Fox informed the Board that a neighbor in retaliation for a complaint that had been filed regarding his garage had filed the complaint. Mr. Fox called his wife to the podium to provide additional testimony.

Mrs. Fox stated that staff had called them repeatedly and asked them to file a special permit application instead of proceeding with the appeal. She stated that they had done nothing wrong and hoped that the Board would rule in their favor. She informed the Board that all of the improvements made on the property were paid for without any loans; therefore, it took a very long time to complete them.

Mr. Fox submitted a letter of support from a neighbor, which included testimony that the garage was built prior to the Zoning Ordinance.
Mr. Hart asked whether or not the appellant had poured the footers and foundation prior to August 14, 1978, the new effective date of the Zoning Ordinance. Mr. Fox replied that he could not remember. Mrs. Fox stated that the footers were installed during the summer; however, the man who installed them was deceased.

Mr. Hart asked staff if there would still be a violation if they believed that there initially was a building permit but it had been lost. William E. Shoup, Deputy Zoning Administrator explained that the critical issue was when the construction actually commenced. He said that the County considered the commencement of construction to be the pouring of footings and some physical construction activity on the structure. He said the appellants' story was very plausible however, staff could not find any documented evidence to prove that the footers were poured prior to August 14, 1978.

Chairman DiGiulian called for speakers.

Calley Collette, Rosemont Circle, came forward to speak in support. She stated that the appellants were wonderful neighbors and urged the Board to vote in their favor.

Joe Meagher, owner of property at 8421 Rosemont Circle, came forward to speak in opposition. He urged to Board to rule against the appellants because they did not have evidence as to the exact date of construction. He suggested that a portion of the garage was built between 1990 and 1994.

Mr. Fox, in his rebuttal, stated that the speaker in opposition was there in retribution for a similar violation and that he was no longer a resident of the neighborhood. He reiterated that he constructed the garage prior to 1978.

Chairman DiGiulian closed the public hearing.

Page 301, May 15, 2001, (Tape 1), TRACY A. FOX AND SUE A. FOX, A 2001-LE-003, continued from Page 300

Mr. Hart stated that the testimony of the appellants and the correspondence was enough to satisfy him that the construction of the garage was started before 1978.

Ms. Gibb and Mr. Ribble stated that they supported the appellants for the same reasons as Mr. Hart.

Mr. Hart moved to reverse the decision of the Zoning Administrator. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 301, May 15, 2001, (Tape 1) After Agenda Items:

Approval of May 8, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hart amended the motion to include corrections. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:42 a.m.

Minutes by: Lori M. Mallam

Approved on: November 27, 2001

Regina Thorn Corbett, 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, May 22, 2001. The following Board Members were present: Chairman DiGiulian, James Hart, Robert Kelley, James Pammel and John Ribble. Ms. Gibb and Mr. Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. He discussed the policies 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 303, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. FATHIA HASSAN ELSAID-SOLIMAN, SP 01-P-010 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land Admin zoned R-2. Providence District. Tax Map 47-2 ((10)) 2.

Chairman DiGiulian stated that the first case had been administratively moved to July 10, 2001.

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Page 303, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DAVID & ANN LYLE, VC 01-B-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 9415 Pickstone Ct. on approx. 7,173 sq. ft. of land zoned R-5. Braddock District. Tax Map 58-3 ((16)) 52. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gerry Hish, Agent, Vice President of Bierry and Partners, 4443 Brookfield Corporate Drive, Chantilly, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a variance to permit construction of living space to be located 10.0 feet from the rear lot line. The minimum for this district was 25 feet; therefore a variance of 15 feet had been requested for additional living space.

Mr. Hish presented the variance request as outlined in the statement of justification submitted with the application. He said that the applicant had gotten approval from the Home Owners Association Architectural Review Committee with the conditions that the addition be compatible with the rest of the home. The applicants were in full agreement with the conditions.

Chairman DiGiulian called for speakers in support of the application.

Debbi Blonder, Vice President, Starlit Ponds HOA and the Chair of the Architectural Review Committee, 9409 Mirror Pond Drive, Fairfax, Virginia, stated that the HOA and ARC were in full support of the application.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 01-B-036 for the reasons noted in the Resolutions. Ms. Gibb and Mr. Hammack were not present for the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID & ANN LYLE, VC 01-B-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from rear lot line. Located at 9415 Pickstone Ct. on approx. 7,173 sq. ft. of land zoned R-5. Braddock District. Tax Map 58-3 ((16)) 52. 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 May 22, 2001; 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 showing compliance with the required standards for a variance.
3. The lot is small and irregularly shaped

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by W. Ross Dickerson, signature dated February 21, 2001, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0-1. Mr. Pammel abstained from the vote and Mr. Hammack and Ms. Gibb were absent.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 305, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PETER W. & LESLIE L. BERK, VC 01-D-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed Lot 7B having a lot width of 31 ft. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Continued from 5/8/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, Agent, Walsh, Colucci, & Stackhouse, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, stated that this case was continued from the May 8, 2001 Board Meeting to allow the applicants time to address issues that had been brought forth by the neighbors on that day. He said the applicant had submitted a revised plat dated May 21, 2001 and the BZA was given a copy of that along with revised development conditions dated May 22, 2001. Mr. Bernal stated that the revisions and changes to the plat included a decrease in the area of Lot 7A from 1.4 acres to 0.92 acres and an eastward shift to the location proposed for the single family dwelling and for the septic field on Lot 7B. He said that the lot width and the requested variance remained the same.

Mr. Hart asked if the change to the plat date was the only change to the development conditions. Mr. Bernal replied that it was.

Ms. Strobel stated that since new information was received at the last hearing, the applicants had further investigated the natural features on the site. She said the representatives of the applicants went back to the property to re-evaluate wetlands, floodplains, and potential perk sites and that all of those issues would be addressed at the time of subdivision.

Ms. Strobel stated the applicants' representatives made minor adjustments to the location of the floodplain and altered the proposed subdivision between the two properties to ensure that the house would be located as shown on the plat. She said she believed that the issues from the prior meeting had been satisfactorily investigated and the applicants were comfortable with the changes made.

Chairman DiGiulian stated he had several letters of opposition and a petition from surrounding neighbors. He asked if Ms. Strobel had seen them and if so, did she want to address them.

Ms. Strobel said that she had seen them and believed that most of the correspondence referred to issues unrelated to the variance request. She stated that the variance dealt with minimum lot width requirements and whether this parcel met the standards. She noted that the issues raised were legitimate concerns that would be addressed by both the Fairfax County Health Department and the Department of Public Works and Environmental Services at the time of subdivision. Ms. Strobel stated that acquiring the approval for the variance was just the first step towards building this subdivision.

Ms. Strobel stated that the applicant had invested money for further studies of this property to ensure that subdivision was feasible and that the plat now showed the house location had actually been moved further from the neighborhood of those in opposition. She stated that the density proposed was much less than that permitted by the existing zoning and was below that which is recommended by the plan, which was .5 dwelling units per acre.

Mr. Pammel asked Ms. Strobel how long the applicants had owned the property. She replied that it had been purchased approximately one year ago.

Mr. Hart asked staff if the current location of the barn and shed that now stood in floodplains would be a problem. Mr. Bernal replied that there was not any indication that these buildings would be moved, and could remain. However, Ms. Strobel said that the existing structures could not be utilized and the applicants anticipated taking the barn and shed down.

Mr. Hart asked Ms. Strobel if the applicants had looked into the issue of granting a conservation easement. Ms. Strobel replied that the applicants wanted to go into that area and make different changes and improvements. Therefore, they did not want to grant an easement which might preclude them from making their own changes.

Steve Tietz, Engineer, Viking Inc., stated he believed that during the subdivision process, a conservation easement would most likely be granted. He said that could be handled outside the limits of the disturbed area and an easement could go to the county without any foreseeable problems.

Chairman DiGiulian asked for speakers in support or opposition to the application.

Mr. Frank Lockner, President of the Lockmead Community Association, a 60-home community to the west of the Berk's lot, stated that the Association owned common grounds with the Berks, which included the 1 ½ acre pond in the floodplain. He spoke in opposition to the application on the grounds that it would adversely affect the health of the community's property and the pond. He spoke in depth about erosion of the land and the drain field from the septic waters.

James Laramie, 10612 Good Spring Avenue, stated that he and his wife owned the property adjacent to the subject property since August 1975. He said that he opposed variance based on the environmental issues that Mr. Brown had presented in the May 8, 2001 BZA meeting. He said he felt that the property was not bought in 'good faith', and was also against the placement of the drainage field.

David Betway, 10609 Good Spring Avenue, spoke in opposition to the application based on the land position of his well and the proposed drainage field.

Jonathan Butler of Morninghood Lane gave opposition to the application based on contamination to the pond and the negative impact to the environment.

Dr. Nicholas Gozman spoke in opposition to the application based on the negative impact it would have on his property and the environmental impact.

Ms. Strobel stated that the application was a reasonable use for the parcel, which contained 4.18 acres. She stated that the division of the property would make the density less than the permitted R1 Zoning.

Ms. Strobel said that the concerns were environmental issues, and that the applicants would still have to proceed through a subdivision process. She said they had done things up front to ensure that there would not be any adverse impact on the property. She stated that the actual issue before the Board was the variance of the lot width proposal.

Mr. Kelley asked Ms. Strobel to address the 'good faith' issue. Ms. Strobel stated that the applicants did buy the property in good faith and had intended to live there, but, she explained, they also saw a way to make the purchase more economically viable for themselves.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 01-D-026 for the reasons noted in the Resolutions. Ms. Gibb and Mr. Hammack were not present.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER W. & LESLIE L. BERK, VC 01-D-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit the subdivision of 1 lot into 2 lots with proposed Lot 7B having a lot width of 31 ft. Located at 10616 Good Spring Ave. on approx. 4.18 ac. of land zoned R-1. Dranesville District. Tax Map 12-3 ((1)) 7. (Continued from 5/8/01) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 22, 2001; and

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

1. The applicants are the owners of the land.
2. The proposed clearing of the trees on the site was of significant environmental damage.
3. The property was acquired with one residential structure and the owners were aware of that; therefore, there was no hardship involved.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 2001. This date shall be deemed to be the final approval date of this variance

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Page 308, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TIMOTHY E. & MAUREEN K. KEENA, VC 01-H-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the minimum required front yard. Located at 9351 Old Courthouse Rd. on approx. 36,913 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 4B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Timothy Keena, 9351 Old Courthouse Road, Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to permit construction of a detached garage as an accessory structure to be located in the minimally required front yard. She said the Ordinance does not permit accessory structures in any minimally required lots.

Mr. Keena presented the variance request as outlined in the statement of justification submitted with the application. He stated that he currently had a side-load garage which he would like to make into a private suite for his elderly in-laws. He said that his family had owned the property since the 1950s and that his brothers were his surrounding neighbors and had no opposition to this structure.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-H-035 for the reasons noted in the Resolutions. Ms. Gibb and Mr. Hammack were not present.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TIMOTHY E. & MAUREEN K. KEENA, VC 01-H-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in the minimum required front yard. Located at 9351 Old Courthouse Rd. on approx. 36,913 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((1)) 4B. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 22, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants have met all nine of the required standards.

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

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

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

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

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

1. This variance is approved for the location of the detached garage shown on the plat prepared by Mark W. Jeffries, P.E., dated December 27, 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 additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Pammel was not present for the vote. Mr. Hammack and Ms. Gibb were absent from the meeting.

Page 310, May 22, 2001, (Tape 1), TIMOTHY E. & MAUREEN K. KEENA, VC 01-H-035, continued from Page 309

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 310, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SYMPHONY MEADOWS L.C., VC 01-H-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of the Dulles Airport Access Rd. Located at 9605 Chathams Ford Dr. on approx. 36,025 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((21)) 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. Sara Kroll, Agent, Land Design Consultants, 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicants sought approval to permit construction of a single family detached dwelling to be located within 200 feet of the Dulles Airport Access Road. The Ordinance required that residential structures be located at least 200 feet from the Dulles Airport Access Road, therefore a variance of 63 feet was required for the dwelling.

Ms. Kroll presented the variance request as outlined in the statement of justification submitted with the application. She stated that the variance was requested because the structure was going to be 137 feet from the Access Road. She said that in 1988 a dwelling had existed there, but for unknown reasons, the dwelling was now gone but the lot was preserved. Ms. Kroll stated that the lot was over 36,000 square feet, with only 3,200 square feet of buildable area by yard setback. She stated that if the 200 feet setback was fully enforced, the area to construct a dwelling would only be 18 feet wide.

Ms. Kroll said that the applicants had met with the adjoining property owner and a letter of support had been submitted by the owners. She also noted that the character of the zoning district could be jeopardized because a smaller house on the lot would not fall in with the surrounding estates.

Mr. Hart questioned Ms. Kroll as to why the dwelling could not be closer to Lot 16. She replied that the placement of the dwelling was done with sensitivity to the closest homeowners, and it had been contemplated that the remaining lots would be subdivided, bringing the homes within 30 feet of the lot line.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 01-H-033 for the reasons noted in the Resolutions.

Mr. Pammel stated that the applicant controlled the proposed Lot 9, Lot 16, and Lot 10. He felt that the applicant could subdivide a little differently, and a variance would not be needed; therefore, Mr. Pammel could not support the motion.

The motion failed for a lack of four votes and the application was **DENIED.** Ms. Gibb and Mr. Hammack were not present.

A request for reconsideration was heard on May 29, and a new hearing was **APPROVED.**

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Page 310, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN & STAN WISSEMAN, VC 01-Y-037 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 28.1 ft. Located at 2722 Valestra Ci. on approx. 20,018 sq. ft. of land zoned R-1 (Cluster).

Sully District. Tax Map 37-3 ((8)) 100

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Stan Wisseman, 2722 Valestra Circle, Oakton, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicants sought approval for construction of an addition, to be located 8 feet from the side lot line, which totaled 28.1 feet. She said that the Zoning Ordinance required a minimum side yard of 12 feet and a minimum total side yard of 40 feet, therefore a variance of 4 feet to the side yard and a variance of 11.9 feet to the total side yard had been requested.

Mr. Wisseman presented the variance request as outlined in the statement of justification submitted with the application. He stated that there was already an existing screened porch in the present location, which had the same floor space as the addition. He said the difference in the floor plans was to allow the addition to be shifted back toward the house by a few feet so as not to infringe on the septic area. Mr. Wisseman stated that they also wanted to change the roof style of the screen porch to make it more architecturally compatible with the existing dwelling and his neighbor was supportive of this change.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-Y-037 for the reasons noted in the Resolutions. Ms. Gibb and Mr. Hammack were not present.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN & STAN WISSEMAN, VC 01-Y-037 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 28.1 ft. Located at 2722 Valestra Ci. on approx. 20,018 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 37-3 ((8)) 100A. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 22, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant's testimony shows that they did comply with the prescribed criteria for the granting of a variance, specifically the location of a drainage field to the rear of the yard precluding any extensions or additions to the house to the rear.
3. The parcel is unusually configured.

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by William C. Putman, dated August 10, 2000, as revised through February 27, 2001, 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. Hart seconded the motion which carried by a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 312, May 22, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ODALYS SMITH & VIRGINIA I. CARBONELL, SPA 94-Y-055-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-Y-055 previously approved for a child care center

to permit increase in enrollment, building addition and change in permittee. Located at 13316 Braddock Rd. on approx. 1.86 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((3)) 57 and 58.

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

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants sought approval of an amendment of the previously approved Special Permit for a child care center to increase enrollment from 43 to 99 children, to add an additional 3,402 square feet of building area, and provide for a change of permittee to reflect an additional property owner. She said an additional nine parking spaces would be added for a total of 21 parking spaces on the site.

Ms. Stanfield stated that the Virginia Department of Transportation (VDOT) told her on May 21, 2001 that they believed a right-turn deceleration lane was warranted for this site. She said she had distributed revised development conditions dated May 22, 2001, which contained a requirement for construction of a right-turn deceleration lane on Braddock Road into the site.

Ms. Stanfield said that due to the intensification on the site, staff did not agree that the application was in harmony with the comprehensive plan and is not in conformance with the applicable Zoning Ordinance provisions. She stated that staff recommended denial of SPA 94-Y-055-2 and if the BZA did approve the entire application as submitted, staff recommended its approval by requiring conformance with the revised development conditions. Ms. Stanfield said that a revised affidavit, dated May 22, 2001, was distributed before the hearing to reflect a contract purchaser of the site.

Mr. Hart asked Ms. Stanfield if she knew what the cutoff number was for VDOT in regard to the number of children attending that daycare. Ms. Stanfield stated she did not have any information from VDOT on that requirement, but would attempt to obtain those figures.

Mr. Johnson presented the Special Permit Amendment request as outlined in the statement of justification submitted with the application. He stated the applicants wanted to use the extension of an existing use. He said the property had less than 5,000 square feet of floor area on a 1.8 acre lot, frontage on a major highway and surrounding residential uses. He said the daycare was located across the road from a 227 acre park that was heavily used by county residents and lighted for nighttime activities. Mr. Johnson stated that many of the children arrive and leave the center by van or bus and therefore the applicants felt they were in compliance with all the requirements.

Mr. Johnson said that, regarding the right-turn lane, VDOT had listed some conditions for minimal standards. He said that a turn lane had not been required for 43 students and VDOT's guidelines were vague and not specific regarding numbers. He said the guidelines were modified according to site distance, availability of right-of-way, and a number of other features. He stated that if the applicants special permit amendment was granted, they would still have to comply with whatever requirements VDOT imposed.

Mr. Hart clarified that regardless of the conditions by the BZA, the applicants would still have to comply with VDOT. Mr. Johnson agreed, stating that if they didn't they would not be able to get a site plan approved, but had not spoken to anyone in VDOT regarding the requirement.

Mr. Hart asked Mr. Johnson if the applicant was flexible as to the maximum number of children because the intensity of 99 children in one setting seemed like a lot.

Cole Smith, owner of the property, stated that most childcare centers in the area had enrollments of at least 175 children. He said that 99 children is the maximum number allowable for an educational use facility, over 99 would be an institutional use group. He stated there was another school one-half mile away that mirrored his school, and it was comparable in every way.

Mr. Hart asked Mr. Smith what was the deadline for the purchase/sale of the property. Mr. Smith replied that June 26, 2001 was the date and the purchasers would not want to delay the transaction any further out. He

said that was the reason Mr. Johnson put in the revised development condition.

Mr. Hart clarified with Mr. Johnson that the applicants were in agreement with all the development conditions as they stand. Mr. Johnson agreed that they were.

Chairman DiGiulian asked if there were any speakers in support or opposition to this amendment.

Susie Denium, 14132 Autumn Circle, Centreville, Virginia, said she had two children who attended the Country School House. She stated she was in favor of the expansion of the school and believed it would be good for the children as well as the community.

Paula Dickerson, 7593 Gales Court, Manassas, stated that she had worked at the school for five years and felt the expansion would be good for the children. She said they needed the space and it this would allow them to have an indoor playground during the winter months.

Chairman DiGiulian stated that he had two petitions before him with approximately 30 signatures in support of the school. He said that he also had a letter from the West Fairfax Citizens Association, which had voted not to support the application.

There was a brief discussion between the BZA and Susan Langdon, Branch Chief, Zoning and Appeals, regarding a change in permittee as listed in development condition number one, and whether it would be necessary to re-advertise. They decided it would not be necessary for the new purchaser to re-apply and advertise again since the name of the new permittee was not listed on the current papers.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 94-Y-055-2 and Mr. Ribble seconded the motion. Mr. Pammel stated that he could not support the motion based on the intensity of the development. Ms. Gibb and Mr. Hammack were not present.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ODALYS SMITH & VIRGINIA I. CARBONELL, SPA 94-Y-055-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 94-Y-055 previously approved for a child care center to permit increase in enrollment, building addition and change in permittee. Located at 13316 Braddock Rd. on approx. 1.86 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((3)) 57 and 58. 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 May 22, 2001; 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 showing compliance with the required standards for a variance.
3. The intensity is not seen as a significant a factor under the circumstances because of the intensity of the park use across the street.

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, Odalys Smith and Virginia I. Carbonell, and the contract purchasers, Nasrin Kazemi and Mina Kazemi, is for the location indicated on the application, 13316 Braddock Road, 1.86 acres, and is not transferable to other land. The applicant and/or contract purchaser must meet all applicable county and State requirements.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Charles R. Johnson dated, December 15, 2000, as revised through April 27, 2001, 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 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. Upon issuance of the Non-Residential Use Permit for SPA 94-Y-055-02, the total maximum daily enrollment may increase to 99 (ninety-nine) children.

6. A minimum of twenty-one (21) parking spaces shall be provided as shown on the special permit plat. The parking spaces shall be delineated by concrete wheel stops. All parking shall be limited to on-site.

7. The maximum hours of operation shall be limited to 6:00 A.M. to 6:00 P.M., Monday through Friday. The maximum number of employees shall be limited to fourteen (14) on-site at any one time.

8. The transitional screening and barrier requirements for all property boundaries shall be modified in favor of existing conditions, as depicted on the Special Permit Amendment Plat. Additionally, a row of evergreen trees shall be planted along the eastern lot line adjacent to the proposed addition, as determined by the Urban Forestry Division of DPWES to provide screening of the proposed structure from adjacent single family residences.

9. Additional vegetation consisting of foundation plantings, as determined by the Urban Forestry Division of DPWES, shall be provided around the existing sign pedestal, to soften the visual impact

10. The barrier requirement shall be waived along the eastern and northern lot lines. The existing six (6) foot high wood fence along the western lot line and around the outdoor play area shall remain and be maintained in good repair.

11. The existing sign shall be permitted, however the sign shall not be illuminated. Any subsequent replacement of the existing sign shall conform to the requirements of Article 12 of the Fairfax County Zoning Ordinance. No additional signs shall be permitted.

12. The architectural design of the proposed building addition shall be consistent with the exterior of the existing building. Building materials shall include brick or wood trim.

13. The full sized school bus located on-site shall be removed. The 14 seat van shall be parked in the

last parking space adjacent to the child care structure.

14. There shall be no parking lot lighting associated with the child care use.

15. The applicant and/or contract purchasers shall continue to provide, operate and maintain van transport service for the benefit of the day care center clients

16. The applicant and/or contract purchaser shall provide a right-turn deceleration lane from Braddock Road subject to review and approval of the Virginia Department of Transportation.

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. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been 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.

Mr. Ribble seconded the motion which carried by a vote of 4-1.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 316, May 22, 2001, (Tape 1), Scheduled case of:

9:30 A.M. DAVID K. YOUNG, A 2001-PR-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant's property did not meet minimum lot area requirement of the Zoning Ordinance when recorded, does not meet current minimum lot size requirements of the R-1 District, was not legally subdivided and is not buildable under Zoning Ordinance provisions. Located at 8400 Rainbow Rd. on approx. 12,515 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((1)) 49.

Daryl Varney, Senior Assistant to the Zoning Administrator, stated that this was an Appeal of the Zoning Administrator's determination that the subject property did not meet the minimum lot area requirement at the time that it was recorded and did not meet the current minimum lot area or lot width requirements. He stated that the parcel had not been legally subdivided and was therefore, not considered a buildable lot. Mr. Varney said the subject property was 12,515 square feet in area and 128 feet in width. The R-1 District required a minimum lot area of 36,000 square feet and a minimum lot width of 150 feet, therefore the property did not meet either requirement. He said the property was recorded by deed on April 28, 1945, and at that time was zoned a Rural Residence District, which had a minimum lot area requirement of 21,780 square feet and a minimum lot width requirement of 100 feet. Mr. Varney stated that because the property contained only 12,500 square feet in area at the time it was recorded, it did not meet the minimum lot area requirement in effect at the time. He said that Section 2-405 was not applicable in this case and the lot was not considered buildable.

Mr. Varney said that since the property was not legally subdivided as required by the Subdivision Ordinance in effect at that time, Paragraph one of Section 18-603 prohibited a building permit from being issued for any construction on this property.

Mr. Young stated that his family purchased the land in July of 1998 in good faith, and had requested reclassification of the lot to R-3. He said that his was one of two vacant lots in a neighborhood of newly built houses that were primarily zoned R-3. He stated that many had lot sizes of approximately 8,000 square feet or less, which was conservatively less than the size of his lot. He said he would like to construct a single family home there, but as the lot can serve no use, it had become a hardship to his family. Mr. Young requested that the BZA approve his request for reclassification.

Chairman DiGiulian stated that the BZA could not rezone property and told Mr. Young he would need to apply for a rezoning application and go before the Board of Supervisors.

Mr. Young stated he had contacted the home owners association regarding the purchase of an adjacent strip which would allow him to meet the area minimum lot requirements, but said that he was told the lot did not meet the requirements when he tried to get a variance and rezone.

Chairman DiGiulian told Mr. Young that rezoning was his only option.

There was a brief discussion between the BZA and Mr. Young. The Board recommended that Mr. Young contact an attorney to guide him through the difficult process of rezoning and to rectify the situation he faced.

Mr. Hart told Mr. Young that staff would give him the names of some reputable attorneys that could help him.

Mr. William Shoup, Deputy Zoning Administrator, stated that staff would be glad to meet with Mr. Young and an attorney to help sort through all of the issues.

Chairman DiGiulian called for speakers.

Joyce Wyatt came forward and stated that she owned the lot across from Mr. Young. She said there were six lots total, and four of them had houses, and only two did not. She stated that she pays for sewage and taxes on the illegal property. She said that all of the surrounding areas had been developed and were classified as R-3 and felt the County should rezone to correspond with the area. She stated that she has also appealed for the right to build on Lot 46, which originally had a house on it, but had been badly vandalized. She said the County required her to demolish it, and currently would not allow her to get a building permit because they said it was an unbuildable lot.

Chairman DiGiulian stated that the problem was created years ago when the lots were illegally divided and not recorded. He said they had not met the width or area requirements then or now.

Mr. Varney stated that he thought that the ideal situation would be for the consolidation of the lots in a rezoning application to R-3 and that he believed that the Comprehensive Plan would support that.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to uphold the Zoning Administrator's determination in Appeal 2001-PR-005. Mr. Pammel seconded the motion which carried with a 5-0 vote. Mr. Hammack and Ms. Gibb were absent from the meeting.

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Page 317, May 22, 2001, (Tape 1), After Agenda Item:

Additional Time Request
VC 98-D-142
Shiloh Baptist Church of Odricks Corner

Mr. Pammel moved that the Board approve the additional time request for an additional 18 months to January 15, 2003. Mr. Ribble seconded the motion which carried with a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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Page 318, May 22, 2001, (Tape 1), After Agenda Item:

Additional Time Request
VC 92-V-081
William Carter Reynolds

Mr. Pammel moved that the Board approve the additional time request for an additional 3 months to July 20, 2001. Mr. Ribble seconded the motion which carried with a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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Page 318, May 22, 2001, (Tape 1), After Agenda Item:

Additional Time Request
SP 99-S-070
Korean Calvary Baptist Church

Mr. Pammel moved that the Board approve the additional time request for an additional 12 months to February 16, 2002. Mr. Ribble seconded the motion which carried with a vote of 5-0. Mr. Hammack and Ms. Gibb were absent from the meeting.

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Page 318, May 22, 2001, (Tape 1), After Agenda Item:

Approval of May 15, 2001 Resolutions

Mr. Pammel moved that the Board approve the resolutions for May 15, 2001. Mr. Kelley seconded the motion which carried with a vote of 5-0. Mr. Hammack 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 adjourned at 10:55 a.m.

Minutes by: Judith A. Gobbi

Approved on: October 16, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, May 29, 2001. The following Board Members were present: Chairman John DiGiulian; John Ribble; James Pammel; James Hart; and Nancy Gibb. Paul Hammack and Robert Kelley were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies 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.

9:00 A.M. THANH TRUONG AND ANANDA BUDDHIST MEDITATION INSTITUTE, INC., VC 01-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with Lot 12A having a lot width of 52.5 ft. and Lot 12B having a lot width of 0.0 ft. Located at 3418 Annandale Rd. on approx. 5.61 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A and 12B.

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 requested a variance of the minimum lot width requirement for the R-3 District. The applicants proposed to subdivide two (2) lots into two (2) lots, with the proposed lots having lot widths less than the minimum 80.0 feet required by the Zoning Ordinance. Lot 12A was proposed to have a lot width of 52.5 feet while Lot 12B was proposed to have a lot width of 0.0 feet. A Resource Protection Area (RPA) was noted along the northwestern portion of lot 12A and encompassed all of Lot 12B.

During the acceptance process for Special Permit SP 98-P-051, for a place of worship on Lot 12A, it was discovered that the property had never been legally subdivided. Since neither lot met the minimum lot width requirement under the current Zoning Ordinance, the applicant requested a variance to legalize the subdivision of the original lot. The Board approved SP 98-P-051 with Development Condition #12, which stated in part that "prior to the issuance of a Non-Residential Use Permit (Non-RUP) for the place of worship, the applicant shall file and obtain approval of a variance from the minimum lot width requirements from the BZA, and a subdivision plat from the Department of Public Works and Environmental Services (DPWES)." The condition further stated that "if the variance and/or the subdivision plat was not approved, the special permit shall be rendered null and void". The minimum lot width for the R-3 District is 80 feet.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that a portion of the property was the subject of a special permit approval in October of 2000, and the applicant was required, by that approval, to pursue a variance for that property as well as the adjacent parcel owned by the Fairfax County Park Authority. She said that the approval of the variance would result in the formalization of a division of property that occurred in 1964.

Chairman DiGiulian called for speakers.

John Murphy, 7321 Statecrest Drive, came forward to speak in opposition. He stated that the applicants were holding religious services on the property and violating the conditions of their special permit. He informed the Board that there was overflow parking on Annandale Road and the special permit conditions maintained that all parking should be onsite. He stated that the overflow parking created a traffic hazard on Annandale Road.

Ms. Strobel, in her rebuttal, stated that she had no knowledge of religious services being held on the property; however, she would speak to the applicants and reiterate that it should not be occurring.
She stated her belief that the religious services were not the subject of the variance.

Mr. Pammel stated that the applicants had violated conditions from the special permit and that was a problem. He stated that all of the parking should be onsite.

Ms. Strobel reiterated that she had no knowledge of what was occurring on the site and she offered to investigate the situation.

Mr. Pammel moved to defer decision regarding VC 01-P-042 until June 12, 2001, at 9:00 a.m., to allow Ms. Strobel and staff to investigate the site and determine whether or not religious services were being held and if

there was offsite parking. Mr. Hart seconded the motion which carried by a vote of 4-0-1. Mr. Ribble abstained from the vote and Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 320, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. RAYMOND J. & PATRICIA A. SMITH, VC 01-P-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.3 ft. from rear lot line. Located at 2420 Sandburg St. on approx. 18,467 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 41F.

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 J. Smith, 2420 Sandburg Street, Dunn Loring, 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 dining room and conservatory addition to be located 20.3 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 4.7 feet was requested.

Mr. Smith called Peter Saulter, Architect, 2419 Sandburg Street, to present the variance request as outlined in the statement of justification submitted with the application. Mr. Saulter stated that dwelling was built in 1914 and it was on a much larger lot that was subdivided before the applicants purchased the property. He said that because the dwelling was located at the rear of the property a variance was needed for the proposed addition.

Mr. Hart asked if there was adequate screening between the closest home on Lot 17 and the subject property. Mr. Saulter replied that there was adequate screening between the two properties. Mr. Smith submitted photographs which illustrated the distance between Lot 17 and the subject property.

Mr. Hart asked what was the height of the proposed addition. Mr. Saulter replied that it was 14 feet to the top of the ridge and it was intended to have a double pitch roof to keep the height down.

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

Mr. Hart moved to approve VC 01-P-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RAYMOND J. & PATRICIA A. SMITH, VC 01-P-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.3 ft. from rear lot line. Located at 2420 Sandburg St. on approx. 18,467 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 41F. 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 May 29, 2001; 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. The lot is irregularly shaped with an older home situated well back on the lot.
4. Based on the photographs and the evidence that was presented, the place to add onto the house was at the back.
5. The property was well screened with mature trees.
6. The variance request is minimal and there would be no significant impact on adjacent properties.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Kenneth W. White dated, February 21, 2001, 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. Ribble and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 322, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SCOTT I. GLIXON, VC 01-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from side lot line. Located at 3415 Miller Heights Rd. on approx. 1.93 ac. of land zoned R-1. Providence District. Tax Map 47-3 ((14)) (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. Scott Glixon, 3415 Miller Heights Road, Oakton, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of additional living space to be located 16.5 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 3.5 feet was requested.

Mr. Glixon presented the variance request as outlined in the statement of justification submitted with the application. He stated that the subject property was exceptionally narrow with the septic field located toward the rear. He stated that the addition was to house his aging parents. He informed the Board that he had full neighborhood support.

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

Mr. Ribble moved to approve VC 01-P-034 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCOTT I. GLIXON, VC 01-P-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.5 ft. from side lot line. Located at 3415 Miller Heights Rd. on approx. 1.93 ac. of land zoned R-1. Providence District. Tax Map 47-3 ((14)) (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 May 29, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.

3. The applicant cited the narrowness, exceptional shape, topographic conditions, and the extraordinary condition or situation insofar as where the house is sited 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 an addition as shown on the plat prepared by Laura Lee Scott, dated, March 1, 2001, 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.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 324, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BRIAN KIM & JUDY WONG, VC 01-D-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 22.0 ft. from rear lot line and 1.0 ft. from side lot line such that side yards total 35.4 ft. Located at 8401 Weller Ave. on approx. 22,527 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-3 ((11)) 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. Lori Greenlief, 14368 Nandina Court, Centreville, Virginia, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a modification to the variance request. The applicants requested approval of a variance to permit construction of a fireplace addition to be located 22 feet from the rear lot line and a garage addition to be located 3.0 feet from the east side lot line such that side yards totaled 37.4 feet. The Zoning Ordinance requires a minimum rear yard of 25 feet, a minimum side yard of 12 feet and a total side yard of 40 feet; therefore, variances of 3.0 feet, 9.0 feet and 2.6 feet were requested respectively.

Ms. Greenlief, agent for the applicants, presented the variance request as outlined in the revised statement of justification. She stated that the variance was needed in order to add a garage and living space to the existing home. She said the garage with living space would extend into the side yard and a chimney would extend 3.0 feet into the rear yard. Ms. Greenlief stated that the property abutted open space both to the side and to the rear and the home was skewed on the lot with 20 feet on one side and 34 feet on the other side. She said that 38 out of the 41 lots in the subdivision had garages and that the property in question was the only one that would need a variance for a garage; therefore, approval of the variance would not set a precedent in the neighborhood. She stated that there were several letters in support of the application. She addressed a petition that was in opposition of the application, which stated that the garage would inhibit or seal access to common open space. She explained that the garage would not block any access to the open space and the garage had been designed to take up part of the existing family room and kitchen to ensure that the addition would not infringe on the side lot line. She said that the proposed addition would be in character with the neighborhood.

Chairman DiGiulian called for speakers in support of the application.

John Stump, no address given for the record, came forward to speak in support. He stated that the proposed addition would not enter the common land.

Dale Snape, 8301 Weller Avenue, came forward to speak in support. He stated that the proposal was an excellent addition to the community.

Chairman DiGiulian called for speakers in opposition to the application.

Stuart McKernon, 8314 Weller Avenue, came forward to speak in opposition. He stated that he was a member of the homeowners association which owned the common land. He contended that the Board of Directors of the homeowners association did not notify members of the association of the applicant's proposal; therefore, they did not have the authority to give the applicant's permission to construct the addition without the support of the association. Mr. McKernon introduced an attorney to speak to that subject.

Kevin Garrafoly, Troutman, Sanders, Maze and Valentine, came forward to speak to the governing documents of the homeowners association. He stated that the Board of Directors of the homeowners association did not have the authority to grant the easement that was attached to the application. He stated that the proposed application would be constructed partially on common area, which was owned by the homeowners association.

Ms. Gibb stated that the addition had not been proposed to be constructed on any common area. She stated that the powers of the Board of Directors of the homeowners association were not an issue in the granting of the variance.

Mr. Garrafoly stated that he was misinformed.

Charles Mullanow, 8321 Weller Avenue, came forward to speak in opposition. He stated that there was no hardship on the applicants' part; therefore, the variance should not be granted.

Ms. Greenlief, in her rebuttal, stated that the issues with the homeowners association and the Board of Directors were not a part of the application. She informed the Board that the previous owners of the home had requested a similar type of addition from the homeowners association and that request was granted. She said that directly following that decision the McKernons submitted a letter of opposition to the homeowners association and they chose not to rescind the approval.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-D-041 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRIAN KIM & JUDY WONG, VC 01-D-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 22.0 ft. from rear lot line and 1.0 ft. from side lot line such that side yards total 35.4 ft. Located at 8401 Weller Ave. on approx. 22,527 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-3 ((11)) 22. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 29, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' statement of justification and testimony indicated compliance with the required standard for the granting of a variance.
3. The house is sited in such a way as to have quite a large yard on one side but very narrow on the other side, hence the need for the easement for the driveway.
4. The applicants made an accommodation to their homeowners association by pulling the garage three feet from the side lot line so that they should be able to maintain it without going over on common area.

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

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

adjacent to the subject property.

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

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

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

1. This variance is approved for the location of the additions shown on the plat prepared by Fabry Associates, dated May 9, 2001, 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. Ribble and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 326, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM STAGE & GLORIA MOROTE-STAGE, VC 01-V-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.0 ft. from front lot line. Located at 1927 Marthas Rd. on approx. 24,022 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((5)) 147. (Admin. moved from 4/24/01 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. Eason Cross, 2309 Glasgow Road, Alexandria, Virginia, replied it was.

Jennifer Josiah, Senior 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 be located 31 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 35 feet; therefore, a variance of 4.0 feet was requested.

Mr. Cross presented the variance request as outlined in the statement of justification submitted with the application. He stated that the original home was sited parallel to the slope of the land, the rear of the house was too steep to build on and it contained marine clay; therefore, the front of the home was the only suitable location for the addition. He stated that there was full community support. He requested a waiver of the 8-day waiting period.

William Stage, 1927 Marthas Road, came forward to speak. He stated that he was the owner of the property. He explained that the front door of the house was on the side of the home and it was not on the front of the house. He said that there was no other house that faced the property in question.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-V-022 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM STAGE & GLORIA MOROTE-STAGE, VC 01-V-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 31.0 ft. from front lot line. Located at 1927 Marthas Rd. on approx. 24,022 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-4 ((5)) 147. (Admin. moved from 4/24/01 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 May 29, 2001; 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. The house is sited in an unusual location on the property.
4. There is very steep terrain and marine clay present on the property, which precludes additions in any other location other than what is proposed by the applicant.

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Eason Cross, Jr. from a survey by Alexandria Surveys, dated January 4, 2001, 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. Hart seconded the motion which carried by a vote of 5-0. Mr. Hart moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 29, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 328, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. REAGAN D. BLACK, SP 01-Y-013 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of deck 13.0 ft. from side lot line. Located at 15401 Snowhill La. on approx. 13,852 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5)) (5) 85.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Ellen Black, 15401 Snowhill Lane, Centreville, Virginia, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a modification to the minimum yard requirements for certain R-C lots to permit the construction of a deck to be located 13 feet from the north side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 7.0 feet was requested.

Ms. Black presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she and her husband had been trying to bring the house up to the standard of the rest of the houses in the neighborhood and she believed that a deck would help to accomplish that goal. She said that the house was built with three doors to provide access to a deck; however, no deck had been constructed. She stated that there was full neighborhood support.

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

Mr. Hart moved to approve SP-01-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

REAGAN D. BLACK, SP 01-Y-013 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of deck 13.0 ft. from side lot line. Located at 15401 Snowhill La. on approx. 13,852 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-2 ((5)) (5) 85. 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 May 29, 2001; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a deck shown on the plat prepared by Alexandria Surveys, Inc., as revised by Reagan Black dated August 28, 2000, submitted with this application 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. 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 time requested and an explanation of why additional time is required.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2001.

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Page 330, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JOAN WISE, VC 01-V-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8.0 ft. and 18.5 ft. from street lines of a corner lot. Located at 11352 River Rd. on approx. 15,174 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (5) 1 – 4, 9 and 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. Melissa Hunt, 8060 Grandview Court, Springfield, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a dwelling 8.0 feet and 28.5 feet respectively from the two street lines of a corner lot. The Zoning Ordinance requires a minimum front yard of 50 feet; therefore, variances of 42 feet and 31.5 feet were requested respectively.

Ms. Hunt presented the variance request as outlined in the statement of justification submitted with the application. She stated that the subject property was formerly a home site prior to the current Zoning Ordinance and contained a one-story dwelling that was demolished under a previously approved variance for a two-story addition. She said there was an approved septic system, an isolated well, a community well hookup, existing footers for the new dwelling and electricity. She stated that the current title owner of the property fell under financial hardship and was unable to complete construction after demolition of the existing dwelling and placed the property up for sale, during which time the variance and the building permit expired. She stated that it was her intention to purchase the property, clean up the site, and continue with the construction of a two-story dwelling on the existing footers. She explained that the site currently housed several sheds, which were to be removed upon construction of the home.

Mr. Pammel asked if she had plans to remove the sheds and the trailer that existed on the site. Ms. Hunt replied that the barn-like structure was to remain to house materials but the other shed and the trailer would be removed.

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

Mr. Ribble moved to approve VC 01-V-039 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOAN WISE, VC 01-V-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of

dwelling 8.0 ft. and 18.5 ft. from street lines of a corner lot. Located at 11352 River Rd. on approx. 15,174 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (5) 1 – 4, 9 and 10. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 29, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. A variance had been granted to a home that had previously existed on the lot in question.
4. The proposed home was only slightly larger than the previous home.
5. The placement of the septic fields prohibited the construction of a home on any other location 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 dwelling shown on the plat prepared by Kenneth W.

White, dated through February 15, 2001, 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 existing trailer and Shed A shall be removed upon the completion of 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.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 6, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 332, May 29, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FOX MILL WOODS SWIM & TENNIS CLUB, INC., SPA 81-C-093-5 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 previously approved for a community recreation facility to permit site modifications. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2.

Chairman DiGiulian stated that the case had been administratively moved to August 7, 2001.

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Page 332, May 29, 2001, (Tape 1) Scheduled case of:

9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((20)) 9. (Def. From 2/13/01 and 2/27/01) (Def. From 5/1/01)

Dolores Kinney, Zoning Administration, explained that staff had suggested a deferral until September 25, 2001.

Chairman DiGiulian asked for speakers to the issue of a deferral.

Dorothy Reilly stated that there was some confusion between the Department of Transportation and Fairfax County so staff had suggested that the appeal be deferred to deal with the issue. She stated that the deferral was acceptable.

Mr. Pammel moved to defer A 2000-MA-034 to September 25, 2001, at 9:00 a.m. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 333 May 29, 2001, (Tape 1) After Agenda Item:

Request for Reconsideration
Symphony Meadows
VC 01-H-033

John Secas, Symphony Meadows, LLC, apologized for the company's presentation at the previous Board of Zoning Appeals hearing. He stated that although the applicant met the requirements for the granting of a variance, the presentation was not as clear and concise as it should have been. He stated that he was willing to move the home further away from the neighbors, as the Board had suggested. He explained that the owners of the property in question were upset that the variance had not been approved and requested that, should the Board approve the reconsideration request that the case be heard as soon as possible.

Mr. Hart stated that he would be willing to hear the case again, as now there is adequate information to answer his questions.

Mr. Hart moved to approve the request. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting. The public hearing was scheduled for August 7, 2001, at 9:00 a.m.

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Page 333, May 29, 2001, (Tape 1) After Agenda Item:

Approval of May 22, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:28 a.m.

Minutes by: Lori M. Mallam

Approved on: October 30, 2001

Regina Thorn Corbett, 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 5, 2001. 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 9:08 a.m. Chairman DiGiulian discussed the policies 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 335, June 5, 2001, (Tape 1), Scheduled case of:

9:00 A.M. HERMIZ AND MAE YONO, VC 01-B-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from rear lot line. Located at 5313 Berrywood Ct. on approx. 10,779 sq. ft. of land zoned R-3. Braddock District. Tax Map 68-4 ((19)) 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. Hermiz and Mae Yono, 5313 Berrywood 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 variance to permit the construction of a screened porch addition to be located 16.9 feet from the rear lot line. The minimum rear yard requirement is 25 feet; therefore, a variance of 8.1 feet was requested.

Mr. Yono presented the variance request as outlined in the statement of justification submitted with the application. He said they were not able to enjoy their deck because of the noise from the tennis and basketball courts located behind their property. Mr. Yono stated that there was a lack of privacy and their yard was used as a cut-through to gain access to the courts.

Mr. Hammack asked whether the screened porch would be located on the existing deck. Mr. Yono replied yes.

Mr. Yono said he had received support from the neighbors and asked for a waiver of the 8-day waiting period.

Mr. Hammack asked if the screened porch would be larger than the existing deck. Mr. Yono replied no.

Mr. Hart asked how tall the screened porch would be. Mr. Yono replied that it would be no higher than the current garage roof.

Mr. Hart asked whether there was height limit. Mr. Bernal replied that the height would be even with the house and that was allowed.

Chairman DiGiulian called for speakers.

Mrs. Yono came forward stating that she supported the application.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-B-056 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HERMIZ AND MAE YONO, VC 01-B-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from rear lot line. Located at 5313 Berrywood Ct. on approx. 10,779 sq. ft. of

land zoned R-3. Braddock District. Tax Map 68-4 ((19)) 7. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 2001; 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 plat reflects that the lot is irregularly shaped.
4. The house is cited in the center of the lot but is pushed to the rear in order to meet other setback requirements.
5. One side lot line is only 64 feet deep.
6. The property backs up to homeowners association open space causing no impact on the neighborhood or the adjacent 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 as shown on the plat prepared by H. Christopher Hughes dated, January 24, 2001, 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. Ribble seconded the motion which carried by a vote of 7-0. Mr. Hammack moved to waive the 8-day waiting period. 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 June 5, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 337, June 5, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY W. & LINDA H. HAMILTON, VC 01-L-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.49 ft. from side lot line. Located at 5817 Pratt Ct. on approx. 15,000 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((6)) (5) 71.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeffrey Hamilton, 5817 Pratt Court, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 10.49 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.51 feet was requested.

Mr. Hamilton presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to expand the family living area for dining purposes. Mr. Hamilton stated that the addition would be architecturally compatible with the existing dwelling.

Mr. Ribble asked whether the addition was closer to the lot line because of the chimney. Mr. Hamilton responded that the architect felt the proposed location was best.

Mr. Pammel asked what other uses would be in the basement area besides parking. Mr. Hamilton replied that there would be stairs to the upper level, a garage, and an all-purpose room.

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

Mr. Pammel moved to approve VC 01-L-044 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY W. & LINDA H. HAMILTON, VC 01-L-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.49 ft. from side lot line. Located at 5817 Pratt Ct. on approx. 15,000 sq. ft. of land zoned R-3. Lee District. Tax Map 81-2 ((6)) (5) 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 5, 2001; 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 addition is minimal.
4. The chimney is a factor in the width of the garage.
5. The architect kept the garage width to a minimum of 20 feet, which is as close as they could come with a minimal variance sought.
6. There are exceptional topographical conditions 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 an addition, shown on the plat prepared by Charles Gavin, dated February 8, 2001, 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. 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 June 13, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 339, June 5, 2001, (Tape 1), Scheduled case of:

9:00 A.M. FLORIS UNITED METHODIST CHURCH, SP 01-H-011 Appl. under Sect(s). 3-103 and 5-503 of the Zoning Ordinance to permit a church with a child care center and nursery school which has an enrollment of 100 or more students daily. Located at 13600 Frying Pan Rd. on approx. 11.61 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A.

Mr. Hart gave a disclosure but indicated it would not affect his ability to participate in the public hearing.

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 D. Leigh, Blankingship & Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Mr. Leigh requested a deferral to allow staff time to review a new plat and to work out issues with the applicant.

Mr. Ribble moved to defer SP 01-H-011 to July 24, 2001, at 9:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 339, June 5, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SPA 91-C-070-2 previously approved for outdoor recreation uses to permit modification of development conditions including but not limited to change in hours of operation, additional lighting, increased food service, addition of special events, and reduction of landscaping. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (OTH HEARING GRANTED)

Mr. Hart gave a disclosure on this case and indicated that it would not affect his ability to participate in the public hearing.

Mr. Kelley moved to defer the application to September 18, 2001, and that it be placed at the end of the agenda in order to allow the applicant's agent time to prepare for the case. He said that the case was not as complex as noted in the newspapers. Mr. Kelley stated that it was his understanding that the applicant was eligible for a Non-RUP since the landscaping had been taken care of and there were no outstanding issues.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for speakers to the question of deferral.

Charles Regal, 1904 Whipping Post Way, came forward to speak in support of the deferral. He stated that the application should be deferred because the applicant's rights had been impinged and everybody who read about the application should be able attend the meeting.

The following speakers came forward to speak in opposition of the deferral request: Bruce and Jody Bennett, 1459 Hunterview Farms; Rela Hornpatten, no address given; Phillip Hughdock, Hunting Crest Lane; Dr. Duffy Ward, 10286 Johns Hollow Road; Bob Rudicielli, 1537 Crowell Road; John Kerins, 10300 Brittinford Drive; and Jeannette Twomey with the Hunter Mill Defense League.

They indicated their opposition to the deferral for the following reasons: the applicant had had time to meet with counsel prior to the public hearing; the citizens had to take off work to attend the public hearing; if deferred, the application should be deferred to a night meeting; and deferrals were inconvenient to the neighbors.

Mr. Hanes stated in his rebuttal, that if the application was continued, he would assure the Board that he would try to take out some of the personal animosity and focus on the land use issues. He said he was just retained and the issues involved were substantial. Mr. Hanes stated that a person had the right to choose an attorney.

Jane Gwinn, Zoning Administrator, noted that a Non-RUP had been issued for the Golf Park based on the SPA 91-C-070-2 application, and the applicant was currently in compliance.

Mr. Pammel suggested an amendment to the motion. He said given the circumstances of the application, the nature of the case, and the fact that it had been around for so long, accommodating the community with an evening meeting was justified and reasonable. Mr. Pammel moved to amend the motion to set a special meeting on the evening of the 18th of September, commencing at 8:00 p.m. and ending at 11:00 p.m. with the stipulation that the proponents and opponents presented their case within that time frame and not go any later than 11:00 p.m.

Mr. Kelley said he did not see a need for an evening meeting. He said the Non-RUP had been issued and the landscaping was taken care of. Mr. Kelley stated that it had been reduced to a simple application to amend the existing special permit approval.

Ms. Gibb seconded the amended motion.

Mr. Pammel said he disagreed with Mr. Kelley and stated that the issues were serious.

Mr. Hammack said the case was controversial and he agreed with Mr. Kelley but would support the motion for an evening meeting.

The amended motion carried by a vote of 5-2. Chairman DiGiulian and Mr. Kelly voted against the amended motion. The application was scheduled for September 18, 2001, from 8:00 p.m. to 11:00 p.m.

Mr. Hart said he wanted to speak to the main motion. Chairman DiGiulian said the main motion was moot.

Mr. Hart said he appreciated the fact that a number of people came out and the Board took the issues seriously. He said they had received a lot of correspondence. Mr. Hart stated that it was important that the Board do the best that they could to understand all the information presented. Mr. Hart stated that in the long run the deferral would help.

Mr. Hammack stated that he wanted to remind the citizens that if the Board took action it would not preclude the applicant from filing an amended application at some point in the future. He said it might be delayed, but the same issues could come back. Mr. Hammack said it was the hope of the Board that with counsel representing the applicant, that some of the issues would be narrowed and the land use issues could be addressed in a deliberate fashion. He said the issues were fairly narrow.

Page 341, June 5, 2001, (Tape 1), GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04, continued from Page 340

Mr. Kelley said he wanted to be clear that the September meeting was not a revocation hearing.

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Page 341, June 5, 2001, (Tape 1), After Agenda Item:

Approval of May 29, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 9:54 a.m.

Minutes by: Regina Thorn Corbett

Approved on: November 13, 2001

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, June 12, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble were present.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies 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.

9:00 A.M. CHRISTY N. LOWREY, VC 01-Y-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from side lot line such that side yards total 18.2 ft. Located at 14835 Cranoke St. on approx. 10,009 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 53-2 ((3)) 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. Christy Lowrey, 14835 Cranoke Street, Centreville, Virginia, replied that it was.

Jennifer Josiah, Senior 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 5.1 feet from the north side lot line such that side yards total 18.2 feet. The Zoning Ordinance requires a minimum side yard of 8.0 feet and total side yards of 20 feet; therefore, variances of 2.9 feet and 1.8 feet were requested respectively.

Ms. Lowrey presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the garage addition was needed to provide additional storage space. She stated that the garage would be in character with the neighborhood.

Mr. Kelley asked the applicant how many vehicles the family owned. Ms. Lowrey replied that they owned four vehicles.

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

Mr. Pammel moved to approve VC 01-Y-043 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTY N. LOWREY, VC 01-Y-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.1 ft. from side lot line such that side yards total 18.2 ft. Located at 14835 Cranoke St. on approx. 10,009 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 53-2 ((3)) 39. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a 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 garage addition shown on the plat prepared by Burgess & Niple, dated February 24, 1987 as revised through March 15, 2001, 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.

Ms. Gibb 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 June 20, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LEWIS & SARAH REARICK, VC 01-P-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. from side lot line. Located at 8309 Westchester Dr. on approx. 30,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((9)) 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. Lewis and Sarah Rearick, 8309 Westchester Drive, Vienna, Virginia, replied that it was.

Jennifer Josiah, 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 to be located 11.2 feet from the east side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 8.8 feet was requested.

Mr. Rearick presented the variance request as outlined in the statement of justification submitted with the application. Mr. Rearick explained that an easement through the property and extreme run off and drainage problems restricted the construction of the garage in any other area. He stated that the garage was needed to provide space to park additional vehicles.

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

Mr. Hart moved to approve VC 01-P-055 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LEWIS & SARAH REARICK, VC 01-P-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.2 ft. from side lot line. Located at 8309 Westchester Dr. on approx. 30,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((9)) 59A. 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 June 12, 2001; 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. The lot is narrow.
4. The photographs and the topography of the lot justify the need for a variance.
5. There would be minimal impact to the neighbors.
6. There are more than a dozen similar variances granted 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 garage addition shown on the plat prepared by Alexandria Surveys, Inc., dated July 24, 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.

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 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 20, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 346, June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. HILDA M. ROCHFORD, VC 01-B-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 5103 Claytonia Ct. on approx. 12,384 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((13)) 13. (Concurrent with SP 01-B-018).

9:00 A.M. HILDA M. ROCHFORD, SP 01-B-018 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 5.8 ft. from side lot line. Located at 5103 Claytonia Ct. on approx. 12,384 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((13)) 13. (Concurrent with VC 01-B-052).

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 Garner, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction to minimum yard requirements based on error in building location to permit a frame shed that was 9.8 feet in height to remain 5.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the amount of error was 6.2 feet. The applicant also requested a variance to permit the construction of an enclosed carport to be located 9.3 feet from a side lot line. The Zoning Ordinance requires a side yard of 12 feet; therefore, a variance of 2.7 feet was requested.

Mr. Garner presented the applications as outlined in the statement of justification submitted with the applications. He spoke to the special permit request and explained that the existing shed had been in place for approximately 15 years, was installed by Hechingers, and the error was made in good faith. He spoke to the variance request by stating that the carport had been constructed with the intention of enclosing it into a garage and that all of the footers were already in place.

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

Mr. Ribble moved to approve VC 01-B-052 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HILDA M. ROCHFORD, VC 01-B-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.3 ft. from side lot line. Located at 5103 Claytonia Ct. on approx. 12,384 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((13)) 13. (Concurrent with SP 01-B-018). 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 12, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The shallowness and exceptional shape of the lot justify 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, shown on the plat prepared by Kenneth W. White, dated October 17, 2000, revised through January 23, 2001 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. 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 20, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble moved to approve SP 01-B-018 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HILDA M. ROCHFORD, SP 01-B-018 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 5.8 ft. from side lot line. Located at 5103 Claytonia Ct. on approx. 12,384 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((13)) 13. (Concurrent with VC 01-B-052). Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2001; 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, as shown on the plat prepared by Kenneth W. White, dated October 17, 2000, revised through January 23, 2001, 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 20, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 350, June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. WILLIAM C. & CHERYL L. MAY, SP 01-P-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.0 ft. from side and rear lot lines. Located at 9137 Leghorn Pl. on approx. 11,115 sq. ft. of land zoned R-3. Providence District. Tax Map 58-2 ((10)) 53.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William May, 9137 Leghorn Place, Fairfax, Virginia, replied that it was.

Mr. Hammack disclosed that he was a member of the Mantua Citizens Association however he was not involved in the position taken by the Association; therefore it would not affect his participation in the hearing.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for a reduction to minimum yard requirements based on error in building location to permit a shed which was 10.5 feet in height to remain 2.0 feet from side and rear lot lines. The Zoning Ordinance requires a minimum rear yard of 10.5 feet and a minimum side yard of 12 feet; therefore, a modification of 8.5 feet for the rear yard and 10 feet for the side yard was requested.

Mr. May presented the special permit request as outlined in the statement of justification submitted with the application. He explained that he was unaware of the height limitation of 8.5 feet upon construction of the shed. He said that it was necessary to level the area beneath the shed by raising the grade 2.0 feet and he did not realize that the leveling of the area was included in the height calculations. He said he spoke to the County before the construction and was informed that no building permit was required for a shed less than 144 square feet in size. Mr. May explained that he had torn down two sheds and a tree that was termite infested and had the shed constructed in that area where the tree and one of the sheds had stood. Mr. May informed the Board that his neighbors to the rear of the property were not happy with the shed and they believed that it was an eyesore that detracted from their property value. He contended that a home on the adjacent property had recently sold above the assessed value; therefore, the shed was not a detriment to property values. He said that he had offered to plant trees in the neighbor's yard to screen the shed however that offer had not been accepted. Mr. May contended that Homeowners Association in the neighborhood did not consistently follow up with the construction projects and that there were many run down sheds and zoning violations in the neighborhood and he provided the addresses to the Board.

Mr. Hammack noted that the shed was on skids and could be moved and he asked the applicant if he would be willing to move it forward and plant adequate screening. Mr. May replied that he was willing to move the shed up 3 to 4 feet. He stated that if he moved the shed to any other location on the property it would have more of a negative impact on the neighbors in opposition.

Mr. Hart stated that the Homeowners Association had not approved the shed. He asked the applicant if he had submitted an application for approval. Mr. May replied that he had not because he felt he needed to obtain the special permit first.

Chairman DiGiulian called for speakers.

Norman Neiss, (no address given for record), Mantua Citizens Association, came forward to speak in opposition. Mr. Neiss stated that had the applicant attempted to get approval for the shed from the Homeowners Association he would have been turned down. He stated addresses that Mr. May had provided as having zoning violations probably had been grandfathered under the Ordinance.

Rob Duff, Baskin, Jackson, Hasbenger & Duffet, representative for Robert Jerussi, came forward to speak in opposition. He stated that the highest point of the shed was 14 feet in height and it created a dominating presence on the Jerussi property. He suggested that the applicant knowingly placed the shed in that location and the error was not made in good faith. He noted that the shed was on skids and could be moved. He submitted to the Board a letter in opposition from another rear abutting property owner. He noted that the applicant would not be under any hardship to move the shed as he could locate it in another area of the property that would not require a special permit.

Ms. Gibb asked if the Jerussi family would be opposed to any other location of the shed. Mr. Duff stated that the Jerussis would be happy with any other location as long as it was in compliance with the Zoning Ordinance.

Mr. May, in his rebuttal, reiterated that he would move the shed up 3 feet and plant adequate screening. He stated that none of the opposing testimony negated the fact that he was entitled to use his property and a denial of the special permit would constitute a taking from his enjoyment of the property. He asked the Board to approve the special permit.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that the photographs illustrated that the shed had a substantially negative impact on the neighbor's property and that a shed 2.0 feet from the rear lot line did not allow for any screening or maintenance. She stated that the applicants were not entitled to have the shed 2.0 feet from the property line just because it was their property.

Ms. Gibb moved to deny SP 01-P-015 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILLIAM C. & CHERYL L. MAY, SP 01-P-015 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.0 ft. from side and rear lot lines. Located at 9137 Leghorn Pl. on approx. 11,115 sq. ft. of land zoned R-3. Providence District. Tax Map 58-2 ((10)) 53. 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 12, 2001; and

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

1. The applicants are the owners of the land.
2. The shed has substantial negative impact on the neighbor's property.
3. Two feet is not enough to allow for screening and maintenance.
4. The applicants were not entitled to have the shed in this position just because they owned the property.
5. The shed could be moved to another place on the lot where it would be legal.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:
THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

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

Mr. 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 20, 2001.

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Page 352 June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. HOPKINS HOUSE, SP 01-V-016 Appl. under Sect(s). 3-203 and 4-803 of the Zoning Ordinance to permit a child care center which has an enrollment of 100 or less students daily. Located at 8539 Richmond Hwy. on approx. 1.75 ac. of land zoned C-8, R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((9)) (1) C1, 501, pt. 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. Harry Hart, 307 North Washington Street, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested a special permit for a child care center with a total maximum enrollment of 99 children. The proposed hours of operation were 7:00 a.m. until 7:00 p.m., Monday through Friday, with occasional evening meetings to last no later than 9:00 p.m. A total of 30 parking spaces were proposed to be located parallel to both Richmond Highway and Forest Place on the northern and western perimeters of the site. A proposed 8,000 square foot play area was proposed to be located in the rear yard surrounded by a chain link fence 4.0 feet in height. The applicant agreed to provide landscaping along Richmond Highway and Forest Place consistent with the Urban Design Guidelines of the Richmond Highway Corridor area. Additionally, transitional screening was proposed along the eastern and southern boundaries of the site, adjacent to mobile homes. The special permit plat also depicted foundation plantings, parking lot landscaping and three areas of storm water management and best management practices facilities. One area, located to the east and north, was to be excavated and utilized as a dry pond; the other two areas, located in the southern end of the site would remain vegetated to the maximum extent possible. Staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions and recommended approval.

Mr. Hart presented the special permit request as outlined in the statement of justification submitted with the application. He reiterated that staff recommended approval of the application and submitted to the Board the two letters of support from the Mount Vernon Manor Citizens Association.

Mr. Ribble discussed a letter from Supervisor Dana Kaufman that stated he was not in opposition of the application, but suggested that the applicants should not ask for any monetary assistance from him for the operation of the child care center. Mr. Hart stated that he had met with Mr. Kaufman regarding that issue and the applicants had agreed not to request any monetary assistance.
Chairman DiGiulian called for speakers.

Earl Berkshoggle, President, Mount Vernon Manor Citizens Association, came forward to speak in support. He stated that the association strongly recommended approval of the application.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SP 01-V-016 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HOPKINS HOUSE, SP 01-V-016 Appl. under Sect(s). 3-203 and 4-803 of the Zoning Ordinance to permit a child care center which has an enrollment of less than 100 students daily. Located at 8539 Richmond Hwy.

on approx. 1.75 ac. of land zoned C-8, R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((9)) (1) C1, 501, pt. 5. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2001; 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 and 4-803 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 and is not transferable without further action of this Board, and is for the location indicated on the application, 8539 Richmond Highway, 1.75 acres, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Christopher Consultants, dated January, 2001, revised through May 23, 2001, 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 total maximum daily enrollment for the child care center shall not exceed 99 (ninety-nine) children. A maximum of thirty (30) children shall utilize the outdoor play area at any one time.

6. The maximum number of employees shall be limited to fifteen (15) on-site at any one time.

7. Hours of operation shall be limited to a maximum of 7:00 a.m. until 7:00 p.m., Monday through Friday, with occasional evening hours, not to exceed three times a month and up to 9:00 p.m., for meetings with parents.

8. Transitional screening, parking lot landscaping and landscaping located parallel to Richmond Highway shall be provided as depicted on the special permit plat. The design and layout of the site shall be provided as depicted in the illustrative rendering, provided with this application and included as Attachment 1.

9. There shall be thirty (30) parking spaces. All parking shall be on-site, as depicted on the Special Permit plat.

10. The applicant shall obtain a sign permit for the proposed sign in accordance with the provisions of Article 12 of the Zoning Ordinance.

11. 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.
    - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
    - 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.

12. The applicant shall provide a two thousand dollar pro rata contribution towards a future signal light at the intersection of Forest Place and Richmond Highway on demand, or at the time of site plan approval, whichever occurs first.

13. Dedicated right-of-way for Richmond Highway shall be provided as depicted on the plat and conveyed to the Board of Supervisors, in fee simple on demand or at the time of site plan approval, whichever occurs first.

14. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in the areas designated on the special permit plat in accordance with the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance subject to approval by DPWES.

15. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Division, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for 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. 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.

16. Notwithstanding the depiction of tree save areas on the special permit plat, prior to approval of the grading plan outlined in Condition #15, a tree preservation plan shall be submitted to the Urban Forestry Division of DPWES for review and approval. The tree preservation plan shall show limits of clearing and grading and shall specify trees to be preserved.

17. All utility distribution lines located on-site shall be placed underground.

18. In order to achieve a maximum interior noise level of 45 dBA L_{dn}, the subject structure shall be constructed with the following acoustical attributes:

    - Exterior walls should have a laboratory sound transmission class (STC) of rating of at least 39.
    - Doors and glazing should have a laboratory STC rating of a t least 28. If glazing constitutes more than 20% of any façade they should have the same laboratory STC rating 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.

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 June 20, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 355, June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GEORGE & JUDY NGUYEN, VC 01-P-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line, an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less **(PLAYHOUSE WAS WITHDRAWN)** and a 6 ft. high fence to remain in front yard. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B.

9:00 A.M. GEORGE & JUDY NGUYEN, SP 01-P-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 dwelling to remain 17.9 ft. from side lot line. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B. (Concurrent with VC 01-P-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. George Nguyen, 3616 Woodburn 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 reduction to the minimum yard requirements based on an error in building location to permit the dwelling to remain 17.9 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 2.1 feet was requested. The applicant also requested variances to permit the construction of an addition to be located 13.0 feet from a side lot line, to permit the construction of a playhouse to be located in the front yard of a house containing 36,000 square feet or less and to permit a 6.0 foot high fence to remain in the front yard. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 7.0 feet was requested for the addition.

Mr. Nguyen presented the requests as outlined in the statement of justification submitted with the application. He stated that he had a large family and needed the addition to provide additional living space. He said that he wanted to relocate the playhouse from the front yard to the backyard to increase an existing storage shed to 11 feet in height.

Mr. Hammack asked staff if a change in the size of the shed would facilitate the need to re-advertise. Susan Langdon, Chief, Special Permit and Variance Branch replied a new variance application would need to be filed if the shed was increased in size, as the shed currently was under 8 feet in height and did not require a variance. She said that the relocation of the playhouse would also need to be re-advertised. There was discussion between the Board, staff and the applicant as to whether the relocation of the playhouse along with the increase in the size of the storage shed would require new variance applications. Mr. Nguyen decided to withdraw the request for the playhouse and said that he would submit a new variance application for the storage shed.

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

Mr. Hammack moved to approve-in-part VC 01-P-061 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE & JUDY NGUYEN, VC 01-P-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line, an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less **(PLAYHOUSE WAS WITHDRAWN)** and a 6 ft. high fence to remain in front yard. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B. (Concurrent with SP 01-P-020). 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 12, 2001; and

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

1. The applicants are the owners of the land.

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

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

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

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

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

1. This Variance is approved for the location of an addition, **(PLAYHOUSE WAS WITHDRAWN)** and fence as shown on the plat prepared by Kenneth W. White, dated December 4, 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.

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 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 June 20, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack moved to approve SP 01-P-020 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 & JUDY NGUYEN, SP 01-P-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 dwelling to remain 17.9 ft. from side lot line. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B. (Concurrent with VC 01-P-061). Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 2001; 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 December 4, 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. 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 20, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 358 June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. RIGOBERTO POSADA, SP 01-L-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 2.7 ft. from side lot line. Located at 7417 Gary St. on approx. 13,613 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (43) 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. Rigoberto Posada, 7417 Gary Street, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for a reduction to minimum yard requirements based on error in building location to permit a garage addition to remain 2.7 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 9.3 feet was requested.

Mr. Posada presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Posada stated that a carport was in existence upon his purchase of the property and he was in the process of enclosing it into a garage.

Mr. Pammel asked staff if the garage was currently in violation of the Zoning Ordinance because it encroached into the side yard set back. Mr. Bernal replied that it was in violation.

Mr. Hart asked if the violation was the result of a complaint. Mr. Bernal replied that a n eighbor had complained because the applicant had commenced construction without a permit.

There was discussion between the Board, staff and the applicant as to whether reducing the width of the garage was possible. Mr. Posada indicated that he was willing to reduce the width of the garage.

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

Mr. Pammel moved to approve SP 01-L-014 with the location moved from 2.7 feet to 4.7 feet from the side lot line; thus making the width of the garage no more than 14 feet.

Mr. Hammack made a substitute motion to defer decision for one week to allow time for the applicant to find an economically feasible way to reduce the width of the garage.

Ms. Gibb seconded the motion which carried by a vote of 7.0.

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Page 359, June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FIRST BAPTIST CHURCH OF KINGSTOWNE, SPA 79-L-170 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-L-170 previously approved for a church and related facilities to permit construction of a new church building and site modifications. Located at 7313 Hayfield Rd. on approx. 1.96 ac. of land zoned R-1. Lee District. Tax Map 91-3 ((1)) 72.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bruce Thompson, 7205 Brookstone Court, Potomac, Maryland, 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 amendment for a previously approved church and related facilities to permit the reconstruction of a sanctuary and a classroom building that was destroyed by a fire in March 2000. The applicant proposed to replace the two existing approved temporary modular buildings with the permanent construction of a masonry two-story structure proposed to be built in two phases. Phase I was proposed to consist of a 6,000 square foot main level sanctuary and Pastor's study with a basement containing classrooms, bathrooms, and a kitchen. Phase II was proposed to consist of a second story addition sometime in the future to contain additional classrooms for an additional 6,000 square feet. At completion, the two-story structure would contain a total of 12,000 square feet. By comparison, the structures that were destroyed by the fire contained 6,586 square feet. The FAR for the proposed site was 0.14. The applicant also proposed to reconfigure the parking area and add 42 additional parking spaces to total 67 parking spaces. The original Special Permit allowed a total of 25 parking spaces. Staff recommended approval.

Mr. Thompson, 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 church was to replace the previous church, which was destroyed by arson. He said that the proposed church was smaller than the previous. He explained that the proposed church was to be located closer to the road to allow room for the 42 additional parking spaces needed to meet the current required standards.

Mr. Thompson stated that the applicants had issues with some of the proposed development conditions. He stated that Development Condition #7 mandated the construction of a sidewalk leading to the church as opposed to the utilization of the existing driveway. He requested that the Board either delete the condition or implement a time-frame due to the church's economic burden of having to rebuild. He requested the deletion of Development Condition #8, which required the planting of additional trees for screening purposes. He contended that adequate screening currently existed and there was no need for any additional screening.

He asked the Board to delete Development Condition #9, which mandated that there could be no uplighting of any of the proposed building additions. He explained that applicants had intended to install lighting on the four corners of the church for safety reasons. He requested that the Board delete Development Condition #10, which stated that all signs on the property had to comply with the Zoning Ordinance. He explained that the applicants intended to continue to use the original sign. He stated that Development Condition #11 required that the proposed church be built with brick veneer; however, due to financial restraints there was a chance that the proposed church be built with a more economical substance. He requested that the Board delete this portion of the condition. He said that Development Condition #11 also required the church to obtain a Non-Rup however, the applicants had obtained a Non-Rup for the original church; therefore, he asked that the Board delete that portion of the condition.

Mr. Hammack asked staff whether the implementation of sidewalks was a standard condition. Mr. Bernal explained that a sidewalk was recommended to encourage parishioners to walk, rather than drive to the facility.

Ms. Gibb asked for clarification that security lighting was permitted as long as it did not shine into adjacent dwellings. Mr. Bernal replied that was correct. Ms. Gibb also asked if the existing sign concurred with the Zoning Ordinance. Mr. Bernal replied that would require further investigation.

Susan Langdon, Chief, Special Permit and Variance Branch, explained that churches were allowed one sign which had to be located a minimum of 10 feet from the front lot line and there was a size limitation. She said that staff was not certain that the current sign met that limitation.

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

Mr. Ribble moved to approve SPA 79-L-170 with the Board's and the applicant's proposed development condition changes 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

FIRST BAPTIST CHURCH OF KINGSTOWNE, SPA 79-L-170 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 79-L-170 previously approved for a church and related facilities to permit construction of a new church building and site modifications. Located at 7313 Hayfield Rd. on approx. 1.96 ac. of land zoned R-1. Lee District. Tax Map 91-3 ((1)) 72. 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 12, 2001; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1 and the area of the lot is 1.96 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). 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, 7313 Hayfield Road (1.96 acres) and is not transferable to other land.

2. This Special Permit is granted only to permit a church and related facilities as indicated on the special permit plat prepared by Kenneth W. White, dated, February 7, 2001, 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 268.

6. Sixty-seven (67) parking spaces shall be provided. All parking shall be on site as shown on the special permit plat.

7. Existing vegetation along the northern lot line shall be preserved and maintained and shall satisfy the requirement of Transitional Screening.

   The barrier requirements shall be waived along the northern, eastern and western lot lines. The existing wood fences shall be used to satisfy the barrier requirement along the southern lot line.

8. 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.
   - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.
   - 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 except at the four corners of any of the proposed building.

9. The existing church sign shall remain.

10. The facade of the building shall blend with the existing residential character of the area.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction or 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 June 20, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 362 June 12, 2001, (Tape 1) Scheduled case of:

9:00 A.M. THANH TRUONG AND ANANDA BUDDHIST MEDITATION INSTITUTE, INC., VC 01-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with Lot 12A having a lot width of 52.5 ft. and Lot 12B having a lot width of 0.0 ft. Located at 3418 Annandale Rd. on approx. 5.61 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A and 12B. (Def. for decision only from 5/29/01)

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.

Ms. Strobel stated that the Board had deferred decision on the application to allow her to speak with the applicants regarding several allegations that services were being held on the premises without approval. She explained that although the applicants did have visitation on the site, there were no religious services being conducted. She noted that a Fairfax County Zoning Inspector had followed up on the allegations and had found nothing.

Chairman DiGiulian asked staff for clarification that an inspector had visited the site. Juan Bernal, Staff Coordinator, explained that Paul McAdam, Senior Zoning Inspector, had visited the site on two occasions and no violations were found.

Ms. Gibb asked the applicant if there were regular services along with visitation at the site. Ms. Strobel replied that the visitations were separate from religious services; however, both would be held on site.

Chairman DiGiulian called for speakers.

John Murphy, 7321 Statecrest Drive, came forward to speak in opposition. He contended that their had been numerous vehicles parked on Annandale Road on Sunday mornings with people exiting the vehicles and entering the subject property dressed as they were attending religious services. He stated that he was opposed to the granting of the variance because the violations that had taken place did not inspire confidence that the applicants would adhere to the limitations that were imposed in the special permit.

Mr. Mattson, 3411 Annandale Road, came forward to speak in opposition. He reiterated the previous speaker's testimony and added that the applicants had not conducted themselves in good faith and had misrepresented their intentions.

Ms. Strobel, in her rebuttal, suggested that a representative of the Institute speak to the Board.

Thanh Truong came to the podium and stated that the applicants had abided by the special permit conditions and conducted any celebrations at a different facility; however, several of his students had visited him. He contended that a Zoning Inspector had visited the site and determined that there were no violations.

Ms. Gibb asked if any religious celebrations had been held on the site. Mr. Truong explained that during religious holidays members had met at the site prior to the event and then had driven there together.

Paul McAdam, Senior Zoning Inspector, explained that he had visited the site on two occasions and there were no religious services being held. He referred to the two inspection reports that had been submitted to

the Board.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the applicants were bound to the development conditions in both the variance and special permit Resolutions and they were required to conduct all large religious ceremonies off-site. He reiterated that any infraction of these conditions could be reported to the County and any violations would be investigated.

Mr. Hart moved to approve VC 01-P-042 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH TRUONG AND ANANDA BUDDHIST MEDITATION INSTITUTE, INC., VC 01-P-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with Lot 12A having a lot width of 52.5 ft. and Lot 12B having a lot width of 0.0 ft. Located at 3418 Annandale Rd. on approx. 5.61 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 12A and 12B. (Def. for decision only from 5/29/01) 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 June 12, 2001; 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. The illegal subdivision was done over thirty years ago, it should have been done right then but it wasn't, and this application confirms the park authority property and confirms the Buddhist Temple property.
4. The variance would not negatively affect any surrounding 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 subdivision of two (2) lots into two (2) lots, with proposed Lot 12A having a lot width of 52.5 feet and Lot 12B having a lot width of 0.0 feet as shown on the plat prepared by Walter C. Sampsell, dated December 22, 2000, as revised through February 12, 2001. 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. Lot 12A shall have access to Annandale Road from the shared driveway as depicted on the variance plat. The driveway shall be constructed in accordance with the Public Facilities Manual and shall not encroach into the Resource Protection Area (RPA).

3. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Trees designated to be saved shall be protected from damage by construction activity 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 5-0-1. Mr. Hammack abstained from the vote and Mr. Pammel was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 20, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 364, June 12, 2001, (Tape 1) After Agenda Item:

Approval of June 5, 2001, Resolutions

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

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Page 365, June 12, 2001, (Tape 1) After Agenda Item:

There was discussion between the Board and Susan Langdon, Chief, Special Permit and Variance Branch, regarding the need for an additional meeting in the month of August. The Board agreed to check their availability to hold the additional meeting on August 21, 2001, and report back at the June 19, 2001 meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Minutes by: Lori M. Mallam

Approved on: November 27, 2001

Regina Thorn Corbett

Regina Thorn Corbett, 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 19, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 367, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. POUL & CLAIBORNE S. ELDRUP-JORGENSEN, VC 01-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. and eave 6 in. from side lot line. Located at 12713 Sabastian Dr. on approx. 1.05 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((6)) 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. Poul Eldrup-Jorgensen, 12713 Sabastian Drive, Annandale, Virginia replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought a variance to permit construction of a two-story addition to be located two feet from the west side lot line and an eave six inches from the same lot line. The minimum side yard requirement was 20 feet; therefore, a variance of 18 feet for the two story addition and 16.6 feet for the eave was requested.

Mr. Jorgensen presented the variance request as outlined in the statement of justification submitted with the application. He stated that he and his wife had bought their house in 1985 and now needed increased living space to accommodate their growing family. He said that moving was not a viable option and the proposed addition would give them a substantially larger living area.

Mr. Jorgensen stated that the lot has some very exceptional topographic conditions. He said the house itself was situated on the far left side of the lot, and the property sloped dramatically next to the garage, which left no other location for the septic fields. He stated that building to the north would require moving the house closer to the road and would require the removal of some of the tree buffer. Mr. Jorgensen said the configuration on the inside of the house did not lend itself to remodeling or putting an addition in any other area without adding a greater financial burden.

Mr. Jorgensen stated that one of the two neighboring houses was located165 feet from the lot line adjacent to the proposed addition, and the second was 75 feet away with many trees between the areas. He stated that building the addition would have no adverse effect to any of the neighbors and he submitted letters from both neighbors in support of his application. He added that there had been previous approval of variances in the Willowmead subdivision.

Mr. Hart stated that the plat was unclear in showing the septic fields, and asked Mr. Jorgensen how far behind the deck was the septic field located. Mr. Jorgensen replied that the septic tank was right by the house and the deck was right over the septic field, which went to the back fence.

Mr. Hart asked staff if the side yard requirement for the house was actually 19 feet as shown on the plat, which was already under minimum standards without the addition. Mr. Bernal stated that the house was built in 1977, just prior to the adoption of the current Ordinance.

Mr. Pammel asked if Mr. Jorgensen would be receptive to a deferral. He said this would give Mr. Jorgensen time to review his application and research other options as he felt that two feet from the lot line was too close. Mr. Jorgensen stated that he would rather have a deferral than a denial, but felt that doing the house differently would be cost prohibitive for him.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to continue VC 01-Y-046 until July 17, 2001, at 9:00 a.m. to give the applicant time to look at other options. Mr. Pammel seconded the motion which carried with a vote of 6-1. Ms. Gibb voted against the motion. //

9:00 A.M. JAMES E. ECKLES, VC 01-B-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line such that side yards total 14.4 ft., 6 ft. high fence to remain in front yard and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 10323 Zion Dr. on approx. 9,856 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-4 ((13)) 29.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James E. Eckles, 10323 Zion Drive, Fairfax, Virginia replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant had requested three variances. He said the first was to permit construction of a garage addition to be located 5.6 feet from the side lot line, such that total side yards totaled 14.4 feet. He said the second was to allow a 6 foot high fence to remain in the front yard, and the third was to allow an accessory structure, an existing wood shed, to remain in the front yard in a lot containing 36,000 square feet or less. The minimum side yard requirement was 8 feet, with a total minimum of 20 feet; therefore, a variance of 2.4 feet was requested for the side yard, while a variance of 5.6 feet was requested for the total side yards.

Mr. Eckles presented the variance requests as outlined in the statement of justification submitted with the application. He stated there was no other location for the garage, which he had specifically structured with two garage doors, one in the front and a second in the back. Mr. Eckles said that the 6 foot high fence had been in place for some time for the protection of his children from the main street and the problem arose when his back yard had been rezoned, and it became his front yard. He said his shed had also been in his back yard, which was now his front yard and at that time he was told by Fairfax County it was okay. Mr. Eckles stated that when he applied for the variance for the garage, he was told that the shed had not been approved.

Mr. Hart asked staff if any of Mr. Eckles neighbors had approval for their fence, which was identical to the applicants. Mr. Bernal said that no other applications had been filed for the fences.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 01-B-047 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES E. ECKLES, VC 01-B-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line such that side yards total 14.4 ft., 6 ft. high fence to remain in front yard and accessory structure to remain in front yard of a lot containing 36,000 sq. ft. or less. Located at 10323 Zion Dr. on approx. 9,856 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 68-4 ((13)) 29. 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 June 19, 2001; 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 small and has an irregular shape.
4. The house faces the street so that the front yard is functionally the back yard.
5. The shed is low and does not have an impact on other properties.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 addition(s) as shown on the plat prepared by Thomas F. Conlon, Jr., dated March 15, 1991as revised through January 2001, 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. Ribble seconded the motion which carried by a vote of 7-0.

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9:00 A.M. RIGOBERTO POSADA, SP 01-L-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 2.7 ft. from side lot line. Located at 7417 Gary St. on approx. 13,613 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (43) 10. (Def. Dec. from 6/12/01)

Chairman DiGiulian stated that this case was deferred from June 2, 2001, for Mr. Posada to see if he could reduce the variance in accordance with Mr. Pammel's request and that Mr. Posada had sent a letter stating that he could reduce the dimensions as requested.

Mr. Pammel made the motion to approve SP 01-L-014 based on the dimensions that Mr. Posada verified would be 4.7 feet from the property line. He stated that the variance would be approved with the stipulation that a revised plat be presented to the Board before final approval.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

RIGOBERTO POSADA, SP 01-L-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.7 ft. from side lot line. Located at 7417 Gary St. on approx. 13,613 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (43) 10. (Def. Dec. from 6/12/01). 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 19, 2001; 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 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). 8-914 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 garage addition as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated December 4, 2000, revised on July 18, 2001 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.

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9:00 A.M. VANCE M., JR. & JOYCE A. HOUGH, VC 01-B-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.7 ft. from side lot line such that side yards total 18.7 ft. Located at 8705 Braeburn Dr. on approx. 12,193 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 272.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vance and Joyce Hough, 8705 Rayburn Drive, Annandale, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicants sought a variance to permit the construction of a garage addition 3.7 feet from the side lot line, with the side yards totaling 18.7 feet. She said the side yard requirement was 8 feet and the proposed location was 3.7 feet, which required a variance of 4.3 feet. Total side yard requirements were 24 feet, and with a proposal of 18.7 feet, a variance of 5.3 feet would be required.

Mr. Vance presented the variance request as outlined in the statement of justification submitted with the application. He stated he and his wife had purchased the property in 1983 and that the lot was exceptionally narrow. He said his son was physically disabled and he had a 7.9 foot van to transport the child, but was unable to get it into the garage. Mr. Vance said that a 2-car garage was needed to allow the use of the lift in the van and to keep his son out of bad weather. He stated there was no other place on their lot to place the addition and meet the setbacks, and because of his son's particular needs, he felt that it would be an undue hardship if he were not allowed to have the addition. Mr. Vance stated that the addition was not a convenience, but something that was needed for his son's care and added that he had submitted letters from neighbors supporting their application.

Mr. Pammel asked if the width of 21 feet for the structure could be reduced to 20 feet. Mr. Vance stated that the van was 7 feet wide and with the lift of the van down, it took 4-5 feet of space, and then another 3 feet to maneuver his son into the van. He also stated that one other problem was an indoor fireplace that had been built into the wall that protruded into the garage.

Mr. Hammack asked if the garage could be more shallow than the 26 feet. Mr. Vance replied that he needed that space to get his son in and out, that the van was about 20 feet long, and he wanted a small space for storage.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-B-047 for the reasons noted in the Resolution.

Mr. Pammel stated he could not support the motion because he felt that all options had not been explored.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VANCE M., JR. & JOYCE A. HOUGH, VC 01-B-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.7 ft. from side lot line such that side yards total 18.7 ft. Located at 8705 Braeburn Dr. on approx. 12,193 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 70-1 ((8)) 272. 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 19, 2001; 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 lot is very 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 an extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Harold a. Logan, dated March 9, 2001, as revised through March 15, 2001, 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 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 6-1. Mr. Pammel voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 27, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 373, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DONNA BERTSCH, VC 01-D-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 20.8 ft. from front lot line of a corner lot and 4.9 ft. from side lot line. Located at 2128 Powhatan St. on approx. 12,027 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((17)) 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. Donna and Chuck Bertsch, 2128 Powhattan Street, Falls Church, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit the construction of a roofed-deck 20.8 feet from the front lot line of a corner lot, and 4.9 feet from a side lot line. She said the Zoning Ordinance required a minimum side yard of 10 feet, which required a variance of 5.1 feet for the side yard. Ms. Stanfield said the Zoning Ordinance also required a minimum front yard of 30 feet, which required a variance of 20.8 feet for the proposed location.

Ms. Bertsch presented the variance request as outlined in the statement of justification submitted with the application. She stated that the roofed porch had to be placed in the proposed location because of the irregular shape of the lot and a 40 foot water easement on the backside of the lot. She said the house was on a corner lot and had two front yards where the set back rules were 30 feet for each. Ms. Bertsch said the house was set diagonally on the property and she presented plans from an architect to show that the porch was compatible with the houses in the neighborhood, adding she had a letter of support from the five neighbors who faced the house.

Mr. Hammack asked if the owners of Lot 17, adjacent to the property, supported the application. Ms. Bertsch stated they did.

Mr. Hammack confirmed that the house was built in 1953 and Ms. Bertsch was doing a complete facelift for it. Ms. Bertsch replied that the renovations were complete as she had only needed a building permit, but the porch presented problems with the setbacks.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-D-049 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONNA BERTSCH, VC 01-D-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a roofed deck 20.8 ft. from front lot line of a corner lot and 4.9 ft. from side lot line. Located at 2128 Powhatan St. on approx. 12,027 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((17)) 18. 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 19, 2001; 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 location of the house is constrained by an easement and the angle of the lot line.
4. The property is a corner lot with two front yards.

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

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

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

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

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

1. This variance is approved for the location of a roofed deck as shown on the plat prepared by Kenneth W. White, dated January 10, 2001, 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 roofed deck shall be architecturally compatible with the existing dwelling.

4. The applicant shall apply for an administrative variance for the location of the existing addition.

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

requested and an explanation of why additional time is required.

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

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Page 375, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 9 ft. from side lot line. Located on Holyoke Dr. on approx. 9,183 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 26.

Chairman DiGiulian stated that the above case had been administratively moved to July 3, 2001, at 9:00 a.m.

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Page 375, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT J. BISHTON AND CHRISTINE H. BISHTON D/B/A JUNIPER LANE SCHOOL, SPA 77-M-332 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to amend SP 77-M-332 previously approved for child care center to delete the child care center and to permit increase in land area, nursery school, private school of general education, increase in enrollment, building addition, change in development conditions and reduction to minimum yard requirements based on error in building location to permit deck to remain 8.2 ft. from side lot line and shed to remain 2.3 ft. from rear lot line. Located at 3106 Juniper La. on approx. 33,304 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((23)) A1 and A2. (Def. from 4/3/01 and 4/24/01) (Continued from 5/15/01).

Chairman DiGiulian stated that the above case had been administratively moved to July 31, 2001 at 9:00 a.m.

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Page 375, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. NELSON T., JR. & SUSANNE E. JOYNER, VC 01-H-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 2002 Cutwater Ct. on approx. 11,925 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((13)) (4) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jeff Stoiber, Agent, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicants sought approval to permit construction of a detached garage as an accessory structure to be located in the front yard of a lot containing 11,925 square feet. She said the Zoning Ordinance did not permit accessory structures in any front yard that contained 36,000 square feet or less.

Mr. Stoiber presented the variance request as outlined in the statement of justification submitted with the application. He stated that the original plans for the Joyners' house showed a garage carport in the front yard and it was shown as being attached to the house, and although it had not been originally built, it had been approved. He said when the design process for the garage was started, he contacted the Zoning office and showed them the plans to build the garage and they initially agreed that the garage was an attachment to the house because of a beam connection. Mr. Stoiber said that upon completion of the construction documents, he submitted them for the building permit and at that time the Zoning Office determined that the beam connection did not constitute an attachment. He stated that every other property on the cul-de-sac where the Joyners' property was located had an attached or detached garage in the front yard; therefore, he requested a variance.

Mr. Hammack stated that the issue of a beam connection had come up in the past, and asked staff what the nature of the beam was that failed. Susan Langdon, Chief of Special Permit and Variance Branch, said that she could not specifically answer the question, but presumed that it had been looked at by Zoning Administration when they made the decision.

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

Mr. Kelley moved to approve VC 01-H-048 for the reasons noted in the Resolutions

Mr. Kelley made a second motion for staff to get an interpretation of the policies of what constituted a connecting garage. Ms. Gibb seconded the motion which was approved by a vote of 7-0.

Ms. Langdon said she had a copy of the building permit stating that it was considered an accessory structure and not an addition, but she would pursue the interpretation for this type of structure.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

NELSON T., JR. & SUSANNE E. JOYNER, VC 01-H-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 2002 Cutwater Ct. on approx. 11,925 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((13)) (4) 16. 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 19, 2001; 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 applicants' justification was explained in full detail 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 the detached garage shown on the undated plat prepared by Jeffrey M. Stoiber, based upon an official plat dated September 16, 1992, prepared by AVW & Associates, 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.

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 27, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 377, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. STEVEN S. & ANNETTE C. MCGOUGH, SP 01-Y-017 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 9.0 ft. from side lot line. Located at 6357 Lee Forest Path on approx. 15,077 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 424.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven and Annette McGough, 6357 Lee Forest Path, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicants sought a modification of the minimum yard requirements for certain RC lots to permit the construction of a screened porch addition to be located 9 feet from the north side lot line. She stated the Ordinance required a minimum of 20 feet; therefore, a modification of 11 feet was requested.

Mr. McGough presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the house was set on the far back of the property, and a screened porch would come within 9 feet of the property line. He said that the closest property to the north was mature

woods and the owners of the property, Virginia Run Board of Trustees, had looked at the plans and unanimously agreed to support the application.

Mr. Hammack stated that the plat showed the house was actually 12.3 feet from the lot line and the corner was really consistent with the original Zoning Ordinance. Mr. McGough replied that he had been told that the subdivision was originally zoned for development, and when the homes transferred, the property was rezoned to RC.

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

Mr. Hammack moved to approve SP 01-Y-017 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

STEVEN S. & ANNETTE C. MCGOUGH, SP 01-Y-017 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements for certain R-C lots to permit construction of addition 9.0 ft. from side lot line. Located at 6357 Lee Forest Path on approx. 15,077 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 424. 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 19, 2001; and

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

1. The applicants are the owners of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This special permit is approved for the location of a screen porch addition shown on the plat prepared by LS,PC, dated March 19, 2000, as revised by Steven S. McGough, dated March 26, 2001, submitted with this application and is 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 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 27, 2001.

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Page 379, June 19, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROSE HILL FARMS COMMUNITY CENTER, INCORPORATED, SPA 69-L-055 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 69-L-055 previously approved for a swimming and tennis club to permit building additions, site modifications and reduction in land area. Located at 6400 Highland Dr. on approx. 6.16 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((4)) 2A.

Chairman DiGiulian stated that he had a letter from the Lee District Supervisor, Dana Kaufmann, who had requested a deferral of this case to allow a technical review by the County staff.

Mr. Hart disclosed that he and Sara Hall, agent for the applicant, had a mutual business client. He stated that hey supported different causes for that particular client and did not feel it would affect his ability to participate in this case.

Chairman DiGiulian asked Ms. Hall if she would like to address the question of deferral.

Ms. Hall replied that in order to address the request for deferral, she would need to briefly summarize the application.

Ms. Hall stated that the applicant was operating a swim club on Parcel 2A, which was approximately 6 acres, under the authority of a special permit that was granted in 1969 and that there were earlier special permits, as the swim club was founded in the 1950's. Ms. Hall said the applicant proposed to tear down an existing bathhouse and rebuild one that would be 100 square feet larger and add a small meeting building, which would be 675 square feet. She said the application was also to decrease the size of the parcel by approximately 2 acres, so that the property, which was subject to the special permit amendment, would be about 4 acres rather than the current 6 acres.

Ms. Hall said the approximately 2 acres, plus Outlot A, was owned by the applicant, but was not under the special permit. She said the 2 acres were under contract for sale for residential development by Steve Morris who intended to develop the property by right under the current C-3 zoning.

Ms. Hall said the request for deferral stated the application was for a subdivision, so that residential lots could be developed, which was not accurate. She briefly explained that the applicant and Mr. Morris were aware of the marine clay in that area. She said that the County had procedures dealing with the development of such land, and believed that the marine clay should not be a consideration in the application. She said the special permit amendment would apply to the swim club on the 4 acres. Ms. Hall added that the sale of the land would offset the cost of improving the bathhouse and construction of the small meeting building

Mr. Hammack asked if Ms. Hall had spoken with the Supervisor's office. She replied that she had met with his aide and was surprised at the letter from his office.

Mr. Hammack asked staff how long it would take for geotechnical survey. Ms. Langdon, Chief Special Permit and Variance Branch, stated that the Department of Public Works and Environmental Services would make that determination, and if land was deleted from the application as proposed, staff would not be

recommending any conditions on the deleted land. She said that staff was looking at the application for an amendment to the special permit for the community center itself and not at the remaining land.

Chairman DiGiulian stated that a geotechnical survey would be required for any piece of land that was developed with marine clay. Ms. Langdon stated that it also was staff's understanding that a survey needed to be done, but that would be determined at the time of subdivision.

The Board discussed the impact that the marine clay issue had on the application and the 4 acres of the swim club land. It was decided not to defer the application, but to go forward with the hearing.

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

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to permit building additions, site modifications, and reduction in land area to 4.03 acres. She said the applicant proposed to demolish the existing 1,272 square feet office/bathhouse and construct a new 1,372 square foot office/bathhouse in the same location as well as construction of a 675 square feet assembly building and 3 sun-shelters on the pool deck. Ms. Josiah stated that the application was in harmony with the Comprehensive Plan and staff recommended approval of the application.

Ms. Hall said that she had given most of her testimony earlier. She stated that the expansions were small, 100 extra square feet for the bathhouse and a small meeting room building. She said they could accept the development conditions and was grateful for the staff's recommendation.

Mr. Hammack asked what assurance the Board had that Rose Hill would not want to expand in the future. Ms. Hall replied that the applicant had no plans to expand in the future, noting they had not done any expansion in the 50 years that they had been in existence. She said the applicant intended to continue current operations, but wanted to improve service.

Mr. Hammack asked staff if there were any problems of overflow parking from swim meets, etc. Ms. Josiah replied that staff was unaware of any past problems and the club had more parking than was required by the Ordinance.

Chairman DiGiulian called for speakers in support or opposition to the application.

Carolyn Slinska, 6308 Climbhill Road, came forward to speak in opposition. She stated that her yard bordered the pool property and while the pool had been a good neighbor, her opposition was to the development of the land to be sold. She said that if the swim club were allowed to sell their 2 acres, development would increase run-off waters, traffic, and taxes.

Mr. Hart asked Ms. Langdon to show a diagram on the view-graph where the marine clay was located. Ms. Langdon asked R.C. Fields, the applicant's engineer, to explain the soils map. Mr. Fields stated that there was not any marine clay in the basic area of the swim club. He stated that the marine clay was mostly in the area of the residue parcel.

Carl Sells, 6601 Cottonwood Drive, President of the Rose Hill Civic Association, came forward to speak in opposition. He stated that the Rose Hill Civic Association was on record as opposing development on marine clay. He said that many homeowners had to make expensive repairs, as their homes were built in the 1950's and 1960's, before anyone knew about the marine clay problems.

Mr. Kelley stated that marine clay was not at issue here, but whether the swim club could operate on 4 acres instead of 6 without interfering with the neighborhood.

Larry Fowler came forward to speak in opposition. He said he lived next door to the parcel of land that was up for sale and said he felt that the swim club could not refurbish the existing dwelling without selling the land. He requested an environmental and traffic impact study on Merryview Street.

Chairman DiGiulian asked Ms. Hall if she had any rebuttal statements. Ms. Hall replied she would like the Board to consider the application within itself, and not include the marine clay issue.

Mr. Hammack stated he was concerned that there was no limitation on the number of members for the club. Ms. Langdon said that the staff considered the size of the pool and how many people were allowed in the pool at any given time, but the Board could add a development condition to limit the membership.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he was not convinced by the applicant that the deletion of the 2 acres was justified. He said the applicant informed the Board that they did not foresee any future expansion. Mr. Pammel said he had yet to see a club that did not want some expansion and this was the first one that requested a reduction in area. Mr. Pammel moved to approve in part SPA 69-L-055 and fully agreeable to the applicant coming before the Board again if they had other options to present to the Board in the future. Mr. Pammel said the motion did not include a reduction in the land area as requested by the applicant. Mr. Hammack seconded the motion.

Ms. Gibb said she would not support the motion. She said the reason the Board did not see other swimming pools asking to reduce the size because if they are doing well they don't expand, Ms. Gibb said the applicant should not be put in a position to have to prove that they would not request for an expansion in the future.

Mr. Kelley said he agreed with Ms. Gibb comments and would not support the motion.

Mr. Hammack said he supported the motion because given that they were proposing to deleting 1/3 of their land area, he would like to see more from the Board of Directors about the members supporting the deletion of land area. He said he was uncomfortable supporting a deletion without being assured that the membership had voted in support of it.

Mr. Pammel said the activities on the remaining 4 acres were really squeezed in, and he felt that the applicants had not justified the deletion of land area. He said he would like to see more information.

The motion failed by a lack of 4 votes with Ms. Gibb, Mr. Kelley, Mr. Ribble, Mr. Hart and Chairman DiGiuilian voting against the motion.

Ms. Gibb moved to approve SPA 69-L-055 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ROSE HILL FARMS COMMUNITY CENTER, INCORPORATED, SPA 69-L-055 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 69-L-055 previously approved for a swimming and tennis club to permit building additions, site modifications and reduction in land area. Located at 6400 Highland Dr. on approx. 6.16 ac. of land zoned R-3. Lee District. Tax Map 82-3 ((4)) 2A. 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 19, 2001; and

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

1. The applicant is the owner of the land.
2. The staff has supported the application, and references from the various agencies to whom this

application was referred have all had no comment as a result of the proposal.

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, 6400 Highland Drive (4.03 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by R.C. Fields, Jr. & Associates, dated February, 2001, signed March 21, 2001, 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. Stormwater Management (SWM) and/or Best Management Practices (BMPs) shall be provided as required, unless waived by DPWES. If a structural SWM/BMP is required, then the type, location and size shall be determined by DPWES, however no vegetation within the transitional screening areas shall be removed for installation of SWM/BMPs.

6. Any proposed 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 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 or existing buildings.

7. The barrier requirements along the southern lot line shall be waived.

8. The existing vegetation shall be preserved and maintained and shall be deemed to satisfy the Transitional Screening requirements along all lot lines. Any dead or dying vegetation shall be replaced with plant material of like kind.

9. A sign permit shall be obtained and any signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

10. There shall be a maximum of 81 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.

11. Hours of operation shall be limited to 11:00 a.m. to 9:00 p.m., daily. However, swim team practice shall be permitted starting at 7:30 a.m., daily, and evening parties may extend beyond 9:00 p.m. provided all noise is contained on the site.

12. The number of tennis courts on the site shall not exceed four (4).

13. The existing snack bar on the site is to be operated in accordance with applicable Fairfax County Health Department requirements.

14. A subdivision plat to delete 2.12 acres from the 6.16 acre site shall be recorded among the land records of Fairfax County prior to site plan approval for Phase 1.

15. The building heights shall not exceed those shown on the Proposed Building Detail on the special permit plat.

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. Kelley 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 June 27, 2001. This date shall be deemed to be the final approval date of this special permit.

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Chairman DiGiulian recessed the Board at 10:50 a.m. and reconvened at 11:05 a.m.

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Page 383, June 19, 2001, (Tapes 2, 3, and 4), Scheduled case of:

9:30 A.M. RICHARD & KATHRYN TUBB, VICTOR & DORINE BLANDBURG, ET AL, A 2001-MA-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a proposed eight-bed substance abuse program operated by Vanguard Services Unlimited is a group residential facility which is permitted to occupy a dwelling by right. Located at 6581 Braddock Rd. on approx. 1.28 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 55.

Jack Reale, Zoning Administrative Division, stated that the issue before the Board involved an appeal of the Zoning Administrator's determination that an eight-bed substance abuse program operated by Vanguard Services, Unlimited, was a group residential facility. He said the program was intended to serve Hispanic adults who would receive substance abuse treatment. Mr. Reale stated that the Zoning Ordinance defined a

group home/residential facility as a facility where no more than 8 unrelated people could reside. He said that handicapped persons were protected under the 1988 Fair Housing Amendments Act, and that the Zoning Administrator had determined that the participants in the Vanguard facility were handicapped and protected under that law. He said drug addiction and alcoholism were impairments which qualified persons as handicapped. Mr. Reale said there were three exclusions to that definition: current illegal use or addiction to a controlled substance, a direct threat to the health and safety of other individuals, or the illegal manufacture or distribution of a controlled substance.

Mr. Reale stated the appellants believed that one or more of these exclusions applied in this case and that the burden was upon the appellants to show that any of these exclusions should apply. He said Congress had made it clear that if participants were in rehabilitation, and not currently using illegal drugs, then they should be protected under the Fair Housing Amendments Act.

Mr. Reale stated that the Vanguard program included detoxification, comprehensive screening, initial drug testing, and follow-up drug testing. He said the appellants claimed that participants in the Program were a threat to the community or convicted felons was hypothetical and speculative in nature and that no facts had been presented to support those issues which would exclude the facility from protection under the Fair Housing Amendments Act.

Mr. Reale stated the staff recognized that it was not unusual for neighbors to have apprehensions about group homes in their neighborhood and that was why Congress had enacted the law to protect people against discrimination. He said the exclusions were not applicable in this case and it had been determined that the Vanguard facility satisfied the definition of a group residential facility under the Zoning Ordinance.

Mr. Reale said that David Stoner, Assistant County Attorney, was present to answer any legal questions. He said John Foote, counsel for Vanguard, was also present, and, as Vanguard was a third party with direct interest in this case, staff suggested they be given an opportunity to make a presentation after the appellants.

Mr. Hammack clarified that if the Board of Zoning Appeals upheld the Zoning Administrator's decision, that would indicate support and that it was a matter of right. He said if they did not, then the issue would have to be heard before the Board of Supervisors (BOS) as a special exception.

William Shoup, Deputy Zoning Administrator replied that if the BZA determined that it was not a group residential facility, that going to the BOS would be one alternative. He said there was a special exception use that would be allowed on this property, which would require the Board of Supervisors approval.

John McBride, Agent for the appellants, came forward to speak to this appeal. He asked the supporters of the appeal who were in the audience to stand so the Board could get an idea of the serious nature of this issue to the local community. He stated that he also had a petition with 628 signatures of supporters, which he gave to the BZA.

Mr. McBride stated that, with the concurrence of the Chair, he would like to divide his time for the appellants between himself, Victor and Dorine Blandburg and Richard Tubb.

Chairman DiGiulian agreed.

Mr. McBride stated that this was an appeal of the Zoning Administrators' determination that all persons, while being treated in this substance abuse treatment center, were qualified as handicapped persons under the Fair Housing Amendments Act of 1988. He said if this appeal went to the BOS, conditions could be applied to it to ensure certain protections for the community, which was what the appellants desired. He said it was their contention that if the Zoning Administrator was affirmed, then a substance abuse treatment center could go in any residential neighborhood within Fairfax County without prior notice, hearings, zoning approvals or without any conditions.

Mr. McBride said that this particular treatment center was not like other group residential facilities, such as those for mentally or physically handicapped. He stated that the Vanguard's program was targeted toward chemically dependant individuals and clearly not a re-entry facility.

Mr. McBride spoke in depth of the three standards or exclusions pertaining to the definition of handicapped under the FHAA as it related to this facility. He addressed each of the exclusions individually and submitted that none of the three were met and should; therefore, go through the special exception process where conditions could be imposed.

Dorine and Richard Blandburg, 6560 Spring Valley Drive, appellants, came forward to speak in support of the Appeal. Mr. Blandburg stated that they had moved into their house three years ago when the house was run down, and they had spent a lot of time, money, and hard work to refurbish it. He said he felt that the existence of a substance abuse treatment center disturbed their peace and invaded their privacy. He said that his family did not feel safe with addicts and current users as his next door neighbor, especially since it was not a secured or locked facility.

Mr. Blandburg spoke in depth of his concern for the safety of his children, having drug users so close to his house, and how he felt this was an open invitation for drug dealers to come into their neighborhood. He stated that he would not have purchased his home had the treatment center been open at that time, as he wanted a home in a good family neighborhood, with good schools and a safe community.

Dr. Richard Tubb, 6556 Spring Valley Drive, appellant, came forward to speak. Dr. Tubb read the definition of the words "chemically dependant" from two different medical dictionaries. He stated that based on those definitions, he felt that the people participating in the Vanguard Program were current addicts. He said he had concerns from a medical standpoint, emphasizing the individuals at risk for HIV because of needle sharing and additional communicable diseases.

Dr. Tubb stated that the community stumbled upon the plans for the treatment facility just a few days before the occupancy would have been irreversible. He said the Health and Human Services Guide endorsed community interaction, which appeared to be ignored by Vanguard.

Dr. Tubb said there were 15 elementary, middle, and high schools plus daycare schools within a one mile radius of the facility and there was no background screening done on the participants in the Program, which he felt posed a safety threat to the community. He said the relevant information presented was that the participants were current addicts, and the FHAA prevented discrimination against recovering addicts, but did not offer special privilege to current addicts.

Mr. McBride asked to enter the written text of Dr. Tubb into the record since he wasn't able to complete it.

Chairman DiGiulian agreed, then called John Foote, counsel for Vanguard, to speak.

Mr. Foote stated that he represented Vanguard Services, Unlimited, the entity which was running the group home. He introduced Deborah Volz as the President and CEO of Vanguard. He said there were also representatives of each of the Community Services Boards of Arlington, Fairfax-Falls Church, and the city of Alexandria present, all of whom had worked actively with them. He asked for all of those in the audience who were in opposition to the appeal to please stand so the Board could be aware of the many people who believed in the program and its value to the community.

Mr. Foote said that a lot of written material had been given to the BZA with respect to this case, and that the information had been worked out in substantial detail. He stated that he would like the BZA to read through all the material before a final decision was made.

Mr. Foote stated that one of the specific points he wanted to make was the interpretation of handicapped under the 1988 FHAA with respect to whether the facility was a group home or special exception. Mr. Foote spoke in depth regarding the three exclusions to the FHAA, addressing each one separately. He addressed the details about the screening process and said he felt that the people who were proposed for this Program were handicapped.

Mr. Hammack said that, according to Vanguard's proposal, the target population for this Program was for individuals who had been diagnosed as being in need of medium to high intensity residential substance abuse treatment. He asked Mr. Foote if he felt this did not fall within the definition of addiction.

Mr. Foote replied that if one were an addictionologist or a doctor, it would have been said that once addicted, always addicted. He said that Congress made the distinction on whether someone was currently using drugs and that there was no case law that turned specifically on the words 'current addiction'.

Mr. Hammack agreed, but stated that the BZA was being asked to make that judgment. He said whether it was current addition or recovering addict, he wanted to have a better idea of the people who would be treated in the facility.

Mr. Foote replied that the thorough screening process that was in place produced a client who was free of drugs when they entered the program. He stated that substance dependence was a concept that might be life long, and the logical conclusion was that no one that had been substance dependent would ever free himself from it. Mr. Foote emphasized that was not what Congress intended.

Mr. Hammack asked Mr. Foote if the target population for the Program included criminal justice system involvement, and if so, how were people screened out and did the treatment team include probation and parole officers.

Mr. Foote replied that some people came to the Program through the criminal justice program, but were not referred by the courts. He stated that the Community Services Boards (CSBs), which also screened the client, made the determination whether the people were suitable placements. He said the participants were not ordered into treatment by the courts, but perhaps as a consequence of their involvement with the criminal justice system; and therefore, would be under probation or parole.

Mr. Hammack stated that earlier Mr. Foote referred to barrier crimes, which disallowed participants into the Program. He asked Mr. Foote to define a barrier crime and explain how the Program screened out individuals who may have fallen within the barrier crime exclusion.

Mr. Foote replied that a barrier crime was the distribution or manufacture of controlled substances, and that because of the extremely extensive interviewing and screening, such people would become apparent. He said that in some cases where people had been involved in the court system, there would be documents, such as a pre-sentencing report, from the court. He said with the detailed background investigation and screening process, individuals who would be subject to barrier crimes and present a direct threat exception would be eliminated through the initial processes.

Mr. Hart asked Mr. Foote to further clarify the reason the participants in the Program were not considered to be addicted.

Mr. Foote replied that current addiction and current use were two separate terms. He said the word 'current' modified both, and the Fourth Circuit Court had said that the word 'currently' had an extremely broad application. He said that one would have to posses a high level of expertise in that area to understand the difference and that the medical community would probably still consider the participants to have some form of addiction.

Mr. Foote said Congress chose to make a distinction and he felt the legal model must govern the decision about whether these people were eligible to participate in the Program. He stated that because these people were not currently using, and because they had tested drug free and gone through a detoxification process, they would qualify as handicapped under Federal law. Mr. Foote said that the Rehabilitation Act didn't include people in a supervised program, and Congress made a determination that people who fall within the category of being drug free and living in a supervised program as not being current addicts

Mr. Hart asked Mr. Foote if the staff at the group home had any professional licensing and if they were trained in this particular field.

Ms. Volz came forward and answered that there were some licensed and certified staff available for the Program.

Mr. Hart asked Ms. Volz if there would be some medication administered to some of the residents under the course of treatment.

Ms. Volz stated that the residents would have gone through a detoxification process, so there would be no medication administered for the participants' addiction. She said they would receive antibiotics or other products that would be found in any home, or medications for specific illnesses such as diabetes. Ms. Volz stated that all medication was kept by the staff and was monitored as the individuals took it, but there was no medication for the addiction.

Ms. Volz stated that the Program was licensed by the Department of Mental Health, Mental Retardation and Substance Abuse, which was a State accrediting body that came in and licensed this type of activity. She said that a requirement for licensure was a medical distribution protocol where all medication was kept by the staff and self-administration was monitored.

Chairman DiGiulian asked if there were any further questions. He asked for a show of hands in the audience for people who wanted to address the Appeal.

Mr. Hammack made a motion to deviate from the normal rules and limit speakers to two minutes pro and con due to the number of speakers. Mr. Ribble seconded the motion which carried with a 7-0 vote.

Chairman DiGiulian called for the first speaker to come forward.

The following people came forward to speak in support of the appeal:

Lucille Fox, 6579 Braddock Road, stated she no longer felt safe in her home of 50 years.

Grail Hardy, representative of the Spring Valley Forest Community Association, stated she was fearful for her children's safety. She said there were a lot of contradictions in Vanguards printed material and she had serious concerns about the resident's health, the screening process and referrals to the Program.

Bill Pemberton, 6586 Braddock Road, stated his concerns were for his family's safety and the threat of dangerous people and drugs coming into his neighborhood.

Marina Ibrahim, 6555 Spring Valley Drive, stated her concerns were the safety of her children and that clients were allowed to leave the facility at will.

Mary Norton, Fairfax County Resident, stated she did not believe that a Phase I Program should be in a residential neighborhood. She said she was also concerned with public safety, inconsistent statements made by Vanguard and that some of the residents may have a criminal background.

Pamela Crippen, 6625 Spring Valley Drive, stated she was concerned that Vanguard's Program Manuals could be changed without review and felt the facility would pose a threat to the community.

Susan Bracken, 5220 Clinton Road, stated her concern was that Vanguards Proposal stated that convicted felons were eligible for the Program, which presented safety issues for the neighborhood.

Kathleen Schildback, 5243 Clinton Road, representative and President of Indian Springs and Clearfield Civic Association, stated she was confused by portions of the FHAA. She said the FHAA did not protect her right to safety and from people whose judgment was impaired by drug use.

Jim Hitchak, 6616 Spring Valley Drive, stated he was concerned with the screening process of patients with a criminal history. He said he felt the drug testing done for the patients was inadequate.

Caroline Hillkirk, 4830 Randolph Drive, said she felt the location of the facility was a bad choice for the type of people involved and the lack of criminal background checks was very disturbing.

Kevin O'Brien, Fairfax County resident, stated that this was not an issue of treatment, but rather of location. He said he felt Vanguard's credibility was questionable.

Ashley Wembert, Fairfax County resident, stated she felt that a First Phase Program belonged in a medical facility with licensed professionals to care for the residents.

Barbara Foster, Fairfax County resident, felt her son's safety was in jeopardy. She said her son had neurological problems and did not possess good judgment, and she felt that he could be endangered by the residents.

Coryn Weigle, 6530 Spring Valley Drive, said that after reading Vanguard's proposal, she was afraid of potential residents because Vanguard's material stated that it accepted murderers, pedophiles, burglars, and people with a history of assaults and flashers. She said she felt her safety was at risk.

Edna Yvorski, Fairfax County resident, stated her concerns were with a Phase One Program being run in a drug free school zone. She said she felt the screening process was inadequate.

Janet Schresco, Fairfax County resident, stated, based on Vanguard's own figures, only 30% of the residents would stay clean. She said she wanted to point out to the Board that most of the people speaking in support of the Appeal were either Vanguard employees or personnel of the County agencies involved with former addicts, and had been called and asked to speak before the Board.

The following people came forward to speak in opposition of the Appeal:

Jorge Figueredo, Director of the Hispanic Community of Virginia, stated he felt it was important to recognize the need to have a program for the Spanish speaking community. He said he felt the Department of Health and Human Services had significant difficulty in providing culturally appropriate professional assistance for the Hispanic community.

Walter Kloetzhi, Fairfax County resident, stated he felt that treatment worked, it was cost effective and gave many people the opportunity to start a new life.

Joyce Brackner, Fairfax County resident, stated she was a recovering alcoholic and drug addict. She said she lived in a Supervised Apartment Program of Fairfax County and felt that people who suffer from addictions should be give the opportunity to recover and become productive citizens.

Tom Ryan, Commander of the Mason District Police Station, stated there were multiple group homes in Fairfax County. He said, in his experience, the group homes did not negatively impact any of the neighborhoods where they were located.

Jenny Hawkins, Fairfax County resident, stated she was a teacher, had a daughter, was a grad student and was a recovering addict. She said she believed that community safety was not an issue because residents of the facilities were focused on changing their own lives and did not have time to think about neighbors.

Enrico Brown, Fairfax County resident, said he was in recovery and felt the Program would offer many new skills to the residents and help make them more productive citizens.

Dr. Edward Eder, Medical Director of Inova's Comprehensive Addiction Treatment Services, stated there was a need in the community for all types of recovery programs. He said Fairfax County had experienced a rapid growth of its Hispanic community and he believed that such a program for them was very important and would not pose a threat to the community.

Linda Issan, 3605 Terrace Drive, stated she was a recovering addict and wanted to emphasize that the Salvation Army ran a similar 16-month program one mile away from this facility. She asked that people give the Hispanic community a Program for recovery and a new life.

Martha Silva, Fairfax County resident, stated she felt people should be more supportive of facilities like Vanguards.

John Avery, social worker and certified addictions counselor, stated that recovering people make good citizens and neighbors.

Dr. Stella Norman stated that people with addictions were, perhaps unknowingly, entrenched in everyone's daily life. She said she felt programs such as Vanguards were an asset to the community.

Mike Ferro, Fairfax County resident and recovering addict, stated he had been one of the threats that people feared. He said from his experience the penitentiaries were for corrections and not rehabilitation. He said a treatment program had given him new life skills and an opportunity to turn his life around.

Santiago Gonzales, recovering addict, stated many Hispanics could not speak English good enough to understand the existing programs. He said he believed a program such as Vanguards would be a great asset for the Hispanic Community.

Michael Allen, attorney for Legal Services in Northern Virginia and recovering addict, stated that the Board needed to respond to the needs of the community while following the FHAA. He said he understood both sides and asked for them to talk seriously and compromise.

Steven Polland, attorney and recovering addict, stated the burden was on the Appellants to show specific facts and specific instances where the residents of a home were a direct threat to the community.

Judy Valois, civil rights attorney and Hearing Officer for Virginia, stated that because of her job, she constantly dealt with the definition of disability. She said that once a person has stopped using drugs and entered a rehabilitation program, they were protected by the FHAA.

Lara Ruhling, Fairfax County resident and recovering addict, stated she had been helped by a facility similar to Vanguards and wanted to emphasize the importance of such a program.

Shirley (no last name), recovering alcoholic and drug addict, said she supported the program and wanted to express how important treatment was to an addict's recovery.

Peggy Cook, Director of Residential Services for Alcohol and Drug Services and part of the Community Services Board, stated that she supported the screening process. She said they took extensive measures to screen people appropriately. She said the CSBs received information from probation and parole officers. Ms. Cook stated that murderers, rapist, etc. would be considered a risk and such people would not be eligible for the Program. She said that regular drug and urine screening would be done and users would be escorted away from the facility, and not sent out into the community.

Jim Thur, Executive Director, Fairfax-Falls Church Community Services Board, spoke in support of the screening process. He said he felt Vanguard was an accountable operator and he would like to see it move forward.

Dick Kunkle, Director of Alcohol and Drug Services for Fairfax-Falls Church CSB, stated that Vanguard was a private contractor and they had a contract with the Fairfax, Arlington, Alexandria CSBs. He said that Vanguard was not contracted by them to take clients from Maryland or D.C., but only clients living in these three counties. He said he felt the screening process was very thorough and would like to see the Program go forward.

Chairman DiGiulian said that there were not any more speakers and asked Mr. Reale if he had additional comments.

Mr. Shoup replied that he would like to clarify a few points. He said that the issue of use should not be viewed in the context of whether or not there was an opportunity for the BOS to decide on the use as a special exception, but rather if the Program met the definition of a group residential facility. Based on the FHAA definition of handicapped, he stated he believed there had been ample information provided to show that the residents of the facility were handicapped.

Mr. Shoup said it was suggested that the neighbors were being viewed as the bad guys, and he wanted to assure the BZA they had not taken that position and said that the fears and concerns expressed by the speakers were not unusual. He said the law states that exceptions to the handicapped definition must be viewed very narrowly, and the legal points and legislative intent led to the conclusion that this was a protected use facility under the FHAA. Mr. Shoup then deferred to David Stoner, Assistant County Attorney, for additional comments.

Mr. Stoner stated that the burden was on the appellants to show that one or more of the exclusions applied and the question before the Board was whether they had done that. He said the appellants wanted the Board to assess unknown perspective residents of the home, and that could not be done.

Mr. Stoner briefly addressed each of the three exclusions and how he believed they did not apply to the group home.

Mr. Kelley asked Mr. Stoner why, if background checks were done with guns, why a background check couldn't be done for drug convictions.

Mr. Stoner stated that because people were addicted to illegal substances, it wasn't enough to trigger a concrete basis for saying that perspective residents of this home posed a direct threat to the community. He stated that this would be a high barrier for the appellants to overcome.

Mr. Hammack questioned Mr. Stoner about how much time had to elapse before a person was not addicted under the statute.

Mr. Stoner replied that the detoxification program might take a matter of days, but he would have to defer that question to the experts. He said he didn't know how long it took for these substances to leave the system so that a person would test drug free.

Mr. Hammack asked if there was any definition in the Ordinance of current illegal use, and Mr. Stoner responded there wasn't.

Ms. Gibb stated that she believed the screening issue was the real problem and if the homeowners were more comfortable with the screening process, she felt there would be less opposition. She said it appeared that Vanguard had few facts to help the community feel comfortable and asked if it was possible to get more clarification on that subject.

Ms. Cook came forward to speak to that issue. She stated that in addition to the two extensive screenings of the clients, her staff was very knowledgeable in addictions and went to great lengths to ensure that the information given to them was factual. She spoke in detail of the different specialists that were involved in screening and assessment, and how they worked closely with the justice system, including probation and parole officers, receiving pre-sentencing reports, etc.

Ms. Gibb asked what type of crimes the participants would be on parole for.

Ms. Cook replied there could be different charges, such as drug possession, drunk in public, or DWIs. She explained how different charges for each individual were assessed and how further information was attained.

Chairman DiGiulian asked if a pending charge against one of the clients would preclude them from entering the Program.

Ms. Cook and Chairman DiGiulian briefly discussed the varying types of a pending assault charge and how it would affect the decision to allow the client to enter the program. Ms. Volz came forward to explain in more detail the specifics of assessing a criminal history and what level of treatment was needed for each individual so as not to bring someone who is a threat to the community into the Program.

There were no further questions and Chairman DiGiulian asked Mr. McBride if he had anything further to add.

Mr. McBride summed up the testimony of the day and said that when the Zoning Administrator made her determination, she had not considered the three exclusions that had been discussed earlier in the hearing. He said the issue before them was not a Federal suit or discrimination suit, but a matter of whether the Zoning Administrator followed the law and rendered a factually correct determination.

Mr. Kelley clarified that if the BZA voted against the Zoning Administrator, that the case would have to go to a special exception and that Vanguard would have to file for a special exception.

Page 391, June 19, 2001, (Tapes 2, 3, and 4), RICHARD & KATHRYN TUBB, VICTOR & DORINE BLANDBURG, ET AL, A 2001-MA-006, continued from Page 390

Mr. McBride and Mr. Kelley had a brief discussion about the due process under the Zoning Ordinance and special exceptions.

Mr. Hart made a motion to defer the decision for Appeal Application A2001-MA-006 for one week. He stated that would give the Board time to review the additional materials received that morning and consider what the speakers had presented. Mr. Pammel seconded the motion which carried with 6-0 vote. Mr. Hammack was not present for the vote.

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Page 391, June 19, 2001, (Tape 4), After Agenda Items:

Approval of June 12, 2001 Resolutions

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

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Page 391, June 19, 2001, (Tape 4), After Agenda Items:

Chairman DiGiulian stated there were five additional land use cases to be heard before September 11, 2001. He asked Ms. Langdon what options were available to work the cases into the schedule. After a brief discussion, it was decided that staff would work with the existing schedule over the next few weeks and make adjustments to include the five cases.

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As there was no other business to come before the Board, the meeting was adjourned at 1:55 p.m.

Minutes by: Judith A. Gobbi

Approved on: December 4, 2001

Regina Thorn Corbett, 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 26, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 393, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ALBERT P. SKROCH, JR., VC 01-L-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.8 ft. from rear lot line. Located at 6461 Waterfield Rd. on approx. 1,549 sq. ft. of land zoned PDH-4. Lee District. Tax Map 81-4 ((38)) (40) 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. Albert Skroch, 6461 Waterfield Road, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a deck addition to be located 2.8 feet from the rear lot line. A minimum rear yard of 5.9 feet with a permitted extension of 0.9 feet is required; therefore, a variance of 2.2 feet was requested.

Mr. Hart said the statement of justification indicated a request within 6 inches of the lot line but the rest of the staff report indicated a 2.8-foot measurement. Mr. Hart asked whether there was a change from the initial application. Mr. Bernal said there were changes from the original plat and the statement of justification.

Mr. Skroch presented the variance request as outlined in the statement of justification submitted with the application.

Mr. Hammack asked whether there were homeowner association covenants. Mr. Skroch said he had gone before the community board and approval was contingent on what happened with the variance request.

Mr. Hammack asked whether Mr. Skroch had spoken with his adjacent neighbor. Mr. Skroch replied yes. He said his house was the only one on that row of townhouses that did not have deck.

Mr. Hammack said the photographs reflected only one other deck. Mr. Skroch replied that when he had initially filed that was true, but since then everyone else had built decks.

Mr. Hammack asked if the other decks would require building permits. Susan Langdon, Chief, Special Permit and Variance Branch, replied that they would require building permits but the area was zoned PDH so if decks were originally shown and built at the time the house were constructed, then they would have been included under the design standards for the PDH District and approved at the time of rezoning.

Mr. Hart asked if the row of townhouses added decks between the time of the photographs and some time in 2001, would they all need variances. Ms. Langdon said if their decks were closer than 5 feet then they would need a variance, if not, they could build by-right up to the 5-foot distance.

Mr. Hart asked if there was something unusual about the subject lot compared to the others. Ms. Langdon said not that staff was aware of, but maybe the applicant could address that.

Mr. Skroch said the lots were all very narrow in the back.

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

Mr. Hammack moved to approve VC 01-L-058 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALBERT P. SKROCH, JR., VC 01-L-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 2.8 ft. from rear lot line. Located at 6461 Waterfield Rd. on approx. 1,549 sq. ft. of land zoned PDH-4. Lee District. Tax Map 81-4 ((38)) (40) 30. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 2001; 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 a deck as shown on the plat prepared by Walter C. Sampsell, III, dated, May 19, 2000, as revised through March 29, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 395, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JORGE M. & RAMONA W. RODRIGUEZ, VC 01-M-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line. Located at 6383 Dockser Terr. on approx. 12,371 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 174.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ramona Rodriguez, 6383 Dockser Terrace, 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 an addition consisting of the enclosure of an existing carport and a second-story addition to be located 10.2 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a variance of 4.8 feet was requested.

Ms. Rodriguez presented the variance request as outlined in the statement of justification submitted with the application. She said the lot lines were narrow and the topography prevented building in the back or front of the lot. Ms. Rodriguez stated that their house was the only one without multiple stories. She said the Architectural Review Board had approved the request.

Chairman DiGiulian noted two letters received in opposition and asked the applicant to respond to them.

Ms. Rodriguez stated that the addition was designed to protect everyone's privacy. She said they offered to put in landscaping between the lots. Ms. Rodriguez stated that the request was not out of character for the neighborhood.

Mr. Hart asked Ms. Rodriguez if she was willing to commit to landscaping. Ms. Rodriguez replied yes.

Chairman DiGiulian called for speakers.

Linda Haake, 6388 Dockser Terrace, came forward stating that the addition would be an impingement on privacy. She said because the lots were narrower, the variance request was more of an impingement on her privacy, light, and the level of noise. Ms. Haake stated that those impingements would change the character of her household. She said the houses were sited in such a way that other houses were not visible. Ms. Haake presented photographs to the Board showing how close the subject house was located in relationship to her property.

Ms. Gibb asked how far away Ms. Haake's home was from the shared property line. Ms. Haake replied about 15 feet.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-M-050 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JORGE M. & RAMONA W. RODRIGUEZ, VC 01-M-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line. Located at 6383 Dockser Terr. on approx. 12,371 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 174. 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 26, 2001; and

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

1. The applicants are the owners of the land.
2. There are exceptional topographical conditions on the property.
3. The request was to enclose the existing carport.
4. The photographs reflect that the applicant's house is much lower than the houses surrounding the property.
5. The applicants met the required standards for a variance.

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

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

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

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

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

1. This variance is approved for the location of an addition shown on the plat prepared by Harold Lee Pierce, dated January 4, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 397, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M., JR. & KAREN P. BRAGG, VC 01-D-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.59 ft. from rear lot line. Located at 1404 Rock Ridge Ct. on approx. 8,506 sq. ft. of land zoned R-3 Cluster). Dranesville District. Tax Map 10-2 ((14)) 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. Robert Bragg, 1404 Rock Ridge Court, Herndon, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 18.59 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.41 feet was requested.

Mr. Bragg presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose the existing deck with roof and screen walls. Mr. Bragg said the request was consistent with the neighborhood and they had received permission from the Architectural Review Board. He requested a waiver of the 8-day waiting period.

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

Mr. Hart moved to approve VC 01-D-051 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT M., JR. & KAREN P. BRAGG, VC 01-D-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.59 ft. from rear lot line. Located at 1404 Rock Ridge Ct. on approx. 8,506 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((14)) 37. 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 June 26, 2001; and

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

1. The applicants are the owners of the land.
2. The applicant's testimony and statement of justification indicated compliance with the required standards for a variance.
3. The lot and the building envelope are oddly shaped.
4. The screened porch addition would be on top of the existing deck.

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

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

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

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

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

limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by David Hangen, dated March 28, 2001, 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Hart moved to waive the 8-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 26, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 399, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DONALD E. CACKLER, VC 01-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.6 ft. from front lot line of a corner lot. Located at 2111 Greenwich St. on approx. 19,600 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 64.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Donald Cackler, 2110 Greenwich Street, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 29.6 feet from the front line of a corner lot. A minimum front yard of 35 feet is required; therefore, a variance of 5.4 feet was requested.

Mr. Cackler presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to add a room and have additional space in the kitchen. Mr. Cackler stated that the property was acquired in good faith.

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

Ms. Gibb moved to approve VC 01-D-060 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD E. CACKLER, VC 01-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.6 ft. from front lot line of a corner lot. Located at 2111 Greenwich St. on approx. 19,600 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((2)) 64. 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 26, 2001; 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 a corner lot with 2 front yards.
4. The proposed location is the only place for the addition because of the need to accommodate future health care needs.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 March 27, 2001, 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 401, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS H. STEPHENS, SP 01-V-019 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 1.7 ft. from side lot line such that side yards total 14.10 ft. and eave 1.0 ft. from side lot line. Located at 8700 Gateshead Rd. on approx. 15,400 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-1 ((20)) (7) 32.

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 Stephens, 8700 Gateshead Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the reduction to minimum yard requirements based on an error in building location to permit an addition, a carport and shed, to remain 1.7 feet from a side lot line such that side yards total 14.1 feet and an eave 1.0 foot from the side lot line. A minimum side yard of 5.0 feet is required and 19 feet for the total side yards; therefore, the amount of error for the carport is 3.3 feet or 66%. The amount of error for the total side yards is 26% or 4.9 feet.

Mr. Pammel asked whether a building permit was acquired for the construction. Ms. Stanfield replied not to her knowledge.

Mr. Stephens presented the request as outlined in the statement of justification submitted with the application. He said that he applied for a permit prior to his wife and himself becoming totally disabled. He said it was rejected due to a lack of footage. Mr. Stephens stated that with the help of his neighbors, they constructed the addition. He said it added convenience for their ability to enter and exit the house.

Ms. Gibb asked how the violation was discovered. Ms. Stanfield said a complaint was filed.

Ms. Gibb asked how close the house was on Lot 33 to the addition. Ms. Stanfield replied 17 feet from the shared lot line.

Mr. Hart asked the applicant for clarification regarding the building permit. Mr. Stephens replied that he had applied for a building permit and it was rejected some years ago because the distance from the lot line was not sufficient.

Mr. Hart asked the applicant whether he built the addition knowing that a building permit was rejected. Mr. Stephens replied yes.

Mr. Hart said there was a letter that discussed someone fraudulently assuming their identity and asked whether that was correct. Ms. Stanfield said she had no way of addressing that issue.

Mr. Hammack said there was a letter in which the people identified themselves as his next door neighbors and stated that they did not make the complaint. Mr. Stephens said he was aware of that and that the neighbor was present to support his application.

Mr. Hammack stated that if the applicant had applied for a variance initially he would have had a very difficult time supporting a variance of the requested amount. He said he could not support the construction the way it was in its entirety and the shed in the corner of the garage. Mr. Hammack said it left no area to walk around the property without trespassing onto the neighbor's property. He said right now the neighbor doesn't oppose it, but that might not always be the case.

Mr. Hammack asked the applicant to describe the construction of the shed. Mr. Stephens said that approximately 15 years ago, he built a wall from the house about 18 feet and 6 feet high. He said that was the back of the carport. He said the shed was placed in that location because there was no step going into the house which allowed his wife the ability to go in and out without having to climb steps.

Mr. Hammack asked what the nature was of the applicants' disabilities. Mr. Stephens replied that his wife had leprospasm where the eye lids shut and there was no control over the closing of the eyelid. Mr. Stephens said his disability was the nine screws and rods in his back, and two new knees that have to be redone.

Mr. Hammack asked whether he had the disability when he constructed the addition. Mr. Stephens said he had help, but that he acted more like the superintendent.

Chairman DiGiulian called for speakers.

Lenora White, no address given, came forward to speak in support of the application. She read a letter submitted to the Board dated March 3, 2001. Ms. White said the carport enhances the property.

Mr. Ribble asked staff whether there was a way to find out who filed the complaint. Ms. Stanfield stated that they had the name of the complainant and it was not the same as the neighbor immediately adjacent to the applicant.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to deny SP 01-V-019 for the reasons noted in the Resolution.

Mr. Kelley stated that he could not allow someone who was aware of the laws to disregard them.

Mr. Pammel stated that the applicant was aware he violated the law. He stated that the applicant should have sought a variance once the building permit was denied.

Mr. Hart stated that he supported the motion. He said if the application would have been a variance, he would have supported it. Mr. Hart stated that the applicant needed to abide by the Ordinance standards.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS H. STEPHENS, SP 01-V-019 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 1.7 ft. from side lot line such that side yards total 14.10 ft. and eave 1.0 ft. from side lot line. Located at 8700 Gateshead Rd. on approx. 15,400 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-1 ((20)) (7) 32. 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 26, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant was aware of the law and disobeyed and deliberately disobeyed the law.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

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

Mr. 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 4, 2001.

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Page 403, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KIM TAEWON & HEA KYUNG YIM, VC 01-B-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. and deck 10.5 ft. from rear lot line. Located at 9415 Wrought Iron Ct. on approx. 5,000 sq. ft. of land zoned R-5. Braddock District. Tax Map 58-3 ((16)) 91.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hea Kyung Yim, 9415 Wrought Iron Court, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a patio room addition and deck to be located 19.5 feet and 10.5 feet from the rear lot line. A minimum rear yard of 25 feet for the patio room and 13 feet for the deck are required respectively; therefore, variances of 5.5 feet for the addition and 2.5 feet for the deck were requested.

Ms. Yim presented the variance request as outlined in the statement of justification submitted with the application. She said she needed extra room.

Mr. Hammack asked how high the deck was off the ground. Ms. Josiah replied 7 feet.

Chairman DiGiulian called for speakers.

Debbie Blonder, Vice President, Starlit Ponds Homeowners Association came forward. She stated that she was not in support or opposition of the application, but the association encouraged improvement in the neighborhood. Ms. Blonder said they were concerned that it backed to the common property. She said the architectural review board had not received an application, and the applicant had not received approval from the homeowners association to proceed with the project.

Mr. Hart asked Ms. Blonder if there was anything that would require redesign to bring the application into compliance with the homeowners association's requirements. Ms. Blonder replied that the architectural review board would need to see what the design would be and what types of materials would be used in order to make a determination.

Michael Smyrnoff, contractor, came forward stating that the patio room would be attached to the facia coming off in a shed style roof. He said the proposed deck was supposed to be a 4 x 4 landing with steps down to have a way to the ground. Mr. Smyrnoff said the steps did not extend past the patio room.

Chairman DiGiulian asked how far the construction would be from the property line. Mr. Smyrnoff said there was 15 feet from the deck to the rear property line.

Chairman DiGiulian stated that the applicant needed to get a new plat.

Mr. Hart said it would be helpful if there were a drawing of the addition.

Allen Tucker, 9386 Tarten View Drive, came forward to speak in opposition. He submitted a petition from 10 neighbors in opposition. He said the deck would take away from his privacy and quality of life. Mr. Tucker stated that he was concerned with the proximity of the addition to the property line.

Ms. Gibb asked how wide Parcel F was between Mr. Tucker and the subject parcel. Mr. Tucker stated that there was a 10 foot easement between the properties.

Mr. Pammel said it appeared to be about 30 feet between the properties.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to defer decision to July 3, 2001, to allow the applicant time to obtain a new plat that accurately reflected what was proposed and to also obtain an interpreter.

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

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Page 404, June 26, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JAMES P. & SANDRA M. LAMBERTI, VC 01-P-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.2 ft. from front lot line. Located at 2907 Melanie La. on approx. 28,526 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-3 ((7)) 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. James Lamberti, 2907 Melanie Lane, Oakton, Virginia, replied that it was.

Jennifer Josiah, Senior 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 addition to the dwelling, to be located 28.2 feet from the front lot line. A minimum front yard of 30 feet is required; therefore, a variance of 1.8 feet was requested.

Mr. Lamberti presented the variance request as outlined in the statement of justification submitted with the application. He said the addition would not affect the neighbors because it faced the road.

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

Mr. Ribble moved to approve VC 01-P-059 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES P. & SANDRA M. LAMBERTI, VC 01-P-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 28.2 ft. from front lot line. Located at 2907 Melanie La. on approx. 28,526 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-3 ((7)) 20. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 2001; and

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

1. The applicant is the owner of the land.
2. There was an extraordinary and unusual situation of the house on the lot.

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

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

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

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

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

1. This variance is approved for the location of the covered porch addition shown on the plat prepared by LS2PC, dated December 13, 2000, revised March 27, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-7 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for cemetery, mausoleum, columbarium, funeral home and crematory to permit change in development conditions. Located at 4401 Burke Station Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 12.

Mr. Hart gave a disclosure but indicated that it would not affect his ability to participate in the public hearing.

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, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment to permit a change in development conditions, the construction of an earthen berm rather than a brick wall to the north of the funeral home/crematory and flexibility in the design of the required right turn lane from Braddock Road. The applicant submitted a revised plat with revisions through June 15, 2001, after the publication of the staff report that corresponded with the landscaped berm schematic. Revised proposed development conditions were distributed that reflected the additional comments by the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES), discussions with the applicant, and the special permit plat revision date. Subject to the revised proposed development conditions dated June 26, 2001, staff recommended approval.

Ms. Kelsey, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said during a meeting with the neighbors and Commissioner Harsel, a more natural berm was requested. Ms. Kelsey stated that the applicant revised the landscape plan and the neighbors indicated their support of the application. She requested that the words "northern slope" be removed from Condition #10. Ms. Kelsey stated that the applicant was in agreement with the revised development conditions.

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

Mr. Pammel moved to approve SPA 81-A-022-7 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK AND FAIRFAX MEMORIAL FUNERAL HOME, L.L.C., SPA 81-A-022-7 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-022 previously approved for cemetery, mausoleum, columbarium, funeral home and crematory to permit change in development conditions. Located at 4401 Burke Station Rd. on approx. 128.14 ac. of land zoned R-1. Braddock District. Tax Map 69-1 ((1)) 1 and 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 June 26, 2001; and

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

1. The applicant is the owner of the land.
2. The community supported the application and the staff report was favorable.

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. These conditions pertain to the funeral home/crematory use only, and DO NOT SUPERCEDE BUT ARE IN ADDITION TO those conditions approved by the Board of Zoning Appeals on June 6, 2000, in conjunction with special permit amendment application SPA 81-A-022-5, which shall remain in full force and effect.

2. 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, 4401 Burke Station Road (128.14 acres), and is not transferable to other land.

3. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by DeLashmutt Associates Ltd., dated February 28, 2001 and signed June 12, 2001, as revised through June 15, 2001, and approved with this application, as qualified by these development conditions.

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. 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.

6. The funeral home/crematory building shall be limited in size to 16,150 square feet of interior floor area, and the garage and crematory unit shall be limited to a total of 3,968 square feet, as depicted in the plat building dimensions.

7. 130 exterior parking/stacking spaces and five (5) garage spaces shall be provided for the funeral home/crematory use. Except for times of use, hearses and similar business vehicles shall be parked and/or stored within the garage. All parking shall be on-site, as shown on the special permit amendment plat.

8. A landscape plan shall be submitted at the time of site plan review for the review and approval of the Urban Forestry Branch. The plan shall be in substantial accordance with Attachment 1 of the Proposed Development Conditions, "Conceptual Berm and Landscape Plan," with additions stated in Development Condition Number 10.

9. A) At the time of grading plan review, the Urban Forestry Branch will designate the limits of clearing and grading, consistent with the trees shown to be preserved on the special permit plat and

"Conceptual Berm and Landscape Plan" prepared by Tilson Landscape Company (included in these Development Conditions as Attachment 1).

B) The applicant will post with the County at time of site plan approval a letter of credit payable to the County to ensure the saving or replacing of such "individual trees" and all other trees which are outside or beyond the limits of clearing and grading as established at the time of grading plan approval. The letter of credit will be in a form acceptable to the County Attorney and in an amount determined by the County Urban Forestry Branch; however, in no event shall such amount exceed fifteen thousand dollars ($15,000). The applicant will post with the County, within fourteen (14) working days of receipt of a request by the Director, DPWES, an amount equal to the replacement value of any tree destroyed as established by the Valuation of Landscape Trees, Shrubs and Other Plants. It is the intent of this development condition that at all times, the $15,000 letter of credit be held by the County no matter how many requests for replacement funds have been called previously, but in no event shall the amount paid to Fairfax County for tree replacement exceed $15,000 per letter of credit. In determining the amount of the letter of credit, the Urban Forestry Branch will assign a replacement value to each existing individual tree shown to be saved on the approved grading plans in accordance with the methods contained in the Valuation of Landscape Trees, Shrubs and Other Plants published by the International Society of Arboriculture. Should this letter of credit or any replacement letter of credit be called by the County and the funds expended to restore or replace trees pursuant to Part 4, Section 12-0400, et. seq. of the Fairfax County Public Facilities Manual (PFM) the applicant will post with the County, within 14 working days of receipt of a request by the Director, DPWES, a replacement letter of credit payable to the County, in a form acceptable to the County Attorney and the same amount as the original letter of credit required by this development condition. Upon release of the Conservation Bond or other similar bond, the letter of credit will be released.

C) During construction, the County Urban Forestry Branch shall periodically inspect the project and determine if any of the designated "individual trees" or any trees located outside or beyond the limits of clearing and grading as shown on the approved grading plans are dead or dying due to acts of negligence by the applicant or are due directly to the development of the project. The applicant may then elect to remove and replace such dead or dying trees according to the directions of the Urban Forestry Branch pursuant to Part 4, Section 12-0400 of the PFM or pay to the County the assigned value as defined in the Valuation of Landscape Trees, Shrubs and Other Plants of such dead or dying tree from the letter of credit.

D) Any funds received by Fairfax County pursuant to this development condition shall be utilized solely to preserve, restore to health or replace trees on the subject property which are shown on the approved grading plans to be saved.

10. The existing vegetation along the eastern lot line shall be deemed to satisfy the transitional screening requirement, with the addition of evergreen trees as shown on the plat.

To the north of the parking lot, the shrub mass and new trees shall be planted as shown on the "Conceptual Berm and Landscape Plan," (Attachment 1). The berm shall be vegetated with at least three (3) different species of evergreen trees as well as flowering deciduous trees and shrubs, dispersed at different elevations along both sides of the berm to provide a natural appearance. The vegetation and berm shall extend from the western to the eastern corners of the parking lot, as shown on the plat and Attachment 1.

The existing vegetation along the western lot lines shall be deemed to satisfy the transitional screening requirement, except within the area between the funeral home facility/parking lot and Burke Station Road where additional evergreen trees shall be installed. The evergreen trees to be installed shall be sufficient in number and height to create a year-round visual screen for residential properties to the west, to the satisfaction of the Urban Forestry Branch.

The existing vegetation along the southern lot lines shall be deemed to satisfy the transitional screening requirement, except that the existing trees shown within the limits of clearing and grading for the funeral home/crematory facility, stormwater management pond and turn lane shall be

replaced if removed or if irreparably damaged during development, as determined by the Urban Forestry Branch. Any required replacement trees shall be installed within the area between the funeral home facility and Braddock Road, to the satisfaction of the Urban Forestry Branch.

11. All vegetation required for screening purposes, as shown on the special permit plat, shall be maintained in good health. Dead or dying vegetation shall be replaced with like-kind vegetation.

12. Barrier requirements shall be waived along all lot lines of the special permit property.

13. All signs shall be in conformance with Article 12 of the Fairfax County Zoning Ordinance.

14. The maximum number of chapels within the funeral home/crematory structure shall be limited to one (1). The maximum total number of seats contained within the funeral home chapel shall be limited to 272. The maximum number of viewing parlors within the funeral home/crematory structure shall be limited to five (5). The maximum total number of seats contained within each viewing parlor shall be limited to 30.

15. Any dumpster located on the property shall be placed indoors or within an enclosure constructed of brick or architectural block. A gate shall be included on the enclosure.

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

17. Funeral services shall be conducted only between the hours of 10:00 a.m. and 3:00 p.m. Visitations and wakes shall be conducted only between the hours of 2:00 p.m. and 4:00 p.m. and between 7:00 p.m. and 9:00 p.m.

18. The architectural design of the funeral home/crematory building shall be in substantial compliance with that shown on drawings included as Attachment 2 to the resolution of approval for SPA 81-A-022-6. The exterior of the building shall be constructed of brick veneer. The top of the building roofline shall be limited in height to twenty-five (25) feet above the first floor elevation. Chimneys associated with the crematory use shall be limited in height to 3.0 feet above the roofline of the funeral home structure.

19. A right turn lane from Braddock Road into the southern entrance shall be constructed to standards as determined by VDOT, in the location as determined by VDOT and DPWES at the time of site plan submission. Prior to issuance of a Non-Residential Use Permit for the funeral home, any landscaping shown that is removed due to turn lane construction shall be replaced pursuant to Development Condition Number 11, above.

20. Stormwater detention shall be provided to the satisfaction of the Director, DPWES.

21. The crematory shall comply with all County, State and Federal Environmental Regulations and any other regulations applicable to its operation.

22. Prior to first submission of the site plan, the applicant shall meet with adjacent property owners and shall provide an opportunity for comment and input on landscape and buffering issues.

23. Crematorium services shall not be provided for any other funeral home establishment.

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 July 4, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 410, June 26, 2001, (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. (Def. from 8/1/00 and 1/2/01 for decision only)

Chairman DiGiulian stated that his office prepared the site plan for the appeal application; consequently, he recused himself from the meeting.

Vice Chairman Ribble noted that the application had been deferred for decision only.

Susan Epstein, Zoning Administration Division, stated that the appeal pertained to an April 7, 1999, Notice of Violation citing the appellants for operating a business, Clifton Pottery, without an approved site plan or Non-Residential Use Permit (Non-RUP) in violation of the Zoning Ordinance. She said the appeal was originally scheduled in August 1999 and had been deferred 4 times. Ms. Epstein said the BZA granted a deferral to allow the appellants additional time to resolve the site plan issues. She said the Notice of Violation had gone unresolved for over two years and it had almost been nine years since the last site plan approval. Ms. Epstein stated that based on staff's conversations with the Department of Public Works and Environmental Services (DPWES), not much progress had been made. She said staff was recently notified that there had been some conversations between the appellants and DPWES. Ms. Epstein said that there did not appear to be any major changes that would bring the appellant closer to obtaining site plan approval. Therefore, staff's position was for the BZA to uphold the determination of the Zoning Administrator.

Vice Chairman Ribble asked the appellant whether he had made progress toward getting the site plan issues resolved. Mr. Knakmuhs replied that he was working with Mr. DiGiulian to obtain approval. He requested a deferral to allow time to get the site plan completed and submitted to the County for approval.

Vice Chairman Ribble asked Ms. Kelsey whether she had anything to add. Jane Kelsey, Jane Kelsey and Associates, came forward stating that she did not represent the appellant in the appeal, but only in their request for the site plan.

Ms. Gibb asked what the progress was with the site plan. Ms. Kelsey said the engineer was ready to submit, but the attorney requested that he review the site plan first.

Ms. Gibb asked how long it would take to get the site plan approved. Ms. Kelsey said she hoped it would be within 2 or 3 months.

Mr. Hart stated that he was not happy with all the deferrals. He said he did not understand how much more time was needed. He stated that a memo from Jane Kelsey indicated that there was an error in a zoning map and that maybe in 1948, the property had been rezoned to a rural business district. Mr. Hart asked staff whether they had time to review that information.

Ms. Kelsey said she faxed the information to Mr. Shoup but he did not receive the last pages and probably

could not answer the question without doing some research. She said they had not done the research to confirm that information either.

Mr. Hart said if there was an error, would that change anything with respect to what uses could be done currently. William Shoup, Deputy Zoning Administrator, said when there were errors or questions of zoning on the property and once the Board of Supervisors adopted the zoning map in conjunction with the current Zoning Ordinance that went into effect in August 1978, that, in effect, was an adoption of the zoning as it was shown on the map. He said that any errors that may have previously occurred were wiped out by the Board's decision to adopt the zoning map in 1978.

Mr. Hart said this was a difficult case and if a further deferral were granted, more information would be helpful.

Mr. Hammack said he shared the same frustrations with deferrals as Mr. Hart. He moved to defer the appeal for 60 days. Mr. Hart seconded the motion.

Mr. Kelley stated that 60 days was not much time.

After discussions between the Board members regarding the length of the deferral, the Board moved to defer the appeal to December 18, 2001, at 9:30 a.m. The motion carried by a vote of 6-0. Chairman DiGiulian was not present for the vote.

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Page 411, June 26, 2001, (Tape 1), Scheduled case of:

9:30 A.M. MARILDA N. ADAMS, A 2000-DR-038 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant has added fill dirt on her property to a depth in excess of eighteen inches and thus altered the natural drainage in the area in violation of Zoning Ordinance provisions. Located at 6312 Old Dominion Dr. on approx. 9,322 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 136. (moved from 3/6/01)

Chairman DiGiulian noted that the appeal had been administratively moved to September 25, 2001.

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The Board recessed at 10:47 a.m. and reconvened at 10:54 a.m.

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Page 411, June 26, 2001, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD & KATHRYN TUBB, VICTOR & DORINE BLANDBURG, ET AL, A 2001 -MA-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a proposed eight-bed substance abuse program operated by Vanguard Services Unlimited is a group residential facility which is permitted to occupy a dwelling by right. Located at 6581 Braddock Rd. on approx. 1.28 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 55. (Def for decision only from 6/19/01)

Chairman DiGiulian noted that the appeal was deferred for decision only.

Mr. Hammack stated that this was a very difficult decision in many respects. He said the appeal was a determination that a proposed 8-bed substance abuse program operated by Vanguard Services Unlimited was a group residential facility which would be permitted to occupy a dwelling by-right as made by Richard and Kathryn Tubb, Victor and Dorine Blandburg, et al. He said that the Board heard a lot of testimony both in support of the Zoning Administrator's decision and against it. Mr. Hammack said there was also a lot of testimony about the Viviendo Saludable program operated by Vanguard. He said the issue wasn't whether the Vanguard program was valuable to the community, whether there was a need for the program, or whether the program works. Mr. Hammack said the issue presented to the Board was whether the Zoning

Administrator's interpretation of the Ordinance, that a group residential facility, which operated its program, was a facility that was permitted to operate a program such as this as a matter of right under the Zoning Ordinance. He said in order to look at that issue the Board had to get to what the program does. Mr. Hammack said the issue was whether the residents qualified as handicapped under the Fairfax County Code and under the Federal Housing Amendment Authorities Act. He said the Zoning Administrator's decision would allow the use of this facility for this program as a matter of right on the subject property. Mr. Hammack said in 1988 Congress amended the Fair Housing Act to extend its protection to handicapped persons. It made it unlawful to discriminate in the sale or rental of property because of a handicap. He said the term "handicap" was specifically defined in the Federal Housing Amendments Authority Act. Mr. Hammack stated that on October 6, 1990, the Board of Supervisors adopted a Zoning Ordinance Amendment to bring the local Ordinance into compliance with the Act, which included homes for recovering drug and alcoholic abusers to be brought within the purview of the Ordinance. As defined in Article 20 of the Ordinance, a group residential facility is a group home or other residential facility. Mr. Hammack said drug addiction and alcoholism were included with the FHAA definition of handicapped, but there were 3 exclusions under the FHAA definition, for current, illegal use of or addiction to a controlled substance. He said a second one was a direct threat to the health and safety of individuals that could result in property damage. And the third was for conviction by any court of competent jurisdiction of the illegal manufactured distribution of a controlled substance. He said the Board was told factually that all of the participants in this program had gone through a detoxification program, but that could be as short as one day or three days or perhaps even longer. Mr. Hammack said that Vanguard argued that the participants were alcohol and drug free at the time of their admission, but that could involve only an overnight stay in some kind of mental health facility or a jail or some other facility. He said Vanguard also said that prospective residents were screened for past violent crimes and for conviction of illegal manufactured distribution of a controlled substance. He said the screening that was presented to the Board troubled him because it was screening that was not controlled by Vanguard. Mr. Hammack said the appellants contend the facility was not a group residential facility and that the participants were not handicapped under the FHAA because they fell within one or more of the three exclusions from the definition of handicapped. The issue presented to this Board to a large extent was really whether the Board felt the Zoning Administrator was right in her interpretation based upon what was presented to her and what was presented to the Board. He said the Ordinance stated that a group residential facility, a group home, or other residential facility with one or more resident counselors or staff persons in which no more than 8 handicapped persons reside, shall not include current illegal use or addiction to a controlled substance as defined in Sect. 54.1-3401 of the Code of Virginia or as defined in Sect. 102 of the Controlled Substances Act. He said the Board had to examine the issue as to whether these persons were handicapped within the meaning of the FHAA or the other definitions that had been presented. He said a controlled substance was defined to mean a drug, but did not include distilled spirits; consequently, the alcoholism was not defined as a controlled substance. He said Title 21 of the United States Code also stated that a controlled substance meant a drug or other substance and did not include distilled spirits.

Mr. Hammack stated that the appellants cite the following errors: that adequate screening was not performed regarding past violent crimes and convictions for illegal manufactured distribution of controlled substances; that all patients have successfully completed detoxification addiction program sufficient to classify them under law as recovered addicts rather than current users and addicts; and, that there will be no patients at the center who currently use illegal controlled substances. He said the applicable legal standard requires that patients not be currently addicted. He said a substance abuse treatment center by definition, temporarily accommodated patients who were currently addicted to a controlled substance, and if there is no current addiction, there is no need for treatment. Mr. Hammack said that the proposal continually referenced its clients as being substance dependent and chemically dependent. The rebuttal to that made by Mr. Foote, who represents Vanguard, actually conceded in his written presentation that protection against discrimination and housing was not accorded to individuals who were subject to current illegal addiction. Mr. Hammack said he was closer to agreeing that they were not currently using, but based on the testimony, they might not be currently using drugs or alcohol for only a day or maybe a very short period of time which didn't satisfy the Code provision. He said the Board had been presented with a number of different definitions under different acts, so his approach was to look at what has been presented by Vanguard and by the appellants. Mr. Hammack said there were good arguments on both sides of the decision. He said under the program description presented by Vanguard, it said that the VS was a five phase residential and transitional program for monolingual Spanish speaking substance dependent adults in Northern Virginia and the goal of VS was to provide a safe and appropriate environment for the effective treatment of the chemically dependent Hispanic adults. He said the VS program was designed to serve Hispanic adults with primary diagnosis of substance abuse/dependency. Mr. Hammack said it seemed that the program anticipated a fairly high

percentage of failure, because the Board was told up to 30% failure, or even higher. He said that was a high percentage of people that at least in a common sense definition, might be current users who were addicts. He said the target population would be individuals who had been diagnosed as being in need of medium to high intensity residential substance abuse treatment. Mr. Hammack said it seemed like that if there was current substance dependence, then there was some sort of ongoing illegal drug use, at least in the short term, previous or multiple attempts to recover and structured treatment didn't sound like a recovered or a former addict in a recovery phase. Mr. Hammack said he was not satisfied with the way that the people were screened to meet the requirements of the Code section that had exclusions for current illegal drug use or addiction or the possibility of illegal manufactured distribution. He said the Board was told that it was too expensive and would take too long to do a police records check. He said that was sort of implausible for a group that said they were going to screen out criminal activity. Mr. Hammack said he didn't think the screening under this program was designed to effectively screen out enough patients, to reduce the level of possible incidence where you have people who would be excluded under the criminal activities sections to a minimum or just to an incidental thing. He said because we're told no records checks was done, that 30% of the population was going to fail, the Community Services Boards didn't do screening for backgrounds, criminal background screening was done, if at all, through probation or parole officers. He said that might exclude a good number but it did not satisfy the Ordinance. He said he was most concerned overall about the exceptions in the Ordinance. Mr. Hammack said that FHAA is remedial, but the exceptions in the Ordinance were written in and were written in for a reason and they were written in at the same time the remedial Ordinance was written and they exclude current illegal use of or addiction to a controlled substance and that was carried through in our local Ordinance. Mr. Hammack said there was no criteria to determine what is an addiction or a current illegal addiction and Vanguard and the County admitted that there was no definition of current illegal addiction in the Code, so the Board had been given a number of cases to review to provide guidance. Mr. Hammack said that the program as it presently was administered was in the nature of a drug treatment program for people who were currently addicted, not recovering addicts who are being discriminated against because of housing. He said there was not a whole lot of evidence as to the type of individuals who had actually been admitted or specific information about the screening process or the criteria. Mr. Hammack said he could not accept that a person who was simply detoxified doesn't fall within the definition of being possibly, currently addicted. He said that the program with the present screening that has been presented to the Board did not qualify it to be a group residential facility as a matter of right. Mr. Hammack moved that the determination of the Zoning Administrator be overruled.

Mr. Kelley seconded the motion. He said he found the inability to check backgrounds disturbing. Mr. Kelley stated that an instant check such as one that many jurisdictions use would be adequate

Mr. Hart stated that both sides made good points in this appeal and many of them were beyond the scope of the Board's review. He said what it boiled down to was a relatively narrow question of whether the use was a group residential facility as that term is defined in the Ordinance because the residents are deemed handicapped, of whether the facility fell within the addiction exception, in subsection C of the definition of a group residential facility. Mr. Hart said this was a very difficult legal issue and his conclusion was based on the record. He said this was not a group residential facility and it was within the addiction exception. He said the Board's function was not to determine whether this was an appropriate site for this facility or not, but to simply look to the Zoning Ordinance and the plain language used. He said his conclusion was not about the merits of this program, but instead an interpretation of this exclusion in the Ordinance.

Mr. Pammel said his greatest concern was on the use of the term that is set forth in the Act, illegal use or addiction to controlled substances. He said it was his understanding that if you were addicted, that was a disease that went with you for the rest of your life. He said the Act gave the Board major problems by the way that it was constructed. He said even though you have gone through the rehabilitation process you still have that issue to deal with, through your subsequent actions through life. Mr. Pammel said he was concerned about the contradictory language, but this was something that was needed. He said the basic threshold was the admission. Mr. Pammel said when an individual seeking treatment, admits that he or she has a problem and needs the benefit of this program, the generous interpretation should allow these facilities to proceed without having to go through the process of special exception which is time consuming and all of the other financial aspects related to that.

Ms. Gibb said she wish she had more information about the screening process. She said her problem was that it is by-right and so that meant that no matter what went on and how it was done, it would automatically be okay. Ms. Gibb said she was torn because she felt the County needed this and she thought it was an

appropriate site for a group home. She stated that she could satisfy herself that the screening was sufficient and that there was not enough information about how a person was taken in and what was the detoxification process. Ms. Gibb stated that she would reluctantly support the motion.

Mr. Hammack said that based on what had been presented to the Board, that the home fell under the Statute as a matter of right. He said he agreed with Ms. Gibb that the Board was not given enough information.

The motion carried by a vote of 6-1. Mr. Pammel voted against the motion. The decision of the Zoning Administrator was overruled.

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Page 414, June 26, 2001, (Tape 1), After Agenda Item:

Approval of June 19, 2001 Resolutions

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

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Page 414, June 26, 2001, (Tape 1), After Agenda Item:

Approval of Retention of Legal Counsel for At Law #196219
Board of Supervisors and Jane Gwinn v. Board of Zoning Appeals and
CESC Tysons Dulles Plaza L.L.C., A 2001-PR-040

Mr. Pammel moved to retain the legal services of Brian McCormack to represent the Board of Zoning Appeals in the above referenced court case. 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 11:50 a.m.

Minutes by: Regina Thorn Corbett

Approved on: November 13, 2001

Regina Thorn Corbett
Regina Thorn Corbett, Clerk
Board of Zoning Appeals

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

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 3, 2001. The following Board Members were present: Chairman John DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble were present.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the rules and policies 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 415 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FIRST AUSTRIAN CORPORATION, SP 01-L-021 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit commercial recreation use. Located at 6717 Frontier Dr. on approx. 40,000 sq. ft. of land zoned C-7 and SC. Lee District. Tax Map 90-2 ((13)) pt. 4A1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wilhelm Durnberger, 309 L. Street, Washington, D.C., replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicants requested approval to permit a seasonal trampoline facility, which would consist of 10 individual trampolines to be located in the parking lot of Springfield Mall. Staff recommended approval.

Mr. Durnberger presented the special permit request as outlined in the statement of justification submitted with the application. He stated that the business would operate Monday through Friday during the Mall hours. He stated that the total attendees during peak hours would be 70 people and during off peak hours there would be 40-60 people. He said the use would not negatively affect the surrounding area.

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

Mr. Hammack moved to approve SP 01-L-021 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FIRST AUSTRIAN CORPORATION, SP 01-L-021 Appl. under Sect(s). 4-703 of the Zoning Ordinance to permit commercial recreation use. Located at 6717 Frontier Dr. on approx. 40,000 sq. ft. of land zoned C-7 and SC. Lee District. Tax Map 90-2 ((13)) pt. 4A1. 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 3, 2001; 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). 4-703 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, 6717 Frontier Drive (40,000 square feet), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by TechGroup, Inc., revised by Richard J. Schuetz, dated January 30, 1991, as revised through February 1, 2001, 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. Any proposed lighting of the trampoline facility shall be in accordance with the following:

   - The combined height of the light standards and fixtures shall not exceed twelve (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 the proposed trampoline facility.

6. A sign permit shall be obtained and any signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

7. Hours of operation shall be limited to 9:00 a.m. to 9:00 p.m., daily, March through October.

8. The number of trampolines on the site shall not exceed ten (10).

9. A minimum of thirteen (13) parking spaces shall be provided for the trampoline facility. All parking shall be on site.

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

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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 July 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 417 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SHARON M. ENTSMINGER, VC 01-L-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.9 ft. from side lot line. Located at 4802 Eubank St. on approx. 10,987 sq. ft. of land zoned R-3. Lee District. Tax Map 101-1 ((4)) 58. (Admin moved from 5/8/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gary Nelson, 4802 Eubank Street, Alexandria, Virginia, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit a garage addition to be located 1.9 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 10.1 feet was requested.

Mr. Nelson, agent for the applicant, presented the variance request as outlined in the statement of justification. He stated that the garage was needed to provide shelter for their vehicles and additional storage. He explained that the requested location of the garage was preferred because it was close enough to the overhang of the porch to provide shelter for people entering and exiting the garage in inclement weather. He said that the backyard was heavily wooded and was not an ideal place for a garage.

Chairman DiGiulian asked the applicant if he was willing to move the garage back to the beginning of the patio. Mr. Nelson replied that it would not look right in that area and it would not provide protection from the weather.

Mr. Pammel stated that a distance of 1.9 feet was not adequate to allow maintenance of the property without infringing on the neighbor's property and that the request was a convenience as opposed to a hardship. Mr. Pammel suggested that the garage be moved back to the beginning of the patio area.

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

Mr. Pammel moved to approve-in-part VC 01-L-031 with a minimum yard of 4.0 feet. Mr. Hart seconded the motion which carried by a vote of 7-0. Mr. Pammel noted that the applicant needed to submit a revised plat, within 30 days, reflecting a minimum yard of 4.0 feet.

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Page 417 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KIM TAEWON & HEA KYUNG YIM, VC 01-B-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. and deck 10.5 ft. from rear lot line. Located at 9415 Wrought Iron Ct. on approx. 5,000 sq. ft. of land zoned R-5. Braddock District. Tax Map 58-3 ((16)) 91. (Def. for decision only from 6/26/01)

Jennifer Josiah, Senior Staff Coordinator, explained that a revised plat had been submitted which reflected the deck at a set back of 13.3 feet and the permitted distance from the rear property line for a deck was 13 feet; therefore, the deck no longer needed a variance. She said that the variance for the patio was still needed.

Mr. Hart moved to approve-in-part VC 01-B-057 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KIM TAEWON & HEA KYUNG YIM, VC 01-B-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.5 ft. and deck 10.5 ft. from rear lot line. **(THE DECK WAS WITHDRAWN)** Located at 9415 Wrought Iron Ct. on approx. 5,000 sq. ft. of land zoned R-5. Braddock District. Tax Map 58-3 ((16)) 91. 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 July 3, 2001; 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. The lot is extremely small and with the revision to the latest plat, the deck is not as close to the property line.
4. The variance for the addition is relatively minimal and because of the large distance between the applicants' property and the properties to the rear due to vacant land owned by the Starlit Ponds Homeowners Association, the impact to the rear yard would be minimal.

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

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

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

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

Page 419, July 3, 2001, (Tape 1), KIM TAEWON & HEA KYUNG YIM, VC 01-B-057, continued from Page 418

deprive 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 addition shown on the plat prepared by Alexandria Surveys, Inc., dated March 8, 2001, revised through June 26, 2001, 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. 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 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 419 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. PATRICK & PENELOPE TOULME, VC 01-P-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 21.9 ft. from front lot line and 7.3 ft. high fence to remain in rear yard. Located at 2829 Woodlawn Ave. on approx. 6,303 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 109.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick Toulme, 2829 Woodlawn Avenue, Falls Church, 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 a second story addition to be located 21.9 feet from the front lot line and a 7.3 foot high fence to remain along the rear lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 8.1 feet was requested for the addition and a variance of 0.3 feet was requested for the height of the fence.

Mr. Toulme presented the variance requests as outlined in the statement of justification submitted with the application. He stated that the variance was needed to provide additional living space for his family. He explained that the fence height was discovered upon completion of the plat.

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

Mr. Ribble moved to approve VC 01-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

PATRICK & PENELOPE TOULME, VC 01-P-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 21.9 ft. from front lot line and 7.3 ft. high fence to remain in rear yard. Located at 2829 Woodlawn Ave. on approx. 6,303 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 109. 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 3, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants' statement of justification indicated compliance with the required standards for the granting of a variance.
3. The lot is exceptionally shallow in 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 second story addition and fence as shown on the plat prepared by Kenneth W. White, dated March 28, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 421 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DEREK WEITZEL, SP 01-D-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 accessory structure to remain 1.8 ft. from side lot line. Located at 720 Miller Ave. on approx. 23,376 sq. ft. of land zoned R-E. Dranesville District. Tax Map 7-4 ((5)) 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. Derek Weitzel, 720 Miller Avenue, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit a shed to remain 1.8 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a modification of 18.2 feet was requested.

Mr. Weitzel presented the special permit request as outlined in the statement of justification submitted with the application. He explained that the company who constructed the shed assured him that the dimensions and placement were within County guidelines. He said that the shed was on a concrete pad and could be moved up several feet from the side lot line.

There was conversation between the Board and the applicant regarding the relocation of the shed several feet on the concrete slab. The applicant was agreeable to that suggestion.

Ms. Gibb moved to approve-in-part SP 01-D-022 with a minimum side yard set back of 4.5 feet 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

DEREK WEITZEL, SP 01-D-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 accessory structure to remain 1.8 ft. from side lot line. **(THE BOARD APPROVED A MINIMUM SIDE YARD SET BACK OF 4.5 FEET)** Located at 720 Miller Ave. on approx. 23,376 sq. ft. of land zoned R-E. Dranesville District. Tax Map 7-4 ((5)) 8. 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 3, 2001; and

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

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART**, with the following development conditions:

1. This Special Permit is approved for the location of an accessory storage structure as shown on the plat prepared by Kenneth W. White, Land Surveyor, dated March 26, 2001, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. NATIONAL PRESBYTERY, INC., SPA 68-D-955-3 Appl. under Sect(s). 3-102 and 3-203 of

the Zoning Ordinance to amend SP 68-D-955 previously approved for a church and related facilities to permit a change in permittee. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Tom Lawson, 10805 Main Street, Suite 200, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant proposed a change in permittee. The present permittee was the Trustees of the Chesterbrook Presbyterian Church and the proposed permittee was The National Presbytery, Inc. according to the applicant's Statement of Justification. No changes were proposed for the operation of the church and related facilities with a child care center and private school of special education from those that were previously approved by the BZA. The development conditions that were previously approved by the BZA in August 1990, in conjunction with the application were to be brought forward with no alterations other than for the change in permittee.

Mr. Lawson, agent for the applicants, presented the special permit request as outlined in the statement of justification. He reiterated that there were no proposed changes for the use other than a change in the name from the Trustees of Chesterbrook Presbyterian Church to the National Capital Presbytery Church. Mr. Lawson noted that the name that was advertised for the church was National Presbytery Church instead of National Capital Presbytery Church.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the application reflected only National Presbytery Church; therefore, that was the name used by staff. She said she would speak with the County Attorney's Office to see if the case would have to be readvertised and report back to the Board.

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

Mr. Hammack moved to approve SPA 68-D-955-3 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NATIONAL CAPITAL PRESBYTERY, INC., SPA 68-D-955-3 Appl. under Sect(s). 3-102 and 3-203 of the Zoning Ordinance to amend SP 68-D-955 previously approved for a church and related facilities to permit change in permittee. Located at 2036 Westmoreland St. on approx. 9.14 ac. of land zoned R-1 and R-2. Dranesville District. Tax Map 40-2 ((1)) 26A, 26B and 26C. 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 3, 2001; and

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

1. The applicants are the owners of the land.
2. The request would allow a change in permittee deleting the Trustees of the Chesterbrook Presbyterian Church and allowing the National Capital Presbytery, Inc. to come in and operate the property.

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). 3-102 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 only, National Capital Presbytery, 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. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a 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 Larry D. Caruthers, and dated May 10, 1985 as revised through June 28, 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 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 maximum seating capacity of the Church sanctuary shall be limited too 220 seats.

6. The maximum daily enrollment for the child care center shall be limited to a total of 60 children.

7. The maximum enrollment for the adult day care center shall be limited to 28 persons.

8. The existing 81 parking spaces shall be maintained and no additional parking shall be required or constructed. All parking shall be on-site.

9. The hours of operation fort he child care center on the site shall be limited to 7:00 am to 6:00 p.m., Monday through Friday; and the hours of operation for the school of special education on the site shall be limited to 7:00 am to 7:00 p.m., Monday through Friday.

10. The existing vegetation shall be used to satisfy the transitional screening requirement provided it is maintained and protected in accordance with the Public Facilities Manual. No additional Plantings shall be required.

11. The barrier requirement shall be waived.

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.

    - The lights shall be of a design which focuses the light directly onto the subject property. Full cut-off lights shall be used.

    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

13. The school of special education shall incorporate the use of vans and/or van pools in their program.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 2201. This date shall be deemed to be the final approval date of this special permit.

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Page 425 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JOHN W. SPADAFORE, VC 01-V-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 8109 Arcade St. on approx. 22,243 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 127.

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 Spadafore, 8109 Arcade Street, Mason Neck, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 20.6 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 4.4 feet was requested.

Mr. Spadafore presented the variance request as outlined in the statement of justification. He stated that the variance was needed to provide additional living space for his family. He said that the lot did not permit the construction of the addition in any other location. He said that the variance would not negatively affect any of the surrounding properties. He requested that the Board waive the 8-day waiting period upon approval of the variance.

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

Mr. Pammel moved to approve VC 01-V-062 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN W. SPADAFORE, VC 01-V-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.6 ft. from rear lot line. Located at 8109 Arcade St. on approx. 22,243 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 113-4 ((6)) 127. 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 3, 2001; 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 prescribed criteria for the granting of a variance.

3. The location of the house to the very rear portion of the property precludes any other location for the addition other than what was proposed.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Larry N. Scartz, dated March 12, 2001, 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.

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. Kelley was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 3, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 427 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. IRVING L. DENTON, SP 01-M-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit awning to remain 3.6 ft. from side lot line. Located at 7124 Dale Ct. on approx. 10,112 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 60-3 ((17)) 6. (Concurrent with VA 96-M-011).

9:00 A.M. IRVING L. DENTON, VA 96-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 7124 Dale Ct. on approx. 10,112 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 60-3 ((17)) 6. (Concurrent with SP 01-M-023).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit an awning to remain 3.6 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 7.0 feet; therefore, a modification of 3.4 feet was requested for the awning. The applicant also requested a variance amendment to construct an addition 15.9 feet from the rear lot line. The addition consisted of an extension of an existing enclosed patio, which was approved by the Board of Zoning Appeals in 1996. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 9.1 feet was requested.

Mr. Reames presented the requests as outlined in the statement of justification submitted with the applications. He stated that the request for the awning had originally been requested but an error had been made during construction.

Mr. Hart asked staff why a special permit was needed if the awning was included on the original building permit. Susan Langdon, Chief, Special Permit and Variance Branch, explained that in the original request the awning was to extend 5.3 feet from the rear lot line and did not require a variance; however, the awning was actually constructed 3.6 feet from the side lot line, thus an error in building location occurred.

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

Mr. Hart moved to approve SP 01-M-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

IRVING L. DENTON, SP 01-M-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit awning to remain 3.6 ft. from side lot line. Located at 7124 Dale Ct. on approx. 10,112 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 60-3 ((17)) 6. (Concurrent with VA 96-M-011). 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 July 3, 2001;

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 awning, as shown on the plat prepared by Kenneth W. White, dated July 25, 2000, revised through April 5, 2001, 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 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hart moved to approve VA 96-M-011 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

IRVING L. DENTON, VA 96-M-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.9 ft. from rear lot line. Located at 7124 Dale Ct. on approx. 10,112 sq. ft. of land zoned R-4 and HC. Mason District. Tax Map 60-3 ((17)) 6. (Concurrent with SP 01-M-023). 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 July 3, 2001; and

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

1. The applicant is the owner of the land.
2. The lot is oddly shaped and the house is positioned to the rear of the property.
3. The Board had previously approved an addition that is significantly larger than the extension and the projection into the rear yard of that addition is the same as this request.
4. The impact from the addition would not be significant.

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

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

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

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

Page 430, July 3, 2001, (Tape 1), IRVING L. DENTON, SP 01-M-023 and VA 96-M-011, continued from Page 429

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

1. This variance amendment is approved for the location of an addition, shown on the plat prepared by Kenneth W. White, dated July 25, 2000, revised through April 5, 2001, 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 430 July 3, 2001, (Tape 1) Scheduled case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8 ft. from side lot line. Located on Holyoke Dr. on approx. 9,183 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 26. (Admin moved from 6/19/01)

Chairman DiGiulian noted that the case had been administratively moved to September 25, 2001, at 9:00 a.m.
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Page 430 July 3, 2001, (Tape 1) Scheduled case of:

9:30 A.M. WOODLAKE TOWERS CONDOMINIUM UNIT OWNERS ASSOCIATION, A 2001 -MA-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a proposal by the owner of the subject property to conduct an activity involving the processing of orders for sporting goods and firearms is most similar to a hobby which is a permitted accessory use to a dwelling and does not require a home occupation permit. Located at 3101 S. Manchester St., Unit 905 on approx. 1,054 sq. ft. of land zoned R-30. Mason District. Tax Map 51-4 ((13)) (3) 905.

Chairman DiGiulian noted that the case had been administratively moved to August 7, 2001, at 9:00 a.m.
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Page 430 July 3, 2001, (Tape 1) After Agenda Item:

Approval of February 13, 2001 and February 20, 2001 Minutes.

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.
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Page 431 July 3, 2001, (Tape 1) After Agenda Item:

Additional Time Request
Greenbriar Civic Association, Inc.
Agape Christian Fellowship Church
Pleasant Valley Preschool
SPA 78-P-192-2

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The new expiration date is February 13, 2002.

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Page 431 July 3, 2001, (Tape 1) After Agenda Item:

Additional Time Request
William L. and Gail H. Purvis
VC 98-V-095

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The new expiration date is November 3, 2001.

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Page 431 July 3, 2001, (Tape 1) After Agenda Item:

Additional Time Request
Brenda Luwis and Satyendra Shrivastava
VC 98-D-008

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The new expiration date is April 13, 2002.

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Page 431 July 3, 2001, (Tape 1) After Agenda Item:

Additional Time Request
Steven A. and Cheryl O. Larson
VC 98-V-120

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The new expiration date is January 6, 2003.

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Page 431 July 3, 2001, (Tape 1) After Agenda Item:

Additional Time Request
Richard and Ruby Smith
VC 98-H-113

Mr. Pammel moved to approve the request for additional time. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The new expiration date is June 8, 2002.

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Page 432 July 3, 2001, (Tape 1) After Agenda Item:

Request for Reconsideration
Thomas H. Stephens
SP 01-V-019

Ms. Gibb addressed the applicant's letter requesting reconsideration by stating that she did not recall testimony reflecting that the applicant's children had bought the materials and his neighbors had pitched in to build the carport. She said the applicant did provide testimony stating that he knew the garage was built in the wrong place. She stated that the Board had not emphasized his disability while making the decision about the case.

Chairman DiGiulian stated that the applicant had testified that he had tried to get a permit to construct the carport and was denied and then built it anyway.

Mr. Hart stated that the applicant had not met the required standards as the building permit had been denied and he constructed the garage anyway. He stated that he strongly disagreed with the suggestion that the Board discriminated against someone because of a disability.

Mr. Hammack stated that had the applicant not raised the issues about his disability, the Board would not have known that he was disabled.

Mr. Pammel moved to waive the 12-month period for re-filing an application. Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 432 July 3, 2001, (Tape 1) After Agenda Item:

Approval of June 26, 2001 Resolutions

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

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

Minutes by: Lori M. Mallam

Approved on: December 11, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 10, 2001. 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 policies 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 433, July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. APRIL A. CHRISTENSEN, VC 01-B-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 8600 Howery Ct. on approx. 12,413 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((9)) 142.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. April Christensen, 8600 Howery Court, Annandale, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant sought a variance to permit the construction of a sunroom 18.2 feet from the rear lot line. He stated that the minimum rear yard requirement was 25 feet; therefore, a variance of 6.2 feet was requested.

Ms. Christensen presented the variance request as outlined in the statement of justification submitted with the application. She said the addition would be 16 feet by 22 feet. She stated that she had presented the plans to the Homeowners Association, and they found it to be in character with the other houses and did not have any problems with it.

Mr. Ribble questioned the applicant about the position of the house and the irregular shape of the lot. Ms. Christensen replied that the house sat at an angle on the property and had a shallow backyard.

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

Mr. Ribble moved to approve VC 01-B-065 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

APRIL A. CHRISTENSEN, VC 01-B-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.2 ft. from rear lot line. Located at 8600 Howery Ct. on approx. 12,413 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((9)) 142. 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 10, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant met the required standards for a variance.
3. The lot has an exceptional shape and is shallow.
4. The variance was needed because of the position of the house 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 an addition as shown on the plat prepared by Kenneth W. White, February 6, 2001, as revised through April 17, 2001, 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

Ms. Gibb seconded the motion which carried by a vote 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. Hart was not present for the votes.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 10, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 435, July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS J. AND LISA A. PICARELLI, VC 01-Y-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and 6.5 ft. high fence to remain in a front yard of a corner lot. Located at 6919 Sharpsburg Dr. on approx. 9,999 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-3 ((13)) 5.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas Picarelli, 6919 Sharpsburg Drive, Centreville, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He said the applicant sought permission to construct a screened porch 18.0 feet from the rear lot line, which had a requirement of 25 feet; therefore, a variance of 7.0 feet was requested. He said the applicant also requested that an existing 6.5 foot high fence be allowed to remain in the front yard of their corner lot.

Mr. Picarelli presented the variance request as outlined in the statement of justification submitted with the application. He said he would like to construct a screened porch over the area of an existing deck. He stated that he had previously spoken to Fairfax County regarding his fence, and was told that it was allowed because he had a corner lot. He said when he applied for his variance, he was told that his fence also needed a variance. Mr. Picarelli he had spoken with the homeowners association and his neighbors and they did not object to the fence.

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

Ms. Gibb moved to approve VC 01-Y-069 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS J. AND LISA A. PICARELLI, VC 01-Y-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from rear lot line and 6.5 ft. high fence to remain in a front yard of a corner lot. Located at 6919 Sharpsburg Dr. on approx. 9,999 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-3 ((13)) 5. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 2001; and

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

1. The applicants are the owners of the land.
2. The screened porch will be placed on the existing deck and will not impact neighbors.
3. The fence was originally constructed in good faith after the applicant consulted with Fairfax County.
4. There has not been any opposition or complaints regarding the height of the fence.

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

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

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

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

1. This variance is approved for the location of an addition and fence as shown on the plat prepared by Kenneth W. White dated, October 26, 1999, as revised through May 21, 2001, 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. Kelley seconded the motion which carried by a vote 6-0. Mr. Hart was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18,

2001. This date shall be deemed to be the final approval date of this variance.

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Page 437 July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. FATHIA HASSAN ELSAID-SOLIMAN, SP 01-P-010 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((10)) 2. (Admin. Moved from 5/22/01).

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 Hassan 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. He stated that the applicant requested a special permit to allow the operation of a childcare center and nursery school. He said the BZA previously approved a home child care facility at this location, SP 99-P-069. He said it permitted a total maximum daily enrollment of 12 children, and the applicant had proposed to change the home child care facility into a child care center and a nursery school. He said the applicant proposed a maximum total daily enrollment of 25 children, with 20 children on-site at any one time. He said the applicant would have ten parking spaces, with one way ingress and egress, which would be facilitated by removing the western-most entrance.

Mr. Bernal said the applicant proposed to move the 1,936 square foot play area located in the rear yard further back to allow for a 400 square foot one-story addition for play and school space. He stated that the rear side yards were surrounded by a 4-foot high chain link fence. He stated that a development condition had been proposed to the applicant to add a 6-foot high board on board fence along the perimeters on the rear and side yards. He said the applicant would also need to plant 6 foot high evergreens along the northern, eastern, and western sides of the play area.

Mr. Bernal stated the proposed hours of operation were from 7:00 a.m. to 6:00 p.m. Monday through Friday, with 2 to 5 five full-time and part-time employees proposed, along with 2 to 4 additional volunteers. He said staff recommended approval of SP 01-P-010 subject to the development conditions contained in Appendix 1 of the staff report dated July 3, 2001.

Ms. Elsaid-Soliman presented the special permit request as outlined in the statement of justification submitted with the application. She stated that she agreed with the staff report development conditions except Number 7 in Appendix 1 regarding the 6 foot high fence and landscaping. She stated she believed she could not take care of the landscaping as proposed by staff, and the estimate for the 320 foot wood fence, along with the planting trees would be $18,000. She said the extended backroom would cost an additional $25,000.

Ms. Elsaid-Soliman stated she also did not agree with development condition Number 10 in Appendix 1 regarding a left-turn lane to be provided by her. She said the lowest estimate for that construction was $86,000, which she did not believe was worth the price for only 20 children. She said if she were permitted to have 50 children, it would be worth the money. She stated there was another child care facility located on Blake Lane that had received an exception permit to have 100 children and they were not required to put in turn lanes.

Chairman DiGiulian stated that the Board had received a petition and a letter from most of the applicant's surrounding neighbors in opposition to her application. He asked her if she had seen them and would she like to respond to them.

Ms. Elsaid-Soliman stated that she had seen the petition and letter. She stated that the neighbor had children with playground accessories like hers, and she felt with the 6 foot high fence and trees this would

hide her from the neighbors' view.

Chairman DiGiulian called for speakers in support or opposition to this application.

Mr. Rohon Sahdi, President of the Homeowners Association, came forward to speak in opposition to the application. He stated that when the original home child care permit was issued in 1999, the other homes had not been built. He said that his lot was adjacent to the applicants. He said he worked out of his home and could see the daily activities of the children. He stated the noise level from the children playing in the yard was so loud that he had to move his office to the other side of his home in order to work. Mr. Sahdi stated that a 6-foot high fence would not help with the privacy as the other homes were built uphill from the center, and would do nothing for the noise. He said that on the plat he saw trees depicted, but they were actually overgrown shrubs.

Chairman DiGiulian asked Mr. Bernal if there was an existing special permit on the property. Mr. Bernal replied that Ms. Elsaid-Soliman had a permit for a home child care facility, which allowed a maximum of 12 children enrolled, and a maximum of 10 children on site at any one time.

Tom Van, 10123 Lake Concord Street, Oakton, Virginia, came forward to speak in opposition. He said he lived directly behind the child care center and lived uphill from the center and believed that a fence would not give him any privacy. He stated that he had worked hard to buy a nice home in a quiet neighborhood for his family, and now found that his privacy was disrupted by the noise and children.

Ms. Elsaid-Soliman stated in her rebuttal that the children went outside to play only twice a day. She said that most of her neighbors worked during the day and left their children with a Nanny which allowed them to play outside. She stated that in the afternoon, there were only 3 or 4 children playing outside. She presented pictures to show that other neighbors also had play equipment for their children also.

Mr. Hammack and Mr. Bernal briefly discussed the Transportation Impact Statement and how it affected the entrance and parking for the center.

Mr. Kelley stated that he did not like development condition Number 10 which required the applicant to construct a turn-lane at a cost of $86,000. He asked Mr. Bernal if he believed that was an unusual burden for a daycare center. Mr. Bernal replied that the daycare was a commercial business and off Blake Lane, which was a busy road.

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

Mr. Kelley moved to approve SP 01-P-010 for the reasons noted in the Resolutions. He moved to delete development conditions 10 and 11.

Mr. Pammel stated he could not support doubling the size of the child care facility based upon the transportation problems that existed.

The motion failed by a vote of 2-4, and the application was denied.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FATHIA HASSAN ELSAID-SOLIMAN, SP 01-P-010 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 10044 Blake La. on approx. 18,993 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((10)) 2. (Admin. Moved from 5/22/01). Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

Page 439 July 10, 2001, (Tape 1), FATHIA HASSAN ELSAID-SOLIMAN, SP 01-P-010, continued from Page 438

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 10, 2001; 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 she is in compliance with the general 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).3-203 of the Zoning Ordinance.

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

Ms. Gibb seconded the motion which failed by a vote of 2-4*; therefore, the application was **DENIED**. Chairman DiGiulian, Mr. Hammack, Mr. Pammel, and Mr. Ribble voted against the motion. Mr. Hart was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 2001. This date shall be deemed to be the final decision date of date of this variance.

*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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Page 439 July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. BRIAN AND CELESTE SULC, VC 01-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition 9.1 ft. from side lot line. Located at 2835 Woodlawn Ave. on approx. 10,234 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 111.

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 and Celeste Sulc, 2835 Woodlawn Avenue, Falls Church, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant sought permission to construct a second story addition to be located 9.1 feet from the side lot line. The Zoning Ordinance required a minimum side yard of 10 feet; therefore, a variance of 0.9 feet was requested.

Mrs. Sulc presented the variance request as outlined in the statement of justification submitted with the application. She stated that she and her husband wanted to add more living space to their home because of their growing family. She said their house had two bedrooms and a loft, which was used as a third bedroom. Ms. Sulc stated that a tree had fallen through the roof last year, and, since it needed to be completely replaced, they decided it would be a good time to put an addition onto the house. She said the house was built in 1938 before the zoning codes were put into effect, and that when the contractor applied for a building permit in February, they found they needed a variance in order to expand their home.

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

Mr. Hammack moved to approve variance application VC 01-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

BRIAN AND CELESTE SULC, VC 01-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a second story addition 9.1 ft. from side lot line. Located at 2835 Woodlawn Ave. on approx. 10,234 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 111. 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 10, 2001; 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 required standards for a variance.
3. The house was built in 1938 before the Ordinance was adopted.

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

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

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

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

interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Kenneth W. White, dated July 11, 1995, submitted with this application and is not transferable to other land.

2. A building permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

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 6-0. Mr. Hart was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 441, July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS J. MCMURRAY, VC 01-V-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard. Located at 9300 Davis Dr. on approx. 36,257 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 27.

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 J. McMurray, 9300 Davis Drive, Lorton, Virginia, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to construct an accessory structure, a detached garage, to be located in the minimum required front yard. She said the Zoning Ordinance did not permit any type of accessory structure in a minimum front yard.

Mr. McMurray presented the variance request as outlined in the statement of justification submitted with the application. He stated that his property was on a corner lot and therefore he had what was considered as two front yards. He said the property sloped down on the one side of the house and there was a septic field in the back, leaving no other location for the garage. He stated that he had gotten approval from the homeowners association and his neighbors did not have a problem with his request.

Mr. Hammack asked Mr. McMurray what was the purpose of such a large garage when he already had a 2-car garage. Mr. McMurray stated that he could not put his SUV in the 2-car garage because the entrance doors were so small. He said he stored his riding mower and his children's bikes, etc. in the 2-car garage and the larger garage would allow him to park his SUV inside. Mr. McMurray stated that the 30 foot garage actually would also help create a courtyard in the back of the house to give his family privacy. He said the proposed location of the garage would be on top of the driveway, and that the length of the garage did not

exceed setbacks.

Mr. Hammack asked staff what the normal setback was in an R-1 district, and Ms. Stanfield replied that it was 40 feet.

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

Mr. Pammel moved to approve VC 01-V-066 for the reasons noted in the Resolutions.

Mr. Hammack stated that he did not want to oppose the variance; however, he felt the structure was too large for the location. He stated that, with some reconfiguring, Mr. McMurray could design the garage in such a way that it would have less impact on the front yard.

The motion failed by a vote of 3-3, and the application was denied.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS J. MCMURRAY, VC 01-V-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in a minimum required front yard. Located at 9300 Davis Dr. on approx. 36,257 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((4)) 27. 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 10, 2001; 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 a variance.
3. The property is a corner lot with two front yards.
4. There is a drain field located to the rear of the property and cannot be utilized for an accessory structure.
5. The proposed site is already improved with a driveway and is the logical location for the accessory structure.

This application meets all of the required standards for Variances in Section 18-404 of the Zoning Ordinance.

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

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

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

Ms. Gibb seconded the motion which failed by a vote of 3-3*, therefore the application was **DENIED.** Chairman DiGiulian, Mr. Hammack and Mr. Kelley voted against the motion. Mr. Hammack moved to waive the 12-month waiting period for the applicant to re-file an application. Ms. Gibb seconded the motion which carried with a 6-0 vote. Mr. Hart was not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 2001. 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 4 members of the Board of Zoning Appeals is needed to grant a variance.

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Page 443, July 10, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24. (moved from 5/1/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sang Park, Agent, replied it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought a special permit to allow a home professional office for the administration of acupuncture and the sale of oriental herbs to his patients. She said that approximately 600 square feet of the 2,500 square foot dwelling would be devoted to the acupuncture procedure and the storage and sale of the herbs.

Ms. Stanfield stated that the office was operated by Mr. Kim, one family member, and one off-site employee. She said three parking spaces were provided in front of the dwelling for the patients and a driveway and parking for Mr. Kim and his family was located in the rear of the property.

Ms. Stanfield said the applicant proposed to have daily hours of operation between 10:00 a.m. to 2:00 p.m., and then from 5:00 p.m. to 9:00 p.m. She said he would dispense herbs daily from 9:00 a.m. to 6:00 p.m., Monday through Friday. She stated staff viewed this proposal as too intensive for a residential area and consequently, a development condition had been included which reduced the hours of operation from 9:00 a.m. to 6:00 p.m., Monday through Friday. She stated that, based on the proceeding analysis, staff concluded that the subject application met all standards for a special permit and was in harmony with the applicable recommendations of the Comprehensive Plan. Ms. Stanfield said that staff recommended approval of the application, but only subject to the development conditions dated July 3, 2001.

Mr. Park stated that he would like to address some of the objections raised in the letters that had been filed with the Board. He said the first issue was the use of the service road in front of the applicant's house. He stated that the service road was not used for parking by Mr. Kim's clients, but by NOVA students and carpoolers. Mr. Park said Mr. Kim cleaned the service road by himself and has paid to have it paved three times, even though there were three other houses on that section of the road.

Mr. Park stated that one letter referred to a blind man who used the service road to walk twice a day. He said Mr. Kim placed a monitor outside his house to observe the safety of this man during the times of his walk.

Mr. Park stated that there were two professional home offices in this neighborhood, which were dentist offices. He said that one had over ten parking spaces, and the applicant had asked for only three spaces for his patients. He stated that delivery of products would be done through UPS, so there would not be commercial trucks taking up the spaces.

Mr. Park said that Mr. Kim and his wife lived in the house and the receptionist lived off site.

Chairman DiGiulian called for speakers in support or in opposition of the application.

Wanda Sanders came forward to speak in support of the application. She stated that she had stomach problems for the past six years, and after seeing Mr. Kim over a three month period, she was 80% better.

She said insurance companies did not pay for acupuncture, and by allowing Mr. Kim to operate a home business, it helped to keep the cost down for them both.

Mr. Hammack asked staff if Mr. Kim was a licensed physician, and if not, did he actually fall under a home professional office. Ms. Stanfield replied that she would refer that question to the applicant.

Mr. Hammack and Ms. Stanfield briefly discussed what constituted retail sales versus sales to patients and whether that would fall under the home professional classification.

Paul R. Cheruk, Jr. came forward to speak in opposition to the application. He stated that he grew up in that neighborhood and would like to see it stay residential rather than seeing it turn commercial. He said that he had a photo to show the Board the parking facilities in front of Mr. Kim's house and believed that the traffic flow would increase, leading to further commercial use.

Louis Digracia came forward to speak in opposition to the application. He stated that he lived two doors away from Mr. Kim, and had four concerns. He said his first concern was the amount of heavy traffic on that road; second, the road was rapidly deteriorating due to the heavy traffic from the college and commuter traffic, third was the commercialization of the neighborhood; and fourth, he questioned whether the Kim's actually lived in the home.

Gracen Argovatos, 4105 Duncan Drive, Annandale, Virginia, came forward to speak in opposition to the application. She said she lived 50 yards from the access road leading to Mr. Kim's residence, and was witness to the amount of parking and traffic that was on the small road. She spoke of the road hazards and commercialization of the neighborhood.

Mr. Park stated in his rebuttal that most of the objections were concerning the commercialization of the residential neighborhood. He said Mr. Kim had requested a special permit for a home business and not to change the zoning of the area. He said that the parked cars shown in the photographs were not the vehicles of Mr. Kim's patients. Mr. Park stated that the three parking spaces in front of the house were for his patients with two spaces behind his house for himself and the staff.

Mr. Park said that the sale of the herbs were incidental to medical treatment. He said Mr. Kim was a nationally licensed acupuncture treatment physician and is allowed to sell the herbs incidental to medical treatment.

Mr. Park stated that staff had done a home visit and seen the living quarters and believed that was not an issue.

He said he had approximately 45 signatures from neighbors and patients supporting Mr. Kim's application.

Mr. Hammack asked Mr. Park if Mr. Kim was licensed by the state of Virginia as a medical doctor. Mr. Park replied that Mr. Kim was not a licensed medical doctor, but an acupuncture oriental doctor who was licensed through the Virginia Board of Medicine.

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

Mr. Hammack stated that he would like to have the applicant provide documentation of Dr. Kim's licenses and corporate verification. Mr. Hammack made the motion to continue the case until July 24, 2001, at 9:00 a.m., allowing specific testimony only to the documentation. Mr. Pammel seconded the motion which carried with a 6-0 vote. Mr. Hart was not present for the vote.

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9:00 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-5 Appl. under Sect(s). 3-C03 of the

Zoning Ordinance to amend SP 82-S-102 previously approved for country club to permit building additions and site modifications. Located at 5110 Ox Rd. on approx. 150.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-1 ((1)) 17, 18 and 20.

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

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought approval to amend SP 82-S-102, which had previously been approved for a country club. She said the applicant would like to construct a 1,009 square foot building addition to the existing 2,743 foot tennis house, three lighted outdoor tennis courts, and relocate the entrance drive. She said the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions; therefore, staff recommended approval of the application.

Mr. Gleason presented the special permit application request as outlined in the statement of justification submitted with the application. He introduced Adrian Morris who was the country club manager.

Mr. Gleason stated that the application was one component of an overall master plan, which began in August of 1999. He stated that the first phase of this plan was in making golfing improvements, which they had already started. Mr. Gleason said that the current application was for the second phase of the project, which addressed the needs of the tennis community, and included three new tennis courts, an addition to the tennis pro shop, as well as relocation of the main driveway. He said that the new facilities would be implemented in phases. Mr. Gleason stated that the tennis courts had been sited to minimize disturbance to any existing vegetation along Ox Road, and they had agreed to all the development conditions as stated in the staff report.

Mr. Hammack asked Mr. Gleason if he had reviewed the proposed development conditions and if he found them satisfactory. Mr. Gleason replied that he had reviewed them and was in agreement with them.

Chairman DiGiulian called for speakers in support or opposition to the application.

William A. Linne came forward to speak in opposition to the application. He stated that over the last several years he has had a water drainage problem, which he believed was caused by the golf course. He said that he had previously discussed the problem with the management, but had not been given a clear answer as to the timeframe in which they would address it. He stated that he had already lost two trees due to soil erosion. He also questioned whether they intended to repave Brookline Drive, as he believed that their construction trucks had caused the road to deteriorate.

Mr. Hammack asked the applicant what his site plan submission date was, and Mr. Gleason replied that the Special Permit Amendment was concurrent with a Special Exception. He said there were development conditions that addressed Mr. Linne's concern regarding the drainage problem and that the site plan had already be submitted and approved by DPW, which was good for the next four years. He explained that according to the golf course construction, Mr. Linne's problem would be taken care of within the next 24 months.

Mr. Linne told the Board that was not satisfactory, and requested that they do something sooner. Mr. Hammack explained to him that the Board could not intercede with complaints and asked Mr. Linne if he had contacted the County about this problem.

Joan M. Linne came forward to speak in opposition and support her husband. She had photos of the drainage and erosion of their property, which she distributed to the Board. She said the County agreed that there was a problem, but nothing had been done about it.

Mr. Kelley spoke in support of the Linne's, and asked that the Country Club give them a better time frame for the resolution of the problem before the Board made a decision on their behalf.

Roger Parthathargy, 11036 Brookline Drive, came forward to speak in opposition to the application. He said his concerns included truckers which came very early in the morning, the garbage left on their property by workers, an

excessive amount of construction trucks, increased dust, fuel fumes, rise in crime, and deterioration of the road caused by this traffic. He stated that the water drainage problem had caused significant erosion to his property also.

Mr. Morris stated in his rebuttal that he had met with both families in opposition, and had talked to them regarding their major concerns. He explained various ways that the road was being treated in an attempt to be of a minimal disturbance to the neighbors.

Mr. Pammel asked when the applicant planned to start the additions to the property and Mr. Morris responded with a timeline for the improvements.

Mr. Kelley made a motion to defer the decision for two weeks and stated that he found Mr. Morris' answers to be unsatisfactory. He said he would like to have a comprehensive report on the improvements as he felt that some of the funds for the additions could be diverted to the drainage problem. Mr. Kelley stated he would also like to have a response from the County.

Mr. Ribble asked Mr. Gleason if the drainage problem was a result of the work that had been done in phase one, and Mr. Gleason replied that he did not believe so. He said he would confirm that with the County Inspector, but believed that this was an existing condition that had been ongoing for some time and they had not been diverting any water onto Mr. Linne's property. He said there was a natural watershed that drained from the 150 acres of the golf course, which drained through Mr. Linne's property.

Mr. Hammack asked when the construction had started, and Mr. Gleason replied that it had begun in November. Mr. Hammack stated that Mr. Linne acknowledged that the problem had been going on for about eight years, so he believed that it had been a pre-existing problem. Mr. Hammack agreed that the photos had shown a serious erosion problem.

Ms. Gibb asked that Mr. Gleason include in his report whether there was a storm drainage easement over Mr. Linne's property.

Mr. Hammack seconded the motion to defer the case until July 31, 2001 at 9:00 a.m. Chairman DiGiulian called for a vote, which was approved by a 6-0 vote. Mr. Hart was not present for the vote.

Mr. Pammel clarified for Mr. Gleason that two reports were expected, one from Mr. Gleason and the one from the County.

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Page 446 July 10, 2001, (Tape 2), Scheduled case of:

9:00 A.M. ESTATES AT RECREATION, INC., SP 01-D-024 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a community swimming pool and tennis court. Located at 11301 Stonehouse Pl. on approx. 1.72 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((3)) (2) 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. Bill Keefe, Agent, replied it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought approval to permit the construction of a community swimming pool, a 1,461 square foot bathhouse, and a tennis court. She stated that the applicant proposed to install 22 additional parking spaces and operate between the hours of 8:00 a.m. and 8:00 p.m., daily. She said the site was originally granted a special permit in 1995 for a similar use, which had expired. Ms. Josiah said the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions and staff recommended approval.

Mr. Keefe stated that the property was originally proposed for a recreation center in 1995 and gave a brief

explanation of the numerous problems incurred between Loudoun County and Fairfax County in the 80's and 90's regarding accesses and roads. He said that in 1995, the differences had been worked out, and a special permit was proposed for the pool and two tennis courts in 1995, which was approved in July 1995 by the BZA.

Mr. Keefe stated that he had consulted with the Great Falls Citizens Association, North Seneca Citizens Association, Dr. Ralph Lazaro, Cascades Citizens Association, Loudoun County, and with the neighbors as much as possible. He stated that one of the tennis courts had been deleted and a wading pool and small tent added to provide shade on the pool deck. He said they added the pedestrian trail to encourage pedestrian access from the Estates, and to limit vehicular traffic. Mr. Keefe said that landscaping had been added on the perimeter of the site and to the west as a buffer. He stated that the development conditions were the same as in 1995, except the deletion of development condition Number 7. He said this change had been made as a result of a request by the Cascades Citizens Association to allow them to have opportunities for community get-togethers during the week.

Ms. Gibb asked why the special permit was allowed to lapse. Mr. Keefe replied that the Chevy Chase Bank had sold the property to Greenvests, and Greenvests owned over 5,000 properties in Loudoun, so he believed that this property fell through the cracks. He said that 112 lots had been sold, and the people living there would like to see the recreation center that was promised to them.

Chairman DiGiulian called for speakers in support of the application.

Melanie Love came forward to speak in support of the application. She represented the Cascades Homeowners Association, and stated that she felt the new proposed conditions addressed all the concerns of the people involved. She said that since most of the residents in the community would walk to the pool, traffic would no longer be an issue and the landscaping should take care of the anticipated visual and noise problems.

David Tomaio came forward to speak in support of the application. He stated that he lived across street from the proposed location and had purchased his home because he was under the impression the recreation facility was going to be built for local use. He said he felt that all the issues had been addressed and that being able to walk to the facility would be a great help with the traffic issue.

Mary Claff, 11351 Jack Rabbit Court, came forward to speak in support of the application. She stated that when they bought their house, one of the main features that attracted them was the upcoming pool and tennis court. She said she was distressed that there was a threat to this pre-approved plan. She spoke of the difficulties she had in driving her children to the closest pool.

Nan Lang came forward to speak in support of the application. She said when they bought their house they were told that approval for the pool and tennis courts had been granted, but was then told the permits were allowed to expire. She said she very disappointed and really wanted the facility to be built.

Harry Raney came forward to speak in support of the application. He spoke of the unfulfilled promises of the pool and tennis court and how long the drive was to the closest pool.

Douglas Stevenson came forward to speak in support of the application. He said his property was within two lots of where the facility was proposed to be, and felt that it would be a very good feature of the neighborhood. He said he felt the redesign should negate all the previous issues.

Roger Berdette came forward to speak in support of the application. He said that due to the relative isolation of the Estates from the balance of the Cascades subdivision, this would be very good for the community. He said the small pool and tennis court would be the only facilities available to the Estates residents as the nearest facility was 10 miles away.

Joanne Taylor came forward to speak in support of the application. She said that her property backed up to the proposed pool and she was very comfortable with what they are going to do with the screening, etc. She stated that when she bought her house, she had been promised that this facility would be built. She said it was not a gift from Greenvest, and the cost had been passed on to the purchasers.

Chairman DiGiulian called for speakers in opposition to the application.

Charles Sloane came forward to speak in opposition on behalf of Bill and Lucy Garrett, who lived directly across the street from the property. He stated that the Garrett's felt that their home would be the one most adversely affected by the facility.

Mr. Sloane stated that the Board had heard from many local neighbors who were going to be potential users, but stated that the facility would be opened to all 5,000 residents of Cascades. He said that his clients would probably not be opposed to the center if it was opened to just the neighborhood, however they felt it would bring a lot more traffic and noise to an area that had always been very quiet. He stated that Mr. & Mrs. Garrett's lot backed up to property that was owned by Northern Virginia Regional Park Authority, and he understood that the Park Authority was also opposed to the proposed pool and facilities.

Mr. Sloane stated that the facility site was located on the far side of the Cascades property, and he believed that there was a proposal for the use of a 12-passenger shuttle bus for the facility. He said he understood the bus would be an accommodation for proposed development condition Number 9, dated July 3.

Mr. Keefe came forward to clarify that Mr. Sloane was referring to the shuttle golf carts. He said the purpose of the carts was an accommodation for the 112 Estates Lot members to be able to get to the two Lowes' Island Golf Courses to the west of the complex, which was intended to keep down the vehicular traffic.

Mr. Sloane summed up by stating that Mr. & Mrs. Garrett were opposed to the application based on the facts that there would be a great potential for cars overusing the area, there would be increased parking on the street, additional noise and a lot more traffic.

Mr. Keefe stated in a brief rebuttal that he felt all the issues had been adequately addressed.

Mr. Pammel asked Mr. Keefe to clarify the geographic location of Cascades and where the parcel was located in relation to the project. Mr. Keefe displayed a map of Loudoun County and Fairfax County for the Board to see.

Mr. Pammel said he would like to have more documentation on the land site in order to take some time to examine them closer. He stated he was concerned that such a small site of 1½ acres would be opened to the 5,000 homes in Cascades, and said he wouldn't have a problem if the facility were restricted to just the 112 homeowners.

Mr. Hammack clarified that there was no cluster association and that everything in Cascades went into a common association. He said he understood that this facility would be technically opened to all 5,000 residents. Mr. Keefe replied that was correct, that they could not specify that they be the sole users of this facility.

Mr. Keefe said that normally swim teams caused the majority of traffic to pools, but according to the development conditions, swim teams and dive teams would not be permitted at the pool in order to keep traffic to a minimum.

Ms. Gibb moved to approve application SP 01-D-024 as stated in the resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ESTATES AT RECREATION, INC., SP 01-D-024 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit a community swimming pool and tennis court. Located at 11301 Stonehouse Pl. on approx. 1.72 ac. of land zoned R-E. Dranesville District. Tax Map 2-2 ((3)) (2) 2. 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 date July 10, 2001; and

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

1. The applicant is the owner of the land.
2. This application had previously been approved in 1995and the request has been further enhanced to meet the concerns of neighbors.
3. The facility will reduce the impact of traffic on Seneca Road.
4. Letters of support had been received from the Great Falls Citizens Association.

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. However, upon conveyance of the property to the Cascades Homeowners Association, this approval will transfer to the association. This approval is for the location indicated on the application, 11301 Stonehouse Place (1.72 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 Bowers & Associates, Ltd. dated February, 2001, as revised through June 26, 2001, 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. All of the parking for the use shall be provided on site as shown on the special permit plat. Twenty-two (22) parking spaces shall be provided.

6. The hours of operation of the tennis court, pool and bath house building shall be a maximum of 8:00 a.m. to 8:00 p.m., daily.

7. The design and operational features for the facility shall include the following requirements:

   - No backboard shall be installed for tennis practice or similar sporting activity;
   - No tennis court lighting shall be permitted;
   - No swimming pool lighting on the pool deck shall be permitted;
   - No building or parking lot exterior lighting shall be permitted unless required by Code;
   - No uplighting of the proposed signage;
   - No consumption of alcohol shall be permitted on the premises;
   - No exterior loudspeakers shall be permitted on the premises; and,

- No swim meets, swim practices, dive meets or flea markets shall be permitted.

8. The golf cart access path located on Parcel A, Section 12-C of the Estates at Lowes Island in Loudoun County, shall be used exclusively for pedestrian, bicycle and golf cart access. The golf carts shall include open air or curtained cart-type vehicles for up to twelve (12) persons, seated not more than two (2) abreast, as a "shuttle golf cart." The access path shall be constructed and maintained in such a manner as to physically prevent passage by vehicles wider than five (5) feet. No access shall be allowed for any motor vehicle whatsoever other than golf carts.

9. Transitional screening shall be provided as shown on the special permit plat along all lot lines. Transitional screening shall be modified along the western lot line as shown on the special permit plat and shall be waived along the stormwater drainage and sanitary lateral easement areas as shown on the special permit plat. The species, size and location of landscaping shall be as determined by the Urban Forestry Branch at the time of site plan review.

10. The barrier requirement shall be satisfied along all lot lines, with the provision of a ten (10) foot high chain link fence surrounding the tennis court and a six (6) foot aluminum fence around the pool.

11. Stormwater management/best management practices shall be provided as determined by DPWES at the time of site plan review. The applicant is encouraged to implement bioretention and infiltration trenches within the landscaped areas along the perimeter of the site in the event that a waiver for stormwater management is not granted. However, if it is determined that a stormwater management/best management practices structural facility is required to be constructed on-site, it shall not be located within the transitional screening areas.

12. The applicant shall provide frontage improvements on Stonehouse Place and Seneca Road as determined by DPWES at the time of site plan review.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 450, July 10, 2001, (Tape 2), Scheduled case of:

9:30 A.M. WILLIAM C. MAY, A 2000-PR-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an accessory storage structure (shed) which exceeds 8 1/2 ft. in height has been erected on the appellant's property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 9137 Leghorn Pl. on approx. 11,115 sq. ft. of land zoned R-3. Providence District. Tax Map 58-2 ((10)) 53. (Def. from 2/13/01 for notices) (moved from 4/10/01).

Chairman stated there was a request for a withdrawal.

Page 451, July 10, 2001, (Tape 2), WILLIAM C. MAY, A 2000-PR-033, continued from Page 450

Mr. Shoup stated that the violation had been resolved, and Mr. May had withdrawn the appeal.

Mr. Ribble moved to allow the withdrawal of the appeal, and Mr. Hammack seconded the motion which carried with a 7-0 vote.

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Page 451, July 10, 2001, (Tape 2), After Agenda Items:

Request for Intent to Defer
Delano Container Service
A 2001 LE-001

William Shoup, Deputy Zoning Administrator, stated that this appeal was scheduled for August 7, 2001, and had been deferred from April 24, 2001, to give the applicant time to get site plan approval. He stated he felt adequate time had been given, and gave a brief summation why staff wanted to go forward.

Fred Wagner, counsel to Delano Container Services Inc., made clarifications as to when the site plans had been filed and stated that he needed an extra 60 to 90 days in order to meet and discuss the issues with the County.

Mr. Pammel moved that they defer action on the request until July 31, 2001. Mr. Hart seconded the motion which carried by a 7-0 vote.

Chairman DiGiulian asked Mr. Shoup for a report from the County plus a status report from DPWES to see what had been accomplished before July 31, 2001.

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Page 451, July 10, 2001, (Tape 2), After Agenda Items:

Approval of
July 3, 2001 Resolutions

Mr. Kelley moved to approve the Resolutions from July 3, 2001. Mr. Ribble seconded the motion which carried 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:41 a.m.

Minutes by: Judith A. Gobbi

Approved: December 2, 2001

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, July 17, 2001. The following Board Members were present: Chairman John 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 policies 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.

9:00 A.M. DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 previously approved for a place of worship to permit a private school of general education which has an enrollment of 100 or more students daily. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with VC 01-M-008). (moved from 4/3/01 and 5/22/01)

9:00 A.M. NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 2.0 ft. from front lot line of a corner lot. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with SPA 84-M-009-2). (moved from 4/3/01 and 5/22/01)

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.

Ms. Kelsey requested a deferral as the applicants felt there were discrepancies in the staff report relating to the aerial photographs of the site. She explained that the police department took the photographs between 12:00 p.m. and 2:00 p.m. on a Friday afternoon during the most popular church service. She contended that since the application pertained to the request for the school, the photographs should have been taken during the time of day that the proposed school would be in operation. She said that the applicants were in the process of obtaining their own aerial photographs for submission.

Chairman DiGiulian called for speakers with regard to the question of deferral.

Jacqueline Gilbert, Lee Boulevard Heights, stated that many of the speakers had taken off work to be present and requested that the Board proceed with the hearing.

Hassan Goulda, (no address given for record), stated that he was a member of the mosque and he was involved in the application request. He said that the applicant was concerned with the material contained in the staff report and requested the deferral to give them time to meet with staff to discuss their issues.

Sylvia Johnson, Lee Boulevard Heights, stated that there had been ample time for staff and the applicants to gather the information needed for the hearing and she requested that the Board proceed.

Mr. Pammel moved to defer SPA 84-M-009-2 and VC 01-M-008 until October 30, 2001, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Pammel also requested that the Planning Commission hold a full hearing on the applications before that date.

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Page 453 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MR. & MRS. WALTER B. MAHER, VC 01-D-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from side lot line. Located at 1920 Valley Wood Rd. on approx. 24,928 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (8) 3A. (Concurrent with SP 01-D-026).

9:00 A.M. MR. & MRS. WALTER B. MAHER, SP 01-D-026 Appl. under Sect(s). 8-914 of the Zoning

Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 21.0 ft. from rear lot line. Located at 1920 Valley Wood Rd. on approx. 24,928 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (8) 3A. (Concurrent with VC 01-D-067).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Walter and Lisa Maher, 1920 Valley Wood Road, McLean, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a reduction in minimum yard requirements based on error in building location to permit the dwelling to remain 21 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a modification of 4.0 feet was requested. The applicants also requested approval of a variance to permit the construction of a garage addition to be located 9.6 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 9.6 feet; therefore, a variance of 5.4 feet was requested.

Mr. Maher presented the requests as outlined in the statements of justification submitted with the application. He stated that the garage was needed to provide shelter for their vehicles and additional living space. He noted that the previous owners of the home, while constructing an addition, built into the rear yard set back. He said that the error was made in good faith.

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

Mr. Hammack moved to approve VC 01-D-067 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MR. & MRS. WALTER B. MAHER, VC 01-D-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.6 ft. from side lot line. Located at 1920 Valley Wood Rd. on approx. 24,928 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (8) 3A. (Concurrent with SP 01-D-026). 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 17, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants provided testimony indicating compliance with the prescribed standards for the granting of a variance.
3. There is a slightly irregular shape to the property.
4. The house is sited in an angular way to the side lot line.
5. The applicants propose only to build on existing foundations.
6. The variance request is minimal and will not adversely affect 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 the garage addition shown on the plat prepared by Michael & Richards, Ltd., dated April 5, 2001, 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. 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 July 25, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack moved to approve SP 01-D-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

MR. & MRS. WALTER B. MAHER, SP 01-D-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 21.0 ft. from rear lot line. Located at 1920 Valley Wood Rd. on approx. 24,928 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (8) 3A. (Concurrent with VC 01-D-067). 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 17, 2001; 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 Michael & Richards, Ltd., dated April 5, 2001, submitted with this application and is not transferable to other land.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 457 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. LINDY STIRTON, VC 01-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.7 ft. from rear lot line. Located at 6806 Tennyson Dr. on approx. 12,308 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 30-4 ((3)) 28.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lindy Stirton, 6806 Tennison Drive, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an addition to the dwelling to be located 17.7 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.3 feet was requested.

Ms. Stirton presented the variance request as outlined in the statement of justification submitted with the application. She stated that she needed the addition to provide additional living space for her ailing father. She indicated that there was full neighborhood support.

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

Mr. Pammel moved to approve VC 01-D-078 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINDY STIRTON, VC 01-D-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.7 ft. from rear lot line. Located at 6806 Tennyson Dr. on approx. 12,308 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 30-4 ((3)) 28. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant provided testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The shallowness of the lot created the need for the variance.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Peter L. Wrenn, dated April 16, 2001 as revised through April 27, 2001, 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. Hart 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 July 25, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. ALYCE A. HORWAT, SP 01-S-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 5.0 ft. from side lot line such that side yards total 18.2 ft. Located at 8104 Saint David Ct. on approx. 10,773 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Alyce Horwat, 8104 Saint David Court, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit an enclosed carport addition to remain 5.0 feet from the side lot line such that side yards totaled 18.2 feet. The Zoning Ordinance requires a minimum 8 foot side yard with a total side yard of 20 feet; therefore, modifications of 3 feet and 1.8 feet were requested.

Ms. Horwat presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the County had issued the building permit in error; therefore, the error was in good faith.

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

Mr. Hart moved to approve SP 01-S-032 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALYCE A. HORWAT, SP 01-S-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 5.0 ft. from side lot line such that side yards total 18.2 ft. Located at 8104 Saint David Ct. on approx. 10,773 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 98-2 ((6)) 46. 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 July 17, 2001; and

WHEREAS, the Board has made the following findings of fact:
That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

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

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

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

1. This Special Permit is approved for the location of an enclosed carport shown on the plats prepared by Alexandria Surveys, Inc., dated April 16, 1992, and Cook & Miller, dated January 12, 1972, as annotated through March 21, 2001, 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. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 460 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MICHAEL AND SUSAN KEHOE, VC 01-Y-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 14019 Marleigh La. on approx. 9,180 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((5)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael and Susan Kehoe, 14019 Marleigh Lane, Clifton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit an enclosed sunroom addition to be located 15.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 9.6 feet was requested.

Mr. Hammack asked if the sunroom was one or two stories tall. Mr. Kehoe replied that it was a one-story sunroom but the deck was located off the second level.

Mr. and Mrs. Kehoe presented the variance request as outlined in the statement of justification submitted with the application. Mr. Kehoe stated that the sunroom was consistent with other decks in the neighborhood. He stated that due to the southern exposure, a sunroom was preferred instead of a deck. He stated that he had full neighborhood support.

Chairman DiGiulian called for speakers.

Narender Gogia, 14017 Marleigh Lane, came forward to speak in opposition. He explained that the front of his home faced the rear of the applicant's home. He stated that a covered sunroom would block the view from his home and decrease the property value of his home. He said he would not be opposed to an uncovered deck. He illustrated for the Board the location of his home to the property in question.

Mr. Hart asked how high the top of the roof of the sunroom was from the ground. Susan Langdon, Chief, Special Permit and Variance Branch, replied 17 feet. He asked if the deck was at the floor level of the sunroom or was the deck downstairs. Ms. Langdon explained that the deck was proposed to be on the second floor also, with the floor of the deck 8.5 feet from the ground. Ms. Langdon asked the applicant to confirm that information.
Mr. Kehoe illustrated the layout of the sunroom and the deck. Mr. Hart asked if there were any trees or fences between the properties. Mr. Kehoe replied that there was a row of trees.

Mr. Kehoe, in his rebuttal, stated that he understood his neighbor's concerns about the view; however, he was concerned about the constructive use of his property. He requested that the Board approve the application based on the fact that the proposed sunroom would be in character with other homes in the area.

Ms. Gibb asked staff if a variance would be needed if the request were for an open deck instead of a sunroom. Ms. Stanfield stated that an open deck would not require a variance.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that although the lot was shallow it was not significantly different from other lots in the neighborhood. She stated that the sunroom was not an entitlement and the impact on the neighbor would be severe.

Ms. Gibb moved to deny VC 01-Y-077 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MICHAEL AND SUSAN KEHOE, VC 01-Y-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line. Located at 14019 Marleigh La. on approx. 9,180 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((5)) 6. 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 17, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants have not met the required standards for the granting of a variance.
3. Although the lot was shallow and the topography of the lot precluded any other placement of the sunroom, the lot was not any more shallow than the adjacent lots.
4. There is not entitlement to a sunroom even though it would be better for the applicants.
5. The application would cause significant detriment to the neighbor's property.

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

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

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001.

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Page 462 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHARLES A., JR. AND LIGIA HOUGHLAND, VC 01-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from side lot line, 12.6 ft. from other side lot line, 8.0 ft. high fence to remain in rear yard and wavier of the 30 percent minimum rear yard coverage requirement. Located at 2946 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 71. (Concurrent with SP 01-P-027).

9:00 A.M. CHARLES A., JR. AND LIGIA HOUGHLAND, SP 01-P-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 accessory structure to remain 1.2 ft. from rear lot line and 0.7 ft. from side lot line. Located at 2946 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 71. (Concurrent with VC 01-P-070).

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 Houghland, Jr., 2946 Fairhill Road, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the requests as contained in the staff report. The applicants

requested a reduction to minimum yard requirements based on error in building location to permit a garage to remain 1.2 feet from the rear lot line and 0.7 feet from a side lot line. The Zoning Ordinance states that no accessory structure or use which exceeds 7 feet in height shall be located closer than a distance equal to its height to the rear lot line or located closer to the distance equal to the minimum required side yard to the side lot line. The minimum rear yard established by the structure was 12.7 feet and the amount of error is 11.5 feet. The minimum side yard requirement is 20 feet; therefore, the amount of error for the side yard is 19.3 feet. The applicants requested variances to permit an addition to be located 14.1 feet from the side lot line, a fence 8.0 feet in height to remain in the rear yard, and the requirement that no more than 30% of the area of the minimum required rear yard would be covered. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 5.9 feet was requested for the addition. The Ordinance mandates a maximum fence height of 7.0 feet in the side yard; therefore, a variance of 1.0 foot was requested for the fence. The Ordinance requires no more than 30% coverage of the required rear yard; therefore, a variance of 33% was requested for the rear yard.

Mr. Hart asked if the area that was indicated on the plat to be covered storage was included in the variance request. Ms. Stanfield replied that it was.

Mr. Houghland presented the requests as outlined in the statements of justification submitted with the application. He stated that all the lots in the area were small in width and that all of the other properties would require a variance to add a similar addition. He stated that he had replaced a dilapidated fence that was painted with lead based paint with the new fence which was primarily made of lattice. He said that the fence was needed to provide privacy for his family. He said that he constructed the garage in the area where two dilapidated sheds had stood and that the garage was not visible from the street. He said that the addition was needed to provide additional living space and storage for his family.

Ms. Stanfield informed the Board that there was another variance on the side lot the subject property for a side yard of 12.6 feet.

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

Mr. Kelley moved to approve SP 01-P-027 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES A., JR. AND LIGIA HOUGHLAND, SP 01-P-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 accessory structure to remain 1.2 ft. from rear lot line and 0.7 ft. from side lot line. Located at 2946 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 71. (Concurrent with VC 01-P-070). 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 17, 2001; 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, as shown on the plat prepared by Larry N. Scartz, dated October 25, 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.

Ms. Gibb seconded the motion which carried by a vote of 5-1. Mr. Hart voted against the motion 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 July 25, 2001. 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 01-P-070 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHARLES A., JR. AND LIGIA HOUGHLAND, VC 01-P-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from side lot line, 12.6 ft. from other side lot line, 8.0 ft. high fence to remain in rear yard and wavier of the 30 percent minimum rear yard coverage requirement. Located at 2946 Fairhill Rd. on approx. 12,000 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 71. (Concurrent with SP 01-P-027). 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 17, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants provided testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is exceptionally narrow.

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

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

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

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

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

1. This variance is approved for the location of an addition, a fence and an accessory structure, as shown on the plat prepared by Larry N. Scartz, dated October 25, 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.

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. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 466 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JUSTIN W. AND ANNEMARIE W. COLLAT, SP 01-P-025 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 7627 Center St. on approx. 1.80 ac. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 12 and 13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Justin and Annemarie Collat, 7627 Center Street, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the request as contained in the staff report. The applicants requested a special permit for a modification to the limitations on the keeping of animals. The applicants currently have two horses on property that is less than two acres. The Zoning Ordinance mandates that horses are only permitted on lots 2 acres or more in size. At 78,408 square feet, the subject property is 8,712 square feet less than the required 2 acre minimum lot size.
The applicants requested that Condition #3 of the proposed development conditions, which specifies that the special permit shall only apply to the applicants' existing two horses be deleted. The applicants also requested that they be permitted to maintain three horses on the property, as there are adequate stalls and space for three horses.

Mr. and Mrs. Collat presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Collat informed the Board of the 33-year history of the horses on the property. She contended that there had never been any complaints until the present time. She explained that the reason for the deletion of Condition three and the request that they be allowed three horses was that they wanted to have the option ot taking in a third horse if they found that one was in need of a home.

Mr. Collat stated that the horses were in retirement and they did not ride or transport the horses, as they no longer owned a horse trailer. He said that the horses and the property were well cared for by he and his wife.

Chairman DiGiulian called for speakers.

Vicky Spruel, (no address given for the record), came forward to speak in support. She stated that the horses were the main attraction for them to move to the neighborhood. She stated that she had no problem with the horses.
Lynne Fletcher, (no address given for the record), came forward to speak in support. She read a letter of support from her daughter.

Annette Zimin, 2407 Hurst Street, came forward to speak in support. She stated that the horses did not negatively impact the neighborhood in anyway.

Patricial Byerly-Worjahowsky, Hurst and Center Street, came forward to speak in support. She said that the horses were an asset to the community.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 01-P-025 with an amendment to development condition number 3 to allow 2 horses to remain continuously on the property and for the reasons stated in the Resolution. Mr. Pammel seconded the motion.

Ms. Gibb amended the motion to allow 3 horses continually on the property. Mr. Kelley seconded the amended motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUSTIN W. AND ANNEMARIE W. COLLAT, SP 01-P-025 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals. Located at 7627 Center St. on approx. 1.80 ac. of land zoned R-3. Providence District. Tax Map 39-4 ((7)) 12 and 13. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 17, 2001; and

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

1. The applicants are the owners of the land.
2. In 35 years there has never been a complaint about the use.
3. Although the use was not technically subject to grandfathering, the two lots combined were only marginally less than what would allow the horses to be kept by-right.
4. The testimony by the applicants and the citizens in support of the application regarding the care and the importance of the animals to the neighborhood indicated compliance with 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 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, 7627 Center Street (1.8 acres), shown on the plat prepared by Justin W. and Annemarie W. Collat, dated April 18, 2001 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 three horses.

4. The yard used for the horses shall be cleaned of animal debris daily and shall be disposed of in a method approved by the Health Department.

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

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 July 25, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 468 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. POUL & CLAIBORNE S. ELDRUP-JORGENSEN, VC 01-Y-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.0 ft. and eave 6 in. from side lot line. Located at 12713 Sabastian Dr. on approx. 1.05 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-4 ((6)) 4. (def. for decision only from 6/19/01)

Mr. Eldrup-Jorgensen informed the Board that he had met with an architect regarding the layout of the addition. He explained that by rearranging the internal configuration of the proposed addition, it could be constructed 3.0 feet from the side lot line.

Mr. Hammack stated that 3.0 feet was still too close to the side lot line. He explained that 3.0 feet from the lot line was not enough room to maintain the property without encroaching on the adjacent property.

Mr. Pammel moved to approve-in-part VC 01-Y-046 for 5.0 feet from the side lot line subject to the submission of a new plat.

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Page 468, July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MARTIN AND MYRA FALCK, VC 01-P-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.6 ft. from rear lot line. Located at 3990 Briarbush Way on approx. 10,727 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 22A.

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 L. Sheldon, 420 Walker Road Great Falls, Virginia replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a second floor addition to enlarge the kitchen area proposed to be located 19.6 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 5.4 feet was requested.

Mr. Sheldon presented the variance request as outlined in the statement of justification submitted with the application. He stated that the addition was needed to provide additional kitchen space for the applicants. He said the irregular shape of the lot justified the need for a variance.

There were no speakers, and the public hearing was closed.

Mr. Hart moved to approve VC 01-P-068 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARTIN AND MYRA FALCK, VC 01-P-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.6 ft. from rear lot line. Located at 3990 Briarbush Way on approx. 10,727 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 22A. 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 July 17, 2001; and

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

1. The applicants are the owners of the land.
2. The lot is only 82.5 feet deep at the wider end, and due to the configuration of the house and its placement, the applicants have met the required standards for a variance.
3. Several adjacent lots with the same topographical conditions acquired slightly larger variances.
4. There would be no adverse impact on the house located at the rear of the subject property because it was located 98 feet away.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Charles E.

Janson, dated, March 5 1990, as certified through April 17, 2001, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 470 July 17, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SEAN KEITH, SP 01-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 5.3 ft. from side lot line. Located at 1934 Franklin Ave. on approx. 13,282 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 32.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sean Keith and Charlene Keith, 1934 Franklin Avenue, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request 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, a detached deck, to remain 5.3 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 15 feet; therefore, a modification of 9.7 feet was requested.

Mr. and Ms. Keith presented the special permit request as outlined in the statement of justification submitted with the application. Ms. Keith explained that the property had a very steep slope of 25 to 30 feet and the houses were situated at different grades so they overlooked each other. She said that the majority of the land was in front with very little to the rear of the home. She stated that they were in the process of constructing a retaining wall to build up the land when the County requested that they stop. She contended that the Board had granted 7 variances to other properties on the same street from 2.7 to 12.6 feet. Ms. Keith explained that they felt that the construction of the deck was included in the previous building permits on the property and when they discovered that it was not included he obtained a building permit for the deck and the retaining wall that they were building. She stated that the neighbors below them had a swimming pool and were in opposition because of privacy issues. She noted that the view from their home to the pool was very minimal. She contended that the topography of the property was very different than others in the area because the backyard was very small and without a retaining wall there was very little useable space.

Mr. Keith illustrated for the Board, the layout of the property. He stated that due to the topography of the land it was inevitable that his property would overlook his neighbors below. He stated that even if he brought his deck in 15 feet to comply with the Zoning Ordinance, his property would still overlook the neighbor's pool. He explained that he had obtained a building permit for the deck as soon as he discovered that the deck had not been included in the previous permit. He provided testimony indicating his knowledge that the deck was not constructed in the area outlined on the plat. He informed the Board that Tammy Brown, Zoning Inspector, had visited the property and informed him that the building permit only authorized the deck to be 7.0 feet in height. He said that as a result of a discussion with Ms. Brown he obtained another building

permit to construct a retaining wall 6.5 feet in height to fill in the land and reflect a total height of 7.0 feet from the top of the retaining wall to the top of the deck railing.

He stated that after he commenced construction of the retaining wall, Ms. Brown contacted him again and informed him that the neighbors were still complaining and another remedy needed to be found.

Mr. Hart asked the applicant if he had done any farther construction after the County had told him to stop. Mr. Keith stated that he had put up some railing on the deck and the stairs for safety measures and done some more construction to the retaining wall.

Mr. Hart asked Ms. Brown when the first time the applicant was advised of the problem with the location of the deck and what was the stage of completion of the deck at that point in time. Ms. Brown replied that the date was September 27, 2001. Mr. Hart asked if that was the first time she visited the property. Ms. Brown replied that was correct. Mr. Hart asked what the stage of completion was of the deck. Ms. Brown replied that the floor was completed and the stairs had been started. Mr. Hart asked if additional work was done to the structure after she had informed the applicant that the deck was too close to the property line. Ms. Brown replied that the applicant continued to build the deck after she had met with him and informed him that the deck was too close to the property line.

Chairman DiGiulian called for speakers.

Carl Landwier, 1923 Kenbar Court, came forward to speak in opposition. He stated that the applicant had never been issued a permit for a deck but instead built the house out to the dimensions of the deck. He said that had the deck been built at ground level behind the house he would have no opposition. He stated that the applicant had not followed any of the procedures correctly and requested that the Board deny the special permit.

William Seale, 1936 Franklin Avenue, came forward to speak in opposition. He stated that he was the initial complainant. He stated that the applicant should have known that a building permit was required to construct the deck. He said that the deck was 14.5 feet from the ground to the top rail. He said that he also had conversations with the County and was told that the applicant never obtained an initial permit to construct a deck. He stated that he wanted the applicant to move his deck back 15 feet from the property line to be in compliance with the Zoning Ordinance.

Tom Thomas, agent for Mr. Seale, came forward to speak in opposition. He stated that the building permit had been issued as a follow up from the Notice of Violation. He stated that upon a conversation with the County, he was informed that even though a retaining wall existed, the height of the deck was measured from the ground to the top of the deck. Mr. Thomas stated that the application was a mugging of the Zoning Ordinance and the application did not meet any of the criteria for the granting of a special permit.

Ms. Keith, in rebuttal, stated that all of the building permits had been obtained. Mr. Keith admitted that he began construction of the deck without a permit; however, he had obtained the permits and complied with all of the requests from the County. He contended that he did stop construction after he was asked to by the County. He reiterated that if the deck were moved back to be in compliance he would still overlook the neighbor's pool in the same way.

Ms. Gibb asked how the fence height was calculated with relation to a retaining wall. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the lowest point of the retaining wall to the highest point of the fence. She stated that if the structure was three feet or closer to the retaining wall then the retaining wall was considered part of the structure height. Ms. Langdon stated that a retaining wall would not remedy this situation; however, the finished product would need to be studied.

Ms. Gibb asked Ms. Brown when the construction needed to halt. Ms. Brown replied that the applicant was given a 60-day time limit to bring the property into compliance, which began the day of the receipt of the letter and the applicant requested an extension to obtain a building permit. At that point the applicant led County staff to believe that the structure was 7.0 feet in height and was issued a building permit reflecting that.

Mr. Keith stated that a person from the County inspected the site and signed off on all of the permits. He

stated that he was told that the measurement for the deck would be taken from the lowest point of the dirt. He said that the retaining wall was located more than 5.0 feet from the structure.

Mr. Hammack asked staff when the County had filed the Declaratory Judgment against the applicant. Mr. Bernal answered April 10, 2001. Mr. Hammack asked why the case was before the Board since the applicant had not applied the special permit within the timeframe that was given. Ms. Langdon replied that the County had delayed any court action until the Board had made a decision regarding the special permit application.

Ms. Gibb asked for an explanation of what led the County to file the Declaratory Judgment. Ms. Brown replied that the applicant had not filed for a special permit by the February 28, 2001, deadline that was given to him; therefore, the Declaratory Judgment was filed against him. Ms. Gibb asked if that was the standard procedure for the County. Ms. Brown replied that it was.

Chairman DiGiulian closed the public hearing.

Ms. Gibb stated that she had visited the site and agreed that the deck was attractive; however, if the applicant had requested a variance for a deck of that size she would have voted against the request. She said that the non-compliance was not done in good faith and the applicant had enough notice that a variance was needed to construct the deck. She said that the testimony from the neighbors and the visit from Ms. Brown along with several letters from Zoning Enforcement indicated that the applicant was never in compliance with the Zoning Ordinance.

Ms. Gibb moved to deny SP 01-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

SEAN KEITH, SP 01-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 5.3 ft. from side lot line. Located at 1934 Franklin Ave. on approx. 13,282 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((8)) 32. 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 17, 2001; and

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

1. The applicant is the owner of the land.
2. If the applicant had requested a variance for the deck, the Board would have voted against it.
3. The noncompliance was not done in good faith and it was not the result of an error in the location of the building subsequent to the issuance of a building permit.
4. The applicant had enough notice that a variance was needed.
5. The testimony from the zoning inspector and from the neighbors indicated that the applicant was never in compliance.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

Page 473 July 17, 2001, (Tape 1), SEAN KEITH, SP 01-D-034, continued from Page 472

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

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 25, 2001.

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Page 473 July 17, 2001, (Tape 1) After Agenda Item:

Request for Reconsideration
Fathia H. Elsaid Soloman
SP 01-P-010

There was no motion and the reconsideration request was denied.

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Page 473, July 17, 2001, (Tape 1) After Agenda Item:

Approval of February 6, 2001 Minutes

Mr. Pammel moved to approve the minutes with two corrections. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 473 July 17, 2001, (Tape 1) After Agenda Item:

Request for Reconsideration
Thomas McMurray
VC 01-V-066

Mr. McMurray stated that before the previous hearing he was lead to believe that a garage would be allowed depending on the location of the garage. He indicated that he was willing to move the garage farther from the side yard. He said that the size of the proposed garage was in keeping with the neighborhood.

There was no motion and the reconsideration request was denied.

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Page 473 July 17, 2001, (Tape 1) After Agenda Item:

Approval of Plat
Sharon Entsminger
VC 01-L-031

Mr. Pammel moved to approve the plat. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

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Page 473 July 17, 2001, (Tape 1) After Agenda Item:

Approval of July 10, 2001 Resolutions.

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0-1. Mr. Hart abstained and Mr. Ribble was absent from the meeting.

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Copy of Virginia State License
Julia Deassuncao Matondo
SP 01-M-008

Mr. Pammel noted that the approval was for a maximum of 10 children and the license was for a maximum of 8 children. He suggested that staff notify Ms. Matondo of the discrepancy. Susan Langdon, Chief, Special Permit and Variance Branch, replied that staff would notify Ms. Matondo.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

Minutes by: Lori M. Mallam

Approved on: April 2, 2002

Regina Thorn Corbett

Regina Thorn Corbett, 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 24, 2001. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies 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 475, July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ALBERT J. & LISA CLAIRE DWOSKIN, VA 70-D-063-2 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. from side lot line. Located at 1255 Crest La. on approx. 2.77 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 23. (moved from 6/12/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, Reed Smith Hazel & Thomas, LLP, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia replied that it was.

Mr. Hart gave a disclosure, but indicated it would not affect his ability to participate in the public hearing.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested an amendment to a previously approved variance to permit the construction of a garage addition to be located 7.6 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a variance of 12.4 feet was requested. The applicant's previously approved variance was granted on June 16, 1970, which permitted a garage addition to be located 7.5 feet from the side lot line; however the garage was never constructed.

Mr. Hanes, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He submitted letters from neighbors indicating their support of the application. Mr. Hanes said the previous owners never built the garage as approved by the previous variance request. He said the lot was strangely shaped and was steep. Mr. Hanes stated that the request met the required standards for a variance. He asked for a waiver of the 8-day waiting period.

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

Mr. Hammack moved to approve VA 70-D-063-2 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALBERT J. & LISA CLAIRE DWOSKIN, VA 70-D-063-2 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. from side lot line. Located at 1255 Crest La. on approx. 2.77 ac. of land zoned R-1. Dranesville District. Tax Map 31-2 ((1)) 23. (moved from 6/12/01). 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 24, 2001; and

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

1. The applicants are the owners of the land.
2. The applicants met the required standards for a variance.
3. The lot is irregularly shaped with exceptional topographical conditions.

4. There was no opposition from the neighbors.
5. The Board found justification to approve the two previous variances 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 an addition as shown on the plat prepared by William G. Hawes, dated November 30, 2000, as revised through March 5, 2001, and 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Hammack moved to waive the 8-day

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 24, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 477, July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PHILIP J. AND BEVERLY H. GEARING, VC 01-V-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 1207 H St. on approx. 7,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (44) 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. Philip Gearing, 1207 H Street, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an enlargement to an existing addition to be located 9.1 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 2.9 feet was requested.

Mr. Gearing presented the variance request as outlined in the statement of justification submitted with the application. He said they wanted to rebuild the addition because their kitchen was cold during the winter months. Mr. Gearing said the addition would be no closer to the lot line and it would not be visible from the street. He said the neighbors were in support of the application.

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

Mr. Hart moved to approve VC 01-V-074 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PHILIP J. AND BEVERLY H. GEARING, VC 01-V-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line. Located at 1207 H St. on approx. 7,500 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-2 ((8)) (44) 17 and 18. 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 July 24, 2001; 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 lot is old and narrow.
4. The combination of two lots resulted in only 50 feet of frontage creating difficulty for any dwelling to meet minimum side yard requirements.
5. Since the addition is the same distance from the side lot line as the existing house, and the house has existed since the 1930s, there would be no impact on the neighbors.

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

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

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

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

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

1. This variance is approved for the location of an addition as shown on the plat prepared by Walter C. Sampsell, Jr., dated September 26, 1994, as revised by Larysa Kurylas, Architect through April 24, 2001, 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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SUSAN ROBSON, SP 01-Y-029 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit addition 13.3 ft. from side lot line. Located at 6511 Trillium House La. on approx. 13,006 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan Robson, 6511 Trillium House Lane, Centreville, Virginia, replied that it was.

Mr. Hart gave a disclosure indicating that he was a neighbor of the applicant and recused himself from participation in the hearing.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for modifications to the minimum yard requirements of the R-C district to permit the construction of a second story bedroom addition to be located 13.3 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, the applicant requested a modification of 6.7 feet.

Mr. Ribble asked staff what were the requirements for a survey. Mr. Bernal replied that the applicant could produce their own survey if the property was located in an R-C District.

Ms. Robson presented the request as outlined in the statement of justification submitted with the application. She presented the original plat to the Board. Ms. Robson stated that the 2nd floor addition would be over the existing garage and it would be no closer to the lot line.

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

Mr. Ribble moved to approve SP 01-Y-029 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN ROBSON, SP 01-Y-029 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit addition 13.3 ft. from side lot line. Located at 6511 Trillium House La. on approx. 13,006 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (2) 49. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 24, 2001; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.
5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of a second-story room addition as shown on the plat prepared by Susan Robson, dated March 29, 2001, 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.

Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Hart was not present for the vote and Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001.

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Page 480, July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARK R. HUNTER, VC 01-V-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line such that side yards total 15 ft. Located at 7841 Godolphin Dr. on approx. 9,200 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-4 ((6)) 231.

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 Hunter, 7841 Godolphin Drive, Springfield, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 7.2 feet from the side lot line such that side yards totaled 15 feet. A minimum side yard of 8 feet is required with a total side yard of 20 feet; therefore, a side yard variance of 0.8 feet and a total side yard variance of 5.0 feet were requested.

Mr. Hunter presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing two-car carport to make a two-car garage. Mr. Hunter said the addition would not be any closer to the lot line than the existing carport. He said the shed on the property would be removed once the garage was completed and asked that to be reflected in the development conditions. Mr. Hunter stated that if the shed were removed prior to construction of the garage, he would have no place to store the equipment that was currently stored in the shed.

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

Ms. Gibb moved to approve VC 01-V-072 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK R. HUNTER, VC 01-V-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.2 ft. from side lot line such that side yards total 15 ft. Located at 7841 Godolphin Dr. on approx. 9,200 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-4 ((6)) 231. 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 24, 2001; and

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

1. The applicant is the owner of the land.
2. The applicant's statement of justification and testimony indicated compliance with the required standards for a variance.
3. The lot is steep; therefore, the proposed addition could not be placed elsewhere.
4. The same footprint of the existing carport would be used for the garage causing no further extension into the yard.

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

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

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

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

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

1. This variance is approved for the location of a garage addition as shown on the plat prepared by Larry N. Scartz, dated April 6, 2001, 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.

4. The shed located on the rear lot line shall be removed or relocated at the time of final inspection of the garage by Fairfax County in conformance with the Zoning Ordinance requirements.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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. Ribble was not present for the vote and Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 482 July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DONALD G., JR. AND NUZHAT P. EGAN, VC 01-D-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. from rear lot line. Located at 2621 Stone Mountain Ct. on approx. 10,045 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((14)) 255.

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 Egan, 2621 Stone Mountain Court, Herndon, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 19.8 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 5.2 feet was requested.

Mr. Egan presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing deck. Mr. Egan stated that the lot was exceptionally shallow and pie-shaped. He said the addition would not be closer to the lot line than the existing deck.

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

Mr. Kelley moved to approve VC 01-D-076 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD G., JR. AND NUZHAT P. EGAN, VC 01-D-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. from rear lot line. Located at 2621 Stone Mountain Ct. on approx. 10,045 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((14)) 255. 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 24, 2001; 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 request is to enclose an existing deck.
4. The applicant's statement of justification substantiates the application.
5. The lot's shape is exceptional.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 April 23, 2001, 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. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 484 July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. EVELYN DEWALD, SP 01-Y-030 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of deck 9.5 ft. from side lot line. Located at 4311 Cub Run Rd. on approx. 10,891 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 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. Bill Reames, Patio Enclosures, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the modification to minimum yard requirements for certain R-C lots to permit the construction of a deck 9.5 feet from a side lot line. A minimum side yard of 15 feet is required; therefore, a modification of 10.5 feet was requested.

Mr. Reames, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the application met the requirements for a special permit

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

Mr. Hart moved to approve SP 01-Y-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

EVELYN DEWALD, SP 01-Y-030 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for certain R-C lots to permit construction of deck 9.5 ft. from side lot line. Located at 4311 Cub Run Rd. on approx. 10,891 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 36. 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 July 24, 2001; and

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

1. The applicant is the owner of the land.
2. The property was the subject of final plat approval prior to July 26, 1982.
3. The property was comprehensively rezoned to the R-C District on July 26, or August 2, 1982.
4. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the

zoning district that was applicable to the lot on July 25, 1982.

5. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area.

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

THAT the applicant has presented testimony indicating compliance Sect 8-006, General Standards for Special Permit Uses; Sect. 8-903, Standard for All Group 9 Uses; and Sect. 8-913, Provisions for Approval of Modifications to the Minimum Yard Requirements for Certain R-C Lots; of the Zoning Ordinance.

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

1. This Special Permit is approved for the location of the deck shown on the plat prepared by Kenneth W. White, dated March 14, 2001, submitted with this application 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. 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001.

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Page 485, July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24. (moved from 5/1/01; continued from 7-10-01)

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

Mr. Hammack stated that he asked for supplementary information, and asked the applicant whether they had any information which reflected that Kim's Oriental Herb and Acupuncture, Inc., was a professional corporation.

Mr. Park replied that it was not a professional corporation nor could they become a professinal corporation. He presented a letter from the Virginia State Corporation Commission. Mr. Park said they submitted Articles of Incorporation as a professional corporation, but it was rejected because it was not recognized as professional under the Corporation Code. He said Mr. Kim was fully licensed by the Virginia State Board of Medicine.

Mr. Hammack said the application included a commercial component in the sale of herbs and he was not sure how that related to acupuncture. He said a non professional corporation was the applicant and not Mr. Kim.

Mr. Park said he called the Virginia State Corporation Commission and they were not sure that the applicant could incorporate as a professional corporation.

Mr. Hammack said he checked the Code and an acupuncturist was supposed to use the letters "L.A." for

licensed acupuncturist behind their name to indicate his professional capacity. He said on technical grounds, he could not approve the application the way it was presented as a C corporation.

Mr. Park asked if the Board would add a condition stating that the applicant had to amend the Articles of Incorporation to change it to a professional corporation and would that satisfy the Board. Mr. Hammack said he was not sure because it had been advertised under a C corporation. He asked staff for comment.

Ms. Stanfield stated that the affidavit had been approved by the County Attorney.

Mr. Hammack said he had issues with the sale of herbs. He said it introduced a commercial retail component. Mr. Hammack suggested a continuance to allow the applicant time to try to work out the issues.

Mr. Park said the sale of herbs was incidental to medical treatment. He said the sale of herbs was not offered to the general public.

Mr. Hammack noted a letter submitted to the Board questioning whether the applicant resided on the property. Mr. Kim replied that he resided on the property and presented photographs to reflect that.

Mr. Kelley said he felt the application was not appropriate for a residential neighborhood. He said it should be in a commercial area.

Mr. Hart asked staff if there were any applications filed under a professional corporation instead of the person who was the professional that was granted a special permit for a home professional office. Ms. Stanfield replied that she would have to check.

Ms. Gibb said she was concerned with the sale of herbs. She said the goal would be to maintain a residential appearance.

Mr. Hammack moved to continue the application to August 7, 2001, at 9:00 a.m. to find out more information about the status of a corporation and the retail issues involved.

Ms. Gibb seconded the motion which carried by vote of 6-0. Mr. Pammel was asbsent from the meeting.

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Page 486 July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JOHN M. BATAL, VC 01-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and one outlot with proposed Lot 2 having a lot width of 12.0 ft. and proposed Lot 3 having a lot width of 17.5 ft. Located at 4042 and 4044 Hunt Rd. on approx. 1.50 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 14 and 14A.

Chairman DiGiulian noted that VC 01-B-071 was administratively moved to September 11, 2001.

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Page 486 July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE LIVING GOD, SP 01-V-028 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a place of worship. Located at 6234 Quander Rd. on approx. 1.98 ac. of land zoned R-4, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((22)) 2.

Chairman DiGiulian noted that SP 01-V-028 was administratively moved to October 2, 2001.

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9:00 A.M. UNITARIAN UNIVERSALIST CONGREGATION OF FAIRFAX, SPA 83-P-053-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-053 previously approved for a church and related facilities, private school of general education and child care center to permit building additions and site modifications. Located at 2709 Hunter Mill Rd. on approx. 10.58 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 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. Keith Martin, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested approval to amend SP 83-P-053, which was previously approved for a church and related facilities, private school of general education, and child care center to permit building additions and site modifications. The applicant proposed construction of a 3,500 square foot addition to the existing sanctuary and a 5,000 square foot addition to connect Buildings II and III. The applicant proposed minor changes in parking near the proposed additions. There would be no change in the number of seats in the sanctuary or children in the private school and child care center. Ms. Josiah stated that the site had been the subject of special permits granted by the BZA since 1976 and the applicant requested essentially the same conditions as previously approved. Staff recommended approval subject to the development condition 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. He said there would be no increase in seating in the sanctuary. Mr. Martin indicated that the neighbors were in support of the application. He said the applicant was in agreement with the proposed development conditions.

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

Mr. Ribble moved to approve SPA 83-P-053-3 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

UNITARIAN UNIVERSALIST CONGREGATION OF FAIRFAX, SPA 83-P-053-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-P-053 previously approved for a church and related facilities, private school of general education and child care center to permit building additions and site modifications. Located at 2709 Hunter Mill Rd. on approx. 10.58 ac. of land zoned R-1. Providence District. Tax Map 37-4 ((1)) 23. 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 24, 2001; 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 and is not transferable without further action of this Board, and is for the location indicated on the application, 2709 Hunter Mill Road (10.58 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 Paciulli Simmons & Associates dated June 4, 2001, 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 of the sanctuary shall be limited to three hundred (300) seats.

6. There shall be a maximum of 169 parking spaces provided as shown on the special permit plat. Wheel stops shall be provided to designate all parking spaces. All parking spaces shall be on site.

7. The combined total maximum daily enrollment of the school and child care center shall be forty (40) children.

8. The hours of operation for the school of general education and the child care center shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday.

9. The maximum number of employees for the school of general education and the child care center shall be eight (8).

10. The existing vegetation shall satisfy the transitional screening requirement along the northern, eastern and western property lines. A six foot board on board fence shall be provided along the northwest property line adjacent to Lot 4, in the vicinity of the play area. The barrier requirement shall be waived along all other lot lines.

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

12. Right of way to 46 feet from the centerline of Hunter Mill Road necessary for future road improvements, including right and left turn deceleration lanes, 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 comes first. Ancillary easements shall be provided to facilitate these improvements to the Fairfax County Board of Supervisors in fee simple at the time of right of way dedication.

13. Any existing or proposed lighting of the parking lot and driveways shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

    - The lights shall be a low-intensity design which focuses the light directly onto the subject property.

    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

14. Signs shall be permitted in accordance with Article 12, Signs.

15. The limits of clearing and grading shall not exceed that which is shown on the special permit amendment plat.

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. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 1, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 489, July 24, 2001, (Tape 1), Scheduled case of:

9:00 A.M. FLORIS UNITED METHODIST CHURCH, SP 01-H-011 Appl. under Sect(s). 3-103 and 5-503 of the Zoning Ordinance to permit a church with a child care center and nursery school which has an enrollment of 100 or more students daily. Located at 13600 Frying Pan Rd. on approx. 11.61 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A. (Def. from 6/5/01).

Chairman DiGiulian noted that SP 01-H-011 was administratively moved to September 18, 2001.

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Page 489, July 24, 2001, (Tape 1), After Agenda Item:

Approval of July 17, 2001 Resolutions

Mr. Hammack moved to approve the Resolutions. Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

Minutes by: Regina Thorn Corbett

Approved on: December 11, 2001

Regina Thorn Corbett

Regina Thorn Corbett, 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 31, 2001. 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 policies 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 491, July 31, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SAMUEL F. MADERT, JR., VC 01-P-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line. Located at 9004 Colesbury Pl. on approx. 25,882 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((14)) 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. Samuel F. Madert, Jr., 9004 Colesbury Place, Fairfax, 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 sought a variance to construct a garage addition to be located 8.7 feet from the side lot line. The minimum side yard requirement was 15 feet; therefore, a variance of 6.3 feet was requested.

Mr. Madert presented the variance request as outlined in the statement of justification submitted with the application. He stated that his mother-in-law recently moved in with him and his wife, and she brought her personal items, such as furniture, antiques, etc. with her. He said they needed extra storage space and would like a temperature controlled environment for the furniture. Mr. Madert stated that his only other option would be to build a shed in the backyard but they would have to remove mature trees to do so. He said that his property had an odd shape and that the house was built very close to the front of the lot, leaving no other alternative.

Chairman DiGiulian called for speakers.

Ron Grimes, 9002 Colesbury Place, came forward to speak support of the application. He said that he had no objections to the addition.

Erin Ward, 9005 Colesbury Place, came forward to speak in support of the application. She said she lived directly across the street from the Madert's property and supported their application.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve variance application VC 01-P-075 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SAMUEL F. MADERT, JR., VC 01-P-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line. Located at 9004 Colesbury Pl. on approx. 25,882 sq. ft. of land zoned R-2. Providence District. Tax Map 58-4 ((14)) 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 July 31, 2001; 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 prescribed standards for the granting of a variance.
3. The lot has unusual depth but is exceptionally narrow at the front with converging lot lines.
4. The house is placed on the lot so that a variance is needed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Larry N. Scartz, dated, February 7, 2001, 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. 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 August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 493 July 31, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JOHN A. COLLINS, VC 01-B-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line. Located at 4721 Groves La. on approx. 39,169 sq. ft. of land zoned R-1. Braddock District. Tax Map 68-1 ((2)) 25B.

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 A. Collins, Jr., 4721 Groves Lane, Fairfax, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She said the applicant sought a variance to permit construction of a garage addition to be located 14 feet from the side lot line. The minimum side yard requirement was 20 feet; therefore, a variance of 6 feet was requested.

Mr. Collins presented the variance request as outlined in the statement of justification submitted with the application. He said his lot was very narrow, and the house was situated to the right of the lot. He said he would like to construct a garage to protect his collectible cars from the elements and already had a driveway and front walkway in place. He added that he had a letter of support from one of his neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve variance application VC 01-B-083 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN A. COLLINS, VC 01-B-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line. Located at 4721 Groves La. on approx. 39,169 sq. ft. of land zoned R-1. Braddock District. Tax Map 68-1 ((2)) 25B. 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 31, 2001; 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 prescribed standards for the granting of a variance.
3. The lot is exceptionally shaped.
4. The house is located in the center of the property and does not allow room for an addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning

Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by Larry N. Scartz, dated, March 14, 2001, 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 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 August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CRAIG A. PUZ, VC 01-S-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line such that side yards total 16.9 ft. Located at 5913 Quintana Ct. on approx. 10,069 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 143.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Craig A. Puz, 5913 Quintana Court, Burke, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought approval to permit the enclosure of an existing carport to be located 6.7 feet from the south side lot line, and that the side yards totaled 16.9 feet. The Zoning Ordinance required a minimum side yard of 8 feet and a total side yard of 20 feet; therefore, a variance of 1.3 feet and 3.1 feet respectively were requested.

Mr. Puz presented the variance request as outlined in the statement of justification submitted with the application. He stated that he would like to improve his home by enclosing the garage. He said he would like to add walls to the existing carport and did not intend to construct any further. He said this would allow him to protect his car, store his tools, and provide shelter for his dog during the day.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve variance application VC 01-S-079 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CRAIG A. PUZ, VC 01-S-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.7 ft. from side lot line such that side yards total 16.9 ft. Located at 5913 Quintana Ct. on approx. 10,069 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 78-4 ((8)) 143. 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 July 31, 2001; 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 prescribed standards for the granting of a variance.
3. The applicant would be utilizing the space and roof line of the existing carport and would not affect the appearance of the dwelling.
4. The neighboring residence will not be impacted as there is a good distance to the common lot line.
5. The variance request is minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;

D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Sam Whitson, L.S./Land Surveying, dated April 25, 2001, 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

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 496, July 31, 2001, (Tape 1), Scheduled case of:

9:00 A.M. PATRICK W. LYNCH, VC 01-D-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.6 ft. from side lot line. Located at 6916 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 10. (Concurrent with SP 01-D-031).

PATRICK W. LYNCH, SP 01-D-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 15.6 ft. from side lot line. Located at 6916 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 10. (Concurrent with VC 01-D-080).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Patrick W. Lynch, 6916 Arbor Lane, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought approval of a special permit for a reduction in minimum side yard requirements based on an error in building location to permit the dwelling to remain 15.6 feet from the west side lot line. The Zoning Ordinance required a minimum side yard of 20 feet; therefore, a modification of 4.4 feet was requested for the existing dwelling.

Ms. Josiah stated that the applicant also requested the approval of a variance to permit the construction of one-story and two-story additions to the dwelling. She said they would be located 15.6 feet from the west side lot line. The Zoning Ordinance required a minimum of 20 feet; therefore, a modification of 4.4 feet was requested.

Mr. Lynch presented the special permit and variance requests as outlined in the statement of justification submitted with the applications. He stated that he bought the house last December with the intention of adding a second story to the house as well as a small extension to the dining room. He said he found out only one week before closing that the existing dining room was located 4.4 feet into the side yard setback.

Mr. Lynch stated that when he contacted the Zoning Office, he found that the original dining room had been a carport when the house was built in 1959. He said the carport had been converted to a garage, and in 1978 the prior owner converted the garage into a dining room. He was told by Zoning that he needed to apply for a special permit to allow the existing dining room to remain in its current location, as well as a variance for the side yard setback requirements to permit a second story on the front extension.

Mr. Lynch stated that the situation had not been caused by him, but the previous owner. He said he did not believe that the existing location was detrimental to the neighbors and that the use of the space as a dining room was probably preferable to its use as a garage, especially since there was no longer a driveway. He stated that he believed enforcing compliance with the Zoning Ordinance to the existing house would cause him considerable hardship.

Mr. Lynch stated that he requested the variance because the house was an odd shape with the dining room jutting out, and he would like to bring the house forward and make it solid along the front. He said he had acquired the property in good faith, and it had some exceptional characteristics. He stated that the house was exceptionally narrow and small for an R-1 property.

Mr. Lynch stated that he had hired an architect and was told by him that the only way to get appreciable living space was to build upward. He said he did not feel the house would be a detriment to the adjacent properties and had a letter of support from the neighbor directly across the street.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve special permit application SP 01-D-031 for the reasons as noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK W. LYNCH, SP 01-D-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 15.6 ft. from side lot line. Located at 6916 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 10. (Concurrent with VC 01-D-080). 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 date July 31, 2001; 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 prescribed standards for the granting of a special permit.
2. The building error exceeded 10% of the measurements through no fault of the applicant.
3. The error has existed for such a long time it will not reduce or impair the purpose of the Ordinance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This Special Permit is approved for the location of the dwelling shown on the plat prepared by Alexandria Surveys, Inc., dated April 5, 2001, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Kelley and 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 August 8, 2001. This date shall be deemed to be the final approval date of this special permit.

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Ms. Gibb moved to approve variance application VC 01-D-080 for the reasons as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PATRICK W. LYNCH, VC 01-D-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 15.6 ft. from side lot line. Located at 6916 Arbor La. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((11)) 10. (Concurrent with SP 01-D-031). 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 31, 2001; 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 prescribed standards for the granting of a variance.
3. The lot is very narrow.
4. The rear portion of the yard is occupied by a septic field, a storm-drainage easement, a patio and deck.
5. The addition would occupy the existing footprints only.
6. The small addition to the front will not impact the side yard anymore than the existing footprint does.
7. The footprint has existed for a significant amount of time.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the one-story and two-story additions shown on the plat prepared by Alexandria Surveys, Inc., dated April 5, 2001, 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. 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 August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 500, July 31, 2001, (Tape 1), Scheduled case of:

9:00 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-5 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 82-S-102 previously approved for country club to permit building additions and site modifications. Located at 5110 Ox Rd. on approx. 150.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-1 ((1)) 17, 18 and 20. (Deferred from 7-10-01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steve Gleason, Agent, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, stated that the BZA deferred decision on this application on July 10, 2001, to allow the applicant time to submit a progress report to the Board outlining the work that had been done and the timeline for future work regarding the drainage issues on the adjacent property. She said the Board also requested a report from the County Inspector assigned to the site.

Ms. Josiah stated that a report from the applicant had been distributed to the Board that morning. She said that, due to a prior commitment with the Supervisor's office, the County Inspector, William Grieve, had been unable to attend the meeting. She said that he had indicated to her that all work done by the applicant had been done in accordance to the site plan and in an acceptable manner at that time. She said the Inspector had no record of complaints from Mr. Linne during that phase of the project. Ms. Josiah said that under the bond agreement, the applicant was responsible for the repair of any damage to Brookline Drive. She stated that the County Inspector was scheduled to perform a final inspection of the project on August 8, 2001, at which time he would determine whether the bond would be released. Ms. Josiah said that the applicant was present and available to answer any questions the Board had.

Mr. Gleason stated that each of the Board members had been given a packet of. He said that Exhibit 1 was a diagram that outlined what had been done to address Mr. Linne's drainage condition according to the approved site plan. He said that the diagram showed runoff water that would be redirected downstream to a pond on the Club's property.

Mr. Gleason stated that the Fairfax Country Club had completed all the construction improvements within all the environmentally sensitive areas of the site. He said that all of the improvements were outside of the drainage shed and would not have caused any problems to it. Mr. Gleason said that the applicant had been working closely with the contractor who had made the improvements to the land over the past year, and that the applicant would commit to make the improvements to the drainage shed in the coming fall. He said that water from an existing culvert would be redirected by the way of an underground pipe, which would go into the pond that they had recently repaired.

Mr. Hart asked staff if any timelines had been changed within the staff report's development conditions due to this new information. Ms. Josiah replied that no changes had been made but the Board had the authority to do that.

Mr. Hart asked Mr. Gleason if he would suggest any changes to the staff report regarding the timing of the scheduled improvement. Mr. Gleason replied he believed that by the time the revised site plans for the tennis courts were approved by the County, the improvements to Mr. Linne's property would be completed.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve special permit amendment application SPA 82-S-102-5 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-5 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 82-S-102 previously approved for country club to permit building additions and site modifications. Located at 5110 Ox Rd. on approx. 150.85 ac. of land zoned R-C and WS. Springfield District. Tax Map 68-1 ((1)) 17, 18 and 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 date July 10, 2001; 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 prescribed standards for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-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 (150.85 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 March 2001, as revised through June 7, 2001, 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 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 approved but not constructed 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 special permit amendment plat approved in conjunction with SPA 82-S-102-4, and except on the eastern property boundary in the vicinity of the proposed outdoor tennis courts, where installation of additional plantings shall be completed in a buffer area to measure a minimum of twenty-five (25) feet in width, as depicted on the special permit amendment plat associated with SPA 82-S-102-5, 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 approved in conjunction with SPA 82-S-102-4.

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.

17. All lighting for the three (3) proposed outdoor tennis courts proposed pursuant to SPA 82-S-102-5 shall be in accordance with the following:

A. The combined height of the light standards and fixtures shall not exceed 22 feet and shall be full cut-off lights.

B. The lights shall be of a design which focuses the light directly onto the subject property.

C. Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

D. The lights shall be controlled with an automatic shut-off device, and shall be turned off when the site is not in use.

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. 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 August 8, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 504, July 31, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DOROTHY I. FELDMAN, VC 01-V-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line. Located at 2210 Martha's Rd. on approx. 18,813 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 101.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dorothy I. Feldman, 2210 Martha's Road, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to construct an addition to the house 13 feet from the side lot line. She said the minimum side yard required by the Zoning Ordinance was 15 feet; therefore, a variance of 2 feet was requested.

Ms. Feldman presented the variance request as outlined in the statement of justification submitted with the application. She stated that the house had been built in the 1950's and had no storage space and very small closets. She said that the house was situated at an angle on the property and in order to get more usable space, it would be necessary to extend the house out from the bedrooms. She said that part of the space was needed for storage of the lawnmower and bikes, and the rest would be closet space.

Mrs. Feldman stated she had spoken with neighbors and had made accommodations to appease any objections. She said the extension was part of a total renovation for the house and felt it would be a great improvement to the home exterior and it had been approved by the Hollin Hills Architecture Committee.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve variance application VC 01-V-073 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DOROTHY I. FELDMAN, VC 01-V-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line. Located at 2210 Martha's Rd. on approx. 18,813 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((4)) 101. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The house is sited at an angle on the property.
3. The variance request is minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 March 13, 2001, 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. 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 August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 506 July 31, 2001, (Tape 2), Scheduled case of:

9:00 A.M. TRUSTEES FOR OAKTON UNITED METHODIST CHURCH, SPA 83-P-027 Appl. under Sect(s). 3-203 and 4-504 of the Zoning Ordinance to amend SP 83-P-027 for a place of worship and related facilities to permit a building addition, site modifications and child care center with less than 100 students daily. Located at 2951 Chain Bridge Rd. on approx. 1.82 ac. of land zoned C-5 and R-2. Providence District. Tax Map 47-2 ((1)) 91. (Concurrent with VC 01-P-086).

TRUSTEES FOR OAKTON UNITED METHODIST CHURCH, VC 01-P-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit sign 1.0 ft. and building 8.0 ft. from front lot line and parking closer than 10.0 ft. from front lot line. Located at 2951 Chain Bridge Rd. on approx. 1.82 ac. of land zoned C-5 and R-2. Providence District. Tax Map 47-2 ((1)) 91. (Concurrent witn SPA 83-P-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. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said that the applicants sought approval of a special permit amendment for an additional 3,352 square feet of building area. She said that site modifications included the relocation of sidewalks and restriping of the parking lot, which would give them an additional six parking spaces. She said that they also sought approval of a childcare center to formalize the existing program, which was limited to 24 children.

Ms. Stanfield stated that the applicant also sought variances to permit the chapel to remain 8 feet from the front lot line, a sign to remain 1 foot from the front lot line, and parking to remain closer than 10 feet from the front lot line. She said that the Zoning Ordinance required a front yard of 40 feet; therefore, a variance of 2 feet was requested for the chapel. She said the Ordinance required a distance of 10 ft. from the front lot line for signs and parking areas; therefore, variances of 9 feet and 8 feet respectively were requested.

Ms. Stanfield stated that 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 of the special permit amendment and variances.

Ms. Stanfield said that the applicant presented proposed modifications to development condition Number 11, regarding the tree preservation along Chain Bridge Road and the elevator addition. She said staff had reviewed it and had no objection.

Ms. Strobel presented the variance and special permit requests as outlined in the statement of justification submitted with the application. She stated that the church had been part of the community for over 100

years, and offered religious services and community programs. She said the original chapel dated back to 1898 and was located on Chain Bridge Road and that most of the existing facilities predated the requirement to obtain approval of a special permit. She stated that this application was an amendment to the first permit approved in 1983. She said the seating capacity would remain unchanged, and the proposed modifications were needed to better serve the membership.

Ms. Strobel said the modifications included building additions of 3,352 gross square feet, which were proposed for the addition of a Music Program room, installation of an elevator, additional meeting rooms and storage space. She stated that the elevator was especially important as many of the older congregation members found it difficult to use the stairs from the street level sanctuary to go to the basement level social hall and the balcony level of the sanctuary.

Ms. Strobel said that due to the development of Fairfax County over the past 100 years, a concurrent variance had been requested due to the dedication of land for the widening Chain Bridge Road. She stated that this would result in non-conforming setbacks for existing improvements and limited other reasonable construction for the applicant. Ms. Strobel said that the applicant had met with the adjacent townhouse community and no objections were raised regarding this application.

Ms. Strobel stated that the applicant had requested an alternative to development condition Number 11. She said that staff had recommended a relocation of the elevator building addition in order to save an existing magnolia tree located close to Chain Bridge Road. She said that the proposed elevator addition could not be relocated given the areas it was to serve. Ms Strobel said that the applicant offered to save four of the existing five mature red maple trees that were located around the facilities. She said the applicant proposed to plant a new magnolia tree after the building additions were completed.

Mr. Pammel asked Ms. Strobel if the chapel had been registered as a historic site and she replied that it was not because of the numerous conditions associated with historical sites.

Mr. Pammel stated that he believed that since only the chapel was involved, he would like to see the applicant start the process of placing the chapel on the National Registry. Ms. Strobel replied that the applicant would be happy to explore that.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve special permit amendment SPA 83-P-027, with the modification to development condition Number 11, and variance application VC 01-P-086 as noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR OAKTON UNITED METHODIST CHURCH, SPA 83-P-027 Appl. under Sect(s). 3-203 and 4-504 of the Zoning Ordinance to amend SP 83-P-027 for a place of worship and related facilities to permit a building addition, site modifications and child care center with less than 100 students daily. Located at 2951 Chain Bridge Rd. on approx. 1.82 ac. of land zoned C-5 and R-2. Providence District. Tax Map 47-2 ((1)) 91. (Concurrent with VC 01-P-086). 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 th e Board on date July 31, 2001; 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 standards for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-203 and 4-504 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, 2951 Chain Bridge Road, 1.82 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 Robert E. Williams, Jr., of Bury + Partners-VA, dated January, 2001 revised through July 20, 2001, 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. Seating capacity for the principal area of worship shall be limited to three hundred and fifty (350).

6. The maximum total daily enrollment for the child care center shall not exceed 24 (twenty-four) children.

7. Ninety-four (94) parking spaces shall be provided on-site.

8. The maximum number of employees shall be limited to nine (9) on-site at any one time.

9. Hours of operation for the child care center shall be limited to a maximum of 9:30 a.m. until 12:15 p.m., Monday through Friday.

10. The transitional screening shall be modified as follows: Existing vegetation subsequent to proposed development shall remain and shall be maintained along all lot lines. Transitional screening adjacent to residential areas to the east and south shall be supplemented by plantings, such as evergreen hedging, to provide additional screening as determined by the Division of Urban Forestry at the time of site plan approval.

11. The eight (8) foot wide concrete sidewalk proposed along the eastern side of the existing building shall be located so that two (2) of the three (3) existing red maples shall be preserved. The two (2) existing red maples located on the south side of the building shall also be preserved, which may require the relocation of the proposed dumpster enclosure. The existing magnolia tree located along the north side of the building shall be removed when the construction of the proposed elevator building addition is commenced. Upon completion of construction of the proposed elevator building addition, a magnolia tree, which is a minimum of four (4) inches in caliber at time of planting, shall be planted in this general area.

12. All barrier requirements on all lot lines shall be waived.

13. All improvements shall be architecturally compatible with the existing structure.

14. If a waiver of stormwater management/best management practices is not approved by DPWES, an amendment to the special permit shall be required.

15. The footprint for the proposed addition will be reduced during site plan review and approval to meet the .30 FAR, if necessary.

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 construction has commenced on the proposed addition and site modifications and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Hart recused himself from the hearing, 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 August 8, 2001. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel moved to approve variance application VC 01-P-086 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES FOR OAKTON UNITED METHODIST CHURCH, VC 01-P-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit sign 1.0 ft. and building 8.0 ft. from front lot line and parking closer than 10.0 ft. from front lot line. Located at 2951 Chain Bridge Rd. on approx. 1.82 ac. of land zoned C-5 and R-2. Providence District. Tax Map 47-2 ((1)) 91. (Concurrent with SPA 83-P-027). 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 31, 2001; 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 standards for the granting of a variance.

3. The site has been in existence for many years.
4. The widening of Chain Bridge Road took land from the Church, leaving it on the existing land.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a sign 1.0 feet and a building 8.0 feet from the front lot line and parking closer than 10.0 feet from front lot line, as shown on the special permit/variance plat prepared by Robert E. Williams, Jr., of Bury + Partners-VA, dated January, 2001, revised through July 30, 2001, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 recused himself from the hearing, 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 August 8, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 511, July 31, 2001, (Tape 2), Scheduled case of:

9:00 A.M. ROBERT J. BISHTON AND CHRISTINE H. BISHTON D/B/A JUNIPER LANE SCHOOL, SPA 77-M-332 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to amend SP 77-M-332 previously approved for child care center to delete the child care center and to permit increase in land area, nursery school, private school of general education, increase in enrollment, building addition, change in development conditions and reduction to minimum yard requirements based on error in building location to permit deck to remain 8.2 ft. from side lot line and shed to remain 2.3 ft. from rear lot line. Located at 3106 Juniper La. on approx. 1.10 ac. of land zoned R-3, C-7, CR and HC. Mason District. Tax Map 51-3 ((23)) pt. A, A1 and A2. (Def. from 4/3/01 and 4/24/01) (Continued from 5/15/01). (Admin moved from 6/19/01)

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 Bishton, 3106 Juniper Lane, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, stated that this case had been heard on May 13, 2001, by the Board of Zoning Appeals and was continued to allow staff time to analyze a revised plat that had been submitted subsequent to the publication of the staff report. Ms. Stanfield stated that the applicant sought approval of an amendment to the previously approved special permit for a childcare center. She said the applicant had requested approval for a nursery school and a private school of general education, increased enrollment from 50 to 99 children, construct a 1,580 square foot addition, increase staff members from 4 to a maximum of 10, increase the hours of operation to 8:00 a.m. to 5:00, and to permit an increase in land area to include the 10,701 square foot adjacent abandoned right of way, which had been acquired by the applicant. She said the application also included a reduction to minimum yard requirements, based on an error in building location to permit a deck to remain 8.2 feet from the side lot line and a shed to remain 3.2 feet from the rear lot line.

Ms. Stanfield stated that the increase in enrollment would require approximately 19 additional parking spaces, based on an enrollment of 50 nursery school students and 49 private school students. She said the original staff report recommended denial of the special permit, because the original plat showed only 4 parking spaces provided on site. She said that after the publication of the staff report, the applicant submitted a revised plat that showed an additional 14 parking spaces located on site, but staff had not received it in time to do a full evaluation prior to the public hearing.

Ms. Stanfield stated that another revised plat had been submitted on July 23, 2001, which depicted the location of 24 parking spaces on the adjacent commercial property to the north. She said the 24 spaces, now formally a part of the application, met the requirements for the Zoning Ordinance for parking. She stated that with the increase in the school hours, staff believed that the extended hours would adversely impact traffic during peak hours. Ms. Stanfield stated that in response to this concern, a development condition had been included that required 50% of the trips generated by students be contained within the hours of 9:00 a.m. to 4:00 p.m.

Ms. Stanfield stated that just prior to the hearing, the applicant had submitted to staff two additional proposed amendments to replace development conditions Number 11 and 12. She stated that staff had not had the time to read the changes, but noted that the applicant had also requested to increase the number of employees to 12 instead of the 10 previously requested.

She said that staff concluded that SPA 77-M-33-2 was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance with the implementation of the revised proposed development conditions contained in Attachment 1 of the addendum dated July 24, 2001, and staff recommended approval.

Mr. Bishton reviewed the past testimonies from the Ravenwood's Citizens Association which gave support to the applicant. He also stated that he had a petition with 14 signatures from neighbors who endorsed the school and encouraged it to expand.

Mr. Bishton said that Raymond Popliman, owner of the Sears site, was supportive and a party to the proposed parking agreement. He said the family of Don MacAlvain, who was a principal partner of Juniper Lane Associates and whose family held a 99 year lease on the Sears site, told him that he would always be happy to provide parking, and would continue to do so in the future. He stated that his school had always had access to sufficient parking for every school family and staff members, and wanted the Board to take note that the school would still exceed the County's parking requirement by 25%.

Mr. Bishton stated he had new two proposed amendments which he would like to replace in the development conditions, which he had given to the Board and staff before the hearing.

Mr. Hammack questioned why the proposed amendment to development condition Number 11 stated that the parking arrangements that existed between the school and Sears could be terminated if the property was to be part of the special permit plat. Ms. Stanfield stated that the applicant had written permission from the property owner, Sears Department Store, to utilize that area.

Susan Langdon, Chief, Special Permit and Variance Branch, clarified that there were only four parking spaces on the front driveway of the school and that the applicant had amended the application and brought in additional land area that included 24 spaces on the adjacent commercial property. She said the commercial property would be part of the special permit and that it was bound by the special permit and development conditions. She stated the applicant had gotten permission from the owner to include those spaces in the special permit but the special permit would be voided if the applicant could no longer use the parking spaces.

Mr. Bishton stated that Sears had a 30 year lease on the property, but could cancel the agreement with a six month notice.

Mr. Hart clarified that on the previous plat, there had been a parking lot depicted off Nicholson Street but the applicant no longer wanted to use that area because he preferred to use the Sears lot.

Mr. Hart stated that neither staff's development condition Number 11 or Mr. Bishton's Number 11 went with the latest revised plat in the addendum. Ms. Stanfield stated that she had spoken to the engineer regarding the division of the properties as depicted and clarified how the land was actually divided. She said that the development condition would be changed to reference a tax map number for clarification.

Mr. Hart said that at the last hearing, the entitlement of the applicant to use the Sears parking spaces was uncertain and temporary. He asked if Mr. Bishton had gotten a written document to verify that the spaces would be available to the school.

Ms. Stanfield stated that when the 24 spaces became part of the special permit plat, it was seen that it was no longer a necessity to have a parking reduction. She said that Mr. Bishton did have a private legal agreement with the owner of the Sears property.

Mr. Hart asked if staff had reviewed the legal agreement to see that the notice provision existed, and whether the school had the entitlement to park their cars on the parking lot. Ms. Langdon stated that they had seen the agreement and that was the reason for the development condition Number 11. She said it was written so the applicant would be aware if his parking status changed he would not meet parking requirements and his special permit would be null and void.

Mr. Hart asked if the purpose of the fence was to enclose the children's play area. Ms. Langdon replied that staff had requested the fence for barrier and screening requirements.

Mr. Bishton stated he did not want to build a fence because he also owned the adjacent lot, and that the Ravenswood Citizen Association stated in their letter that they did not think any further landscaping, etc. was needed.

Mr. Hammack asked if the letter in the staff report, which gave a 30 days notice for the parking, had been superceded. Ms. Stanfield replied that it had been. Mr. Hammack asked to see the lease and questioned who had signed it on behalf of Sears.

Mr. Hammack stated that he was not ready to vote on the application with the various proposed changes and made a motion to defer the hearing for one month. Mr. Pammel seconded the motion.

Mr. Pammel stated that he did not like the final submission. He said he believed that the applicant was trying to get a special permit by attempting to put all parking on another site, which was inappropriate.

Mr. Hart stated that he would like to see further clarification of the parking situation and a valid lease from the appropriate owner one week before the case was scheduled. He asked staff to review development condition Number 11 and define which lots were for parking and which lots were owned by Sears. Mr. Hart said that he would also like staff to address what would be required of Mr. Bishton if the Sears parking lot was closed. Mr. Hart stated he would prefer that staff rewrite the verbiage for development conditions Number 11 and Number 12 for clarity.

Ms. Langdon stated that staff had seen all the supporting documents for the parking at Sears, but believed it had been returned to the applicant. She said she would request it again and give copies to the Board. She said that a revised plat would also be needed to show the outline of the portion of the Sears parking lot that would be brought into the special permit.

The Board members briefly discussed the validity of the parking agreement submitted on behalf of Sears and reaffirmed that they needed more detailed documentation and validation.

The motion carried by a 6-0 vote. Mr. Ribble was absent from the meeting. SPA 77-M-332 was deferred until September 11, 2001, at 9:00 a.m.

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Page 513, July 31, 2001, (Tape 2), Scheduled case of:

9:00 TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83- D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00 and 3/27/01).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michele Rosati, Agent, replied that it was.

William Mayland, Staff Coordinator, made staff's presentation as contained in the staff report. He said that the applicant sought approval to permit site modifications for the erection of a 100-foot telecommunications facility and a bell tower. He said the development plan had been amended to include the bell tower and an equipment building for storage. Mr. Mayland said that the application was in harmony with the Comprehensive Plan and staff recommended approval.

Ms. Rosati presented the special permit request as outlined in the statement of justification submitted with the application. She said that she was before the Board for the last land-use issue, to amend the existing special permit. She stated that the applicant had submitted six different designs. Ms. Rosati said that the structure was originally proposed for 140 feet in height and six feet wide and the dimensions had been reduced to 100 feet in height and 10 feet wide.

Ms. Rosati stated that this application was unique for Fairfax County. She said it was a bell tower design specifically to minimize the visual impact of the telecommunications facilities and allowed the use of the existing Reifsnyder house to contain all the telecommunications and bell tower equipment.

She stated that originally the applicant did not have the support of the Planning Commission, the Board of Supervisors, or the BZA staff. She said they now had the support of all three Boards due to a long collaborative process. Ms. Rosati said that the community was still split over the application and there were people present to speak in support and in opposition to this issue.

Ms. Rosati stated that the application that was before the Board was a slight site modification. She said there had been a series of special permit amendments on the property, including an addition of over 40,000 square feet of building space for the church. She said there were two significant conservation easements, which contained trees that measured 85 feet tall and would help to screen the proposed facility. Ms. Rosati stated that the telecommunications aspect of this application had already been approved as a special exception and the issue before the Board was the approval of a very minor site modification to the existing special permit. She said the location of the structure met or exceeded all applicable Zoning Ordinance requirements.

Ms. Rosati said that non-converted studies by professional appraisers had been introduced into the record. She said, according to the appraisers, these structures would not adversely affect or impact adjacent property values. Ms. Rosati stated that the applicant agreed with staff on all of the requirements for open space, landscaping, screening, and drainage.

Mr. Hart asked Ms. Rosati for clarification on development condition Number 17, Appendix 2, which dealt with the speaker system broadcasting the sound of bells. Ms. Rosati replied that the bells were computerized and amplified, and that the actual sound of bells would come from a computerized system housed inside the Reifsnyer house.

Ms. Gibb asked if the equipment building that was currently in use would continue to look like a residential house and Ms. Rosati replied that it would. She said that the building was currently empty and rundown, but the applicant anticipated renovating and maintaining the house to give it a residential look. She stated that a seven foot board on board fence would also be put up behind the house.

Mr. Hammack asked if the church agreed that the bells would not be played between 6:00 p.m. and 7:00 a.m. and Ms. Rosati replied that the applicant had agreed to that condition.

Chairman DiGiulian called for speakers in support of the application.

Tim Craig, Pastor of Dranesville Methodist Church, came forward to speak in support of the application. He stated that he had also been authorized to speak on behalf of the District Superintendent of the Arlington District, and they consented to the land use and supported the application. Mr. Craig stated that one of the concerns of the community was a trench in the cemetery of the church that was said to have contained 197 dead confederate soldiers. He said he did some research on that and found it to be untrue. He read from official records of General Stewart to support his claim.

Rusty Shaw, 1501 Kings Valley Court, Herndon, came forward to speak in support of the application. He said that his family had been members of the church for many years. He stated that he was an architect and in his professional opinion, the bell tower structure was done with expertise.

Kathryn Harrison Farrar, 11718 Leesburg Pike, Dranesville, came forward to speak in support of the application. She stated that she and her husband owned several pieces of property on the north side of Leesburg Pike, adjacent to Dranesville United Methodist Church. She said she would have full view of the proposed bell tower, and had no objections to it. She said she believed that the tower would be more attractive than multiple telephone and electric poles.

Glenda Rogers, 12208 Sugar Creek Court, Herndon, came forward to speak in support of the application. She said she lived less than one mile from the bell tower site and was in favor of the proposed tower.

Chairman DiGiulian called for speakers in opposition to the application.

Anna Lavanino came forward to speak in opposition to the application. She said she owned two lots directly across the street from the church and the site of the proposed bell tower. She asked that a video tape from

the Board of Supervisors Public Hearing, June 11, 2001, for SE 99-D-043, be played and it was. The five minute video tape contained a discussion among the BOS regarding the cell tower. Kathy Fairbairn, 12285 Millwood Landing Court, Herndon, came forward to speak in opposition to the application. She stated that she also represented the Millwood Pond Homeowners Association, and they were opposed to the proposed cellular tower.

Ms. Fairbairn stated that other requests for similar bell towers in Fairfax County had been denied because of strong local opposition. She said the community was almost unanimously opposed to the proposed use of the site and a petition with over 220 signatures from local property owners in opposition had been submitted to the Board.

Mr. Pammel asked Ms. Fairbairn if she was a subscriber to wireless services, and if so, could she give an estimate of how many people in her community were subscribers. She stated she was a subscriber and probably a majority of the people in her community were also subscribers.

Merrill Renaud, 11708 Sugarland Road, Herndon, came forward to speak in opposition to the application. She stated that she opposed the tower because she felt it was inappropriate for it to be located in her backyard. She said she believed that this was an easy way for the church to raise money and felt that the church's fundraising activities should not be at the expense of the neighbors.

Colin Desa, 1096 Liberty Meeting Court, came forward to speak in opposition to the application. He said that the County Comprehensive Plan stated that the Route 7 corridor had been planned for residential use. He stated his concern was that the facility was a commercial site and was an encroachment on the homeowners. Mr. Desa said that the facility also violated the Comprehensive Plan for childcare facilities, which was located at the church.

Mr. Pammel asked if Mr. Desa was a subscriber to a cell phone. Mr. Desa replied that he did not own one, but his company gave him a cell phone that he was required to carry because of his occupation.

Thelma Malveaux, 1097 Liberty Meeting Court, came forward to speak in opposition to the application. She stated that her home was located closest to the proposed site of the small house where the electrical equipment would be kept. She said she felt this facility was incompatible with the residential houses and zoning use. Ms. Malveaux stated her objections as: the site was extremely close to the homes; the housed high voltage electrical equipment put curious children at risk; the structure would adversely impact the neighboring homes by limiting the ability to install pools, etc.; traffic and noise pollution would be created by service trucks; and the cell tower was not in harmony with the neighborhood.

Paul Lanizka, 11850 Timber Knoll Court, Herndon, came forward to speak in opposition to the application. He stated that he was a cellular user, and he did not oppose the tower, but did oppose the residential location. He said that he believed that in the winter, the tower would have a negative visual impact for the neighbors.

Henry Renaud, 11708 Sugarland Road, Herndon, came forward to speak in opposition to the application. He stated that he had two cellular phones he used regularly. He said he was opposed to the tower at the proposed location. He said that in 1996 the BZA had looked carefully and in-depth at the special permit that was granted to the church at that time and he believed that any further development would be detrimental to the area.

Zita Desa, 1096 Liberty Meeting Court, Herndon, came forward to speak in opposition to the application. She stated that she felt the safety of her three young boys was at risk, as children can easily climb a 6 foot fence. She said there were no warning signs of high voltage and that she felt that the house would be extremely dangerous. She stated she felt that all the heat and radiation emitted from the house could possibly cause the house to catch on fire.

Cindy Brake came forward to speak in opposition to the application. She stated that she was a neighbor of the Dranesville Church and she also had a letter of opposition from Tom Land, who could not attend the hearing. She said they were both members of the church and they were concerned about the location of the tower and felt that the community's best interest had not been taken into consideration.

Mr. Pammel asked Ms. Brake if she was a subscriber of wireless services. She replied that she was not, and that she used an old fashioned telephone.

Angela Love, 1120 Stuart Hills Way, Herndon, came forward to speak in opposition to the application. She stated she believed that if the tower were to be built at that location, it would add more commercialism to the area. She said that telephone and electrical wires were necessary, but she felt the tower would not provide a necessary service to the community.

Mr. Pammel asked Ms. Love if she was a subscriber to wireless services. She replied that she was.

Bert Dumpe, Ergotech Association, came forward to speak in opposition to the application. She stated that she was not a subscriber of wireless services. She spoke of the financial status of the church and explained in-depth why the church was in debt. She said the church was always in need of money and she felt it was now using the bell tower to get it.

Kim Fox, 11851 Timber Knoll Court, Herndon, came forward to speak in opposition to the application. She stated she was one of 250 members who signed the petition against the bell tower. She referred to written materials that she had given to the Board and she said her concerns were with residential issues, historical issues, and spiritual issues. She made a small presentation on the overhead view graph that emphasized her points.

Mr. Pammel asked Ms. Fox if she was a subscriber of wireless communication. She replied that she had been for the past two years and never had a problem sending or receiving calls.

David Hutchinson, 11867 Timber Knoll Court, came forward to speak in opposition to the application. He stated that when he bought his house, his neighborhood had been serene and quiet. He said he believed that the bell tower would have a negative visual impact for many property owners. He stated that the fencing presented a danger to the children in the community. He said he spent 25-30 hours collecting signatures for the opposition's petition, and he found that there was a huge opposition to this facility. Mr. Hutchinson stated that he was a cellular subscriber, but would get rid of it if the Board would deny the application.

Fred Ackbari, 1110 Stuart Road, Herndon, came forward to speak in opposition to the application. He said that he had conducted recorded studies of telephone access by three main carriers in that area and had given the studies to the Planning Commission. He spoke of the uninterrupted coverage in the proximity of the homes and felt that the beneficial use had not been demonstrated by the applicant. He stated that the applicant had made no effort to find a more suitable site for the bell tower and spoke in-depth of the environmental and health issues associated with the tower.

Mr. Pammel asked Mr. Ackbari if he was a subscriber of wireless services. Mr. Ackbari replied that he was and that he got excellent service.

Christine Sleeper, 115 Clinch Road, came forward to speak in opposition to the application. She said she had lived in her home for 32 years, and had gone out recently to measure the distance from her house to the bell tower and it was 160 feet. She felt that was an encroachment to her house and was adamantly opposed to the bell tower.

Ms. Rosati stated, in rebuttal, that the issue before the Board was a minor site modification, and not the use of the land. She said the land use for cellular structures and the proving of need were considerations of the special exception process, which had already taken place and had been approved. She said that the tower met all of the applicable Zoning Ordinance and Comprehensive Plan recommendations and requirements. She stated that the only traffic going to the tower would be monthly visits for maintenance.

Ms. Rosati stated that the tower had been recommended for approval by staff. She said the Board of Supervisors and Planning Commission spent a long time considering the towers design, location and height. She said the applicant had compromised with the Board and had lowered the tower by forty feet.

Mr. Pammel asked Ms. Rosati that if the Board did not approve the special permit, that the SE would be null and void. Ms. Rosati referred the question to staff and Mr. Mayland stated that was correct.

Mr. Pammel stated that his concern was not with the bell tower, but with the structure that would house the equipment. He said he knew there was going to be a face-lifting but asked if anything further would be done for safety. Ms. Rosati stated that the applicant had initiated a Phase One Environmental Assessment and stated that every effort would be made to ensure the safety of the structure.

Mr. Pammel stated that he had overseen the installation of three similar structures. He said that each one had been built so that emissions would not escape the building. He stated his concern was that the information presented by Ms. Rosati regarding the facility would not satisfy the criteria of a structure that was sound and safe and did not meet all of the standards relative to the emissions that would occur with the use of the equipment.

Ms. Rosati stated that the facility would meet all local, state, and federal requirements.

Chairman DiGiulian closed the public hearing.

Mr. Hart made the motion for the BZA to defer decision for two weeks. Mr. Hammack seconded the motion.

Mr. Hart stated that the Board members had received a lot of written material regarding the case and more had come in that morning and he would like time to digest all the information.

Mr. Pammel stated that his inquiry regarding wireless service was to verify pertinent information that he had received. He said he understood that the demand for wireless services was greater than what the companies could provide because of the lack of facilities such as the one proposed. Mr. Pammel stated that the service in some areas was not good due to the lack of such facilities.

Mr. Kelley stated that he was opposed to the special permit and felt that the location was a bad choice. He said that he was a cellular subscriber. He said he was also concerned about the deletion of some of the parking spaces at the church and there had been testimony that the church membership has grown. He said he did not support the deletion of parking spaces.

Mr. Mayland stated that the first site would have required the deletion of some parking spaces, but that would not be necessary for the current site.

The motion to defer for decision only carried by a vote of 6-0. Mr. Ribble was absent from the meeting. The special permit amendment application SPA 83-D-022-2 was deferred to August 14, 2001, at 9:00 a.m.

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The Board recessed at 12:05 p.m. and reconvened at 12:10 p.m.

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Page 517, July 31, 2001, (Tape 2), Scheduled case of:

9:30 ERIC H. AND JOYCE H. WYANT, A 2001-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area requirements of the Zoning Ordinance when recorded in its current configuration, does not meet current minimum lot size requirements of the R-1 District, was not legally subdivided and is not buildable under Zoning Ordinance provisions. Located at 8405 Rainbow Rd. on approx. 27,269 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((1)) 46.

Mr. Hart made the disclosure that currently he had three other matters involving different attorneys from Mr. Hanes' firm, but felt that would not affect his ability to participate in this case. He made a second disclosure that although the 1966 deed was prepared by the firm of Dixon and Horan, he had not been associated with them at that time and that would not affect his ability to participate in this hearing.

John Bell, Zoning Administration Division, stated that this was an appeal of the Zoning Administrator's

determination that the appellants property located at 8405 Rainbow Road had not met the minimum lot area requirements of the Zoning Ordinance when recorded in its current configuration. He said it had not met the current lot size requirements of the R-1 district, it had not been legally subdivided, and was not a buildable lot under the current Zoning Ordinance provisions.

Mr. Bell stated that the staff found that the original subdivision of the property by deed in 1945 resulted in Lot 46 having a lot area of approximately 31,000 square feet. He said in 1945 the property was zoned as a Rural Residence District and met the lot area and width requirements, and since that time, the lot had never received subdivision approval from Fairfax County. Mr. Bell stated that the appellants claimed that the original subdivision of the property was done under the "Free Cut" provisions, but those provisions were not instituted until 1947.

Mr. Bell stated that the Quick Claim Deed filed in 1966 further reduced the area of Lot 46. He said at that time the area was zoned RE-1, which required a minimum lot area of one acre, and that there was no documentation showing that this change had been approved by the County.

Mr. Bell read excerpts from Section 2-405 of the Zoning Ordinance, and from Paragraph One of Section 18-603. He explained how it applied to the subject property and that the lot had not met the Zoning Ordinance requirements for subdivisions. Mr. Bell stated that the Zoning Administrator determined that the appellant's property had not met the minimum lot area requirements which were in effect at the time the property was recorded in its current configuration in 1966.

Mr. Bell stated that the appellant's grounds for appeal noted that the BZA had made a similar determination for Lot 49, which was directly across the street from Lot 46. He said this was part of the same subdivision that created the subject property and he stated that the appeal for Lot 49 was recently heard by the BZA and the Zoning Administrator's determination had been upheld.

Grayson Hanes, Agent, 3110 Fairview Park Drive, Falls Church, Virginia, stated that he would like a deferral so that he could get a copy of the subdivision Ordinance for Fairfax County in 1945 and to research the definition of a subdivision back in the 1940's and 1960's.

Mr. Hanes said that the subject property was inherited in 1988 by the Wyants and Lot 46 contained 2,700 square feet. He said the difference between Lot 46 and Lot 49 was that, at one time, Lot 46 had a house on it. He said the house at one time was a residence, but became run down and was left vacant for some time. He stated Fairfax County informed the applicants that they needed to tear the house down as it was uninhabitable. He said the Wyants paid for the demolition of the house and when they applied for a permit to rebuild, the County said they couldn't build on it due to the 1945 zoning laws, even though they had been paying taxes on the property since 1988.

Mr. Hanes gave a detailed synopsis of the facts he had been able to obtain prior to the hearing and asked for a deferral to do further research on Lot 46.

William Shoup, Deputy Zoning Administrator, said he would not object to a deferral, as this case was actually a two-prong case dealing with the Ordinances of 1945 and 1966. He said he also believed that additional information would be helpful in making a determination.

There was a brief discussion among the Board regarding the language in the Virginia Codes that Mr. Hanes had submitted and pertinent information that would be needed.

Mr. Hammack moved to defer the case until September 18, 2001, at 7:30 p.m., and Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 518, July 31, 2001, (Tape 3), Scheduled case of:

9:30 KRIS S. HANSEN, MELANIE J. DALSIMER AND ISABEL DALSIMER, A 2001-MA-012

Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are allowing a dump truck to be parked in the R-3 District in violation of Par. 16 of Sect. 10-102 of the Zoning Ordinance and the conditions of the Home Occupation Permit. Located at 6812 Fern La. on approx. 13,744 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((3)) 169.

William Shoup, Deputy Zoning Administrator, stated that this appeal dealt with a violation of a dump trunk on the appellant's property located at 6812 Fern Lane. He said the Zoning Ordinance addressed the parking of commercial vehicles on residential property and it allowed for one commercial vehicle, but specifically precluded parking certain types of vehicles, which included dump trucks.

Mr. Shoup said that the appellant's truck was a Ford F-150 pick-up truck with a gross weight of 10,000 pounds and a rated carrying capacity of 4,500 pounds and the truck also contained lettering advertising the appellants home based business. He said the truck had a dump bed that was designed with a hydraulic lift and submitted photographs to the Board of the truck to review.

Mr. Shoup stated that the truck was defined in the Zoning Ordinance as a commercial vehicle. He said the appellants were not disputing the type of truck they had, but they believed that since the truck was not a large dump truck, it should not be subject to the prohibitions in the Zoning Ordinance.

Mr. Shoup summarized by saying that the appellant's truck was fitted with a dump unit, was used as a dump truck and satisfied the Zoning Ordinance criteria to be considered a dump truck. He said that two very similar previous hearings went before the BZA in the 1980's and the BZA upheld the Zoning Administrator's determination at that time.

Steven Fox, Agent, stated that the Zoning Ordinance provision appeared to be flawed in its drafting or flawed in its application. He said the appellants did not contest that the truck was a commercial vehicle. He said the vehicle in question was a truck that dumped, which he stated did not make it a dump truck within the contemplation of the Ordinance written by the Board of Supervisors. He said that the vehicle was a pickup truck with a small body that tilted. Mr. Fox spoke of the different types of dump trucks and how wreckers and certain SUV's could also be considered dump trucks in specific situations. He stated that he did not believe the Zoning Ordinance was meant for small trucks such as the appellant's.

Chairman DiGiulian stated that in observing photographs of the vehicle that it had dual wheels on the rear. He questioned Mr. Fox about his contention that the vehicle was a small F-150, as he did not believe that F-150's had dual wheels. Chairman DiGiulian stated that the bed of the truck looked like a dump truck bed and asked to what extent the springs had been beefed up.

Mr. Fox spoke briefly with the appellant and then affirmed that the truck was in fact an F-350 and apologized for his error. He said that the springs had not been beefed up, but that the truck was an ordinary F-350.

Mr. Pammel asked how the vehicle was registered and Mr. Fox replied that it was registered as a truck.

Mr. Hart stated that some letters from neighbors of the appellant complained about the storage of pesticides and fertilizers being stored at the site. He asked if there was more than an office and the truck at the location. Mr. Fox replied that no chemicals were kept on site.

Mr. Hart questioned the construction of a huge garage at the rear of the property, and Mr. Fox replied that the appellant had a building permit from the County for that.

Chairman DiGiulian called for speakers.

Kathryn Shaw, 7820 Holmes Run Drive, came forward to speak in support of the appeal. She stated that she was also a landscaper and the appellant had educated her extensively about organic gardening and she believed that chemicals were not an issue. She spoke in-depth about the beauty of a garden and how home-based businesses were becoming more popular and said she thought the truck was cute.

Mr. Shoup stated that the drafting of the provision was not the issue at the hearing. He said that the truck

had the capability of dumping, had a true dump bed on it and was a dump truck, and therefore was prohibited to be parked on the property.

Mr. Fox stated he thought the Board of Supervisors had made a distinction in the types of trucks they were talking about, which were really huge trucks or similar vehicles. He felt that the Ordinance was dated and the trend of the small pickup trucks had not been considered. Mr. Fox said he did not think the Ordinance was intended for people such as the appellant.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made the motion to uphold the Zoning Administrator's determination. Mr. Kelley seconded the motion which carried with a 5-0 vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 520, July 31, 2001, (Tape 3), After Agenda Items

Request for Intent to Defer
Delano Container Services
A 2001-LE-001

William Shoup, Deputy Zoning Administrator, stated that the BZA considered this item for deferral on July 10, 2001. The Board deferred action on the request as an After Agenda item for July 31, 2001. He said the case was scheduled to be heard on August 7, 2001, but the notices had not been mailed before the July 23, 2001, deadline and the hearing could not go forth as scheduled. Mr. Shoup said that on July 10, 2001, the Board had asked the appellant to work with DPWES to see if they could work on the site plan issues and give a progress report on July 31, 2001.

Fred Wagner, Agent, stated that he met with Mr. Sidhu from DPWES on July 19, 2001. He said that Mr. Sidhu reviewed the site plan application that was submitted and he had not yet heard back from DPWES in writing and had not been able to not move forward. Mr. Wagner said that it was the appellant's intent to review any information sent back to him, and respond to it accordingly.

Mr. Wagner stated that he had also met briefly with Mr. Nassimbeni of DPWES and was told that the County required full site plans, and that the County would deny in advance any waivers suggested for major site plans. He said he was concerned over this as the Zoning Ordinance stated that each application should be reviewed on its merits and the information provided by the applicants.

Mr. Wagner stated that he did not believe a hearing on this matter at this time would be productive as they were still gathering information. He said that he originally asked the Board for a 60 to 90 day deferral to allow time to go through all of the necessary processes.

Mr. Hart asked Mr. Wagner why the notices did not go out in a timely fashion. Mr. Wagner replied that they went out three days late because there was some confusion between he and Mr. Bell. He said he misunderstood the necessity of sending out the notices as he thought he was to go back to the Board with a status report and didn't believe they would go forward with the scheduled hearing date.

Mr. Shoup stated that he believed they would go forward with the scheduled hearing date unless the Board took action to defer it and he was not notified of any confusion.

Mr. Wagner said that when he met with Mr. Bell in the office, it was unclear to him what the purpose was of the July 31, 2001, hearing, which was one week before the scheduled hearing date. He stated he understood that the upcoming hearing was to address the Notice of Violation, and since the appellant was now in the process of submitting plans and getting comments from the county in order to be in compliance, he believed there was nothing to discuss at the scheduled hearing.

Mr. Wagner stated that the County told him that he would hear back from them in 30-60 days. He said the

site plan had been filed July 5, 2001, and he expected to receive some information back soon.

Chairman DiGiulian asked Mr. Wagner if the comments came back and the County would not accept his site plan, what time-frame would be needed to prepare a major site plan. Mr. Wagner replied that was why he had asked for the 60 to 90 days. He would then have time to review the comments and take the necessary action.

Chairman DiGiulian stated that if the Board approved his request for a deferral, they would not accept another deferral if the notices were not sent out.

Mr. Shoup clarified that the issue of this violation was that the appellant was operating without a site plan and a Non-Rup. He said that the appellants were challenging the application of the site plan provisions, which were a separate issue. He said if DPWES took action under the Zoning Ordinance provisions, they would need to do that separately.

Mr. Wagner stated that this was not an appeal on whether a major or minor site plan was needed, but an appeal on whether a plan had been submitted.

Mr. Kelley clarified his understanding that the Board could either dismiss or permit the deferral.

Mr. Shoup stated that in the past the Board had taken action to dismiss cases when notices had not been sent out, and that was an option in this case.

Mr. Kelley said that he questioned the sincerity of the appellant in this case.

Mr. Wagner summarized the expense that the appellant had gone through so far, and the many meetings that had taken place. He said that after the initial meetings with the County, he understood that a minor site plan would be achievable, but now was being told a different story.

Mr. Hart stated that the appellant had given the same pitch to the Board the last time they came before the Board. He said the Board had similar situations before where notices were not sent out and the applicants counted on getting a deferral, which was not necessarily granted.

Mr. Hart stated that he took issue with Mr. Wagner's representation that the County was somehow changing their position when it had been abundantly clear at the previous hearing that the point of an intermediate review was for Mr. Wagner to present a status report to the Board.

Mr. Hammack made a motion to continue the hearing until November 13, 2001, and Mr. Pammel seconded the motion. The motion carried with a 3-2 vote. Mr. Hart and Mr. Kelley voted against the motion. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 521, July 31, 2001, (Tape 3), After Agenda Items:

Consideration of Acceptance of Appeal
Tavares Concrete Company, Inc.

Mr. Shoup stated that the Tavares Concrete Company, Inc. had written a letter to withdraw the appeal.

Mr. Hart made the disclosure that he had worked with Mr. Flynn's firm on several other cases at various times, but did not feel that would affect his ability to participate in this case.

Mr. Pammel moved to accept the Request for Withdrawal from Tavares Concrete Company, Inc. Mr. Hammack seconded the motion which carried with a 5-0 vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 522, July 31, 2001, (Tape 3), After Agenda Items:

Approval of
March 6, 2001, and March 13, 2001 Minutes

Mr. Hart moved to approve the Minutes of March 6 and March 13, 2001. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 522, July 31, 2001, (Tape 3), After Agenda Items:

Approval of
Resolutions of July 24, 2001

Mr. Hammack moved to approve the Resolutions of July 24, 2001. Mr. Hart seconded the motion which carried with a 4-0-1 vote. Mr. Kelley abstained from the vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 522, July 31, 2001, (Tape 3), After Agenda Items:

Request for Intent to Defer
Kim's Oriental Herb & Acupuncture
SP 01-B-007

The Board had a brief discussion regarding the nature of the deferral. Mr. Hart moved to defer the hearing until August 21, 2001, at 9:00 a.m. for decision only. Mr. Hammack seconded the motion which carried with a vote of 4-0-1. Mr. Kelley abstained from the vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 522, July 31, 2001, (Tape 3), After Agenda Items:

Approval of Revised Plat
Rigoberto Posada
SP 01-M-014

Mr. Hart moved to approve the plat. Mr. Pammel seconded the motion which carried with a 5-0 vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

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Page 522, July 31, 2001, (Tape 3), After Agenda Items:

Mr. Pammel made a motion to have the Zoning Administrator provide a formal interpretation with respect to the jurisdiction of the Board of Zoning Appeals and/or the Board of Supervisors under the recently amended amendments to the Zoning Ordinance relative to Special Permits, Special Exceptions, and a specific reference to the application of the Mosque on Leesburg Pike.

Mr. Hammack seconded the motion which carried with a 5-0 vote. Mr. Ribble was absent from the meeting, and Ms. Gibb was not present for the vote.

The Board briefly discussed a letter from the County Attorney regarding the Dry Cleaning Depot.

Mr. Kelley asked Ms. Langdon to have Pat Taves, County Attorney, to clarify the letter that had been issued as a handout to the Board on the day of the hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 1:43 p.m.

Minutes by: Judith A. Gobbi

Approved on: June 4, 2002

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, August 7, 2001. 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 policies and policies 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 525 August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JIM AND JENNY MOUNTJOY, VC 01-V-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 11371 River Rd. on approx. 12,614 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 6A, 7 - 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. James and Jenny Mountjoy, 11371 River Road, Lorton, Virginia, replied that it was. Tom Mahoney, 7371 H. Lockport Place, Lorton, Virginia, also reaffirmed the affidavit.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a sunroom addition to be located 14.3 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 17 feet was requested.

Tom Mahoney, agent for applicants, stated that the property in question had less square footage than the surrounding vacant properties. He explained that the rear portion of the property extended at a slope down to the river.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-V-088 for the reason stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JIM AND JENNY MOUNTJOY, VC 01-V-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.3 ft. from rear lot line. Located at 11371 River Rd. on approx. 12,614 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 6A, 7 - 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 August 7, 2001; 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. The photographs indicate a very steep drop off to the rear of the property down to the river.
4. The sunroom would not negatively impact anyone to the rear of the property.
5. The placement of the house on the property does not allow for the sunroom to be 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 an addition as shown on the plat prepared by R. C. Fields, Jr., dated March 15, 2001, as 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. 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 15, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SUSAN T. & MICHAEL P. BIGMAN, VC 01-B-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 8611 Thames St. on approx. 13,021 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Susan and Michael Bigman, 8611 Thames Street, Springfield, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a second story addition, which consisted of an extension of existing bedrooms to be located 5.5 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 6.5 feet was requested.

Mr. and Mrs. Bigman presented the variance request as outlined in the statement of justification submitted with the application. Mrs. Bigman stated that the additional bedroom was needed to provide more living space and to make a total of four bedrooms. She stated that a bedroom in any other location was not practical because it would eliminate windows from existing bedrooms.

Chairman DiGiulian asked if the addition was two stories high. Mrs. Bigman replied that it was a one-story ranch style home with a basement and the addition was on the first floor; however, the back of the house looked like a second floor.

Mr. Hammack asked the applicants if the request was for an enlargement of an existing bedroom or for the construction of an additional bedroom. Mrs. Bigman replied that it was for the construction of an additional bedroom. Mr. Hammack asked if there was any other place that they could construct the bedroom. Ms. Bigman stated that the bedroom could not be located anywhere else because it would block windows from the existing bedrooms. Mr. Hammack asked the applicants if they had seen the opposition letter that was submitted. Mrs. Bigman replied that she had seen the letter and stated that the addition would not be visible from the street and the only view that the neighbor in opposition would have was from their back deck.

Mr. Hart asked the applicants if there would be a basement to the proposed addition. Mrs. Bigman stated that there would not be anything underneath the proposed addition but agreed to install lattice around the sides to make for a better appearance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-B-084 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SUSAN T. & MICHAEL P. BIGMAN, VC 01-B-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line. Located at 8611 Thames St. on approx. 13,021 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((4)) 45. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 2001; 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 standards for the

granting of a variance.
3. The topography falls off sharply to the rear.
4. The house is located on the property at an angle.
5. The location is the only logical one for the use of the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition as shown on the plat prepared by John A. Kephart, dated, March 16, 2001, and signed May 8, 2001, as 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. Hart 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 August 15, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 529 August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHRISTOPHER J. & PATRICIA S. INGLESE, SP 01-D-035 Appl. under Sect(s). 3 -303 of the Zoning Ordinance to permit a home professional office. Located at 1451 Cedar Ave. on approx. 7,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7)) (3) 66 and 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher and Patricia Inglese, 1451 Cedar Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, presented the special permit request as contained in the staff report. The applicants requested approval of a special permit for a home professional office to provide certified public accounting services from the basement of their home to serve one client at a time with a maximum of four clients per day. The public accounting service consisted of the applicant and his wife. The proposed office would be located in the basement of the dwelling which had access to the rear yard. Approximately 567 square feet of the 2,600 square foot dwelling was proposed to be utilized for the home professional office for a total of 22% of the dwelling. There was no new construction or other physical changes proposed for the site. The proposed hours of operation for the home professional office were from 9:30 a.m. to 6:30 p.m., Monday through Friday and during the tax season on Saturdays, from 9:30 a.m. to 6:30 p.m. February 1 through April 15. Staff recommended approval of the application.

Mr. and Mrs. Inglese presented the special permit request as outlined in the statement of justification submitted with the application. Mr. Inglese stated that he was the only full time employee of the business and his wife worked part-time doing the bookkeeping. He said that he only met with one client at a time and for about 9.5 months out of the year they averaged less than one client per day and for the other 2.5 months they averaged about 3 clients per day. He explained that the office hours would start at 9:30 a.m. and would not go beyond 6:30 p.m. He stated that there were 6 parking spaces on the property. He said that there would only be one client seen at a time and the business would not cause traffic problems in the neighborhood. Mr. Inglese indicated that he had read a letter from their neighbor who was in opposition. He stated that he had spoken with this neighbor before filing for the special permit and they had agreed that there would be no parking in front of her home. He stated that this neighbor had not had any other concerns at that time. Mr. Inglese stated that most of his clients used the mail or fax as a way of submitting their tax information to him. He said that on the occasions when he met with clients his driveway was large enough to accommodate their cars.

There was discussion between the applicant, the Board, and staff as to whether or not the clients would be coming in two different vehicles. Ms. Langdon stated that if the Board wished, they could add development conditions that only one car per client was allowed.

Mr. Hart asked if there was any screening between the neighbor in opposition and the applicant's property. Mr. Inglese replied that there was a row of trees.

Chairman DiGiulian called for speakers.

Lorraine Davis, 1455 Cedar Avenue, came forward to speak in opposition. She stated that there was insufficient parking on the applicants' property to accommodate the requested commercial use. She said that additional parking would lead to parking on the street, which had no sidewalks or in the graveled area in front of her home.

Mr. Inglese, in his rebuttal, stated that none of his clients would park on the street or in front of the Davis home. He explained that he had adequate parking spaces on his property with ample area to turn around to

pull out of the driveway.

Mrs. Inglese illustrated the layout of the driveway and the different possibilities for parking arrangements.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that the application met all of the required standards for the granting of a special permit.

Mr. Kelley stated that he could not support the application because there was inadequate parking on the property.

Mr. Hammack stated that he was opposed to the application due to the hours of operation.

Mr. Hart moved to approve SP 01-D-035. Mr. Pammel seconded the motion which failed by a vote of 2-5. Chairman DiGiulian, Ms. Gibb, Mr. Hammack, Mr. Kelley and Mr. Ribble voted against the motion.

A REQUEST FOR RECONSIDERATION WAS APPROVED ON AUGUST 14, 2001, AND A NEW HEARING WAS SCHEDULED FOR OCTOBER 23, 2001.

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Page 530 August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. THANH CHAU HUYNH, SP 01-L-033 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 accessory structure to remain 2.6 ft. from side lot line and 6.8 ft. from rear lot line and addition 14.8 ft. from side lot line. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 01-L-085).

9:00 A.M. THANH CHAU HUYNH, VC 01-L-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and to permit a 4.5 ft. high fence to remain in front yard. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with SP 01-L-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. John Ba Pham, 2922 Willston Place, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit for the reduction of minimum yard requirements based on an error in building location to permit a 28 X 22 foot shed to remain 2.6 feet from the side lot line and 6.8 feet from the rear lot line and to allow an addition to remain 14.8 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet and the minimum rear yard is the distance equal to the height of the structure; therefore, the shed represented an error of 17.4 feet for the side yard and 1.8 feet for the rear yard. The addition was located 5.2 feet in error from the side lot line. The applicant also requested a variance to permit an addition to be located 7.0 feet from the side lot line and a variance to allow a 4.5 foot fence to remain in the front yard. The addition required a variance of 13 feet and the fence would require a variance of .5 feet.

Mr. Pham presented the applications as contained in the statements of justification submitted with the applications. He stated that the applicant wanted to construct a two-story addition to provide additional living space. He said that the shed had existed upon the purchase of the home and the error was done in good faith. He explained that the applicant wanted the variance to permit an extended width of his driveway because his wife was not a good driver and she needed more room to turn her vehicle around.

There was conversation between the Board, staff, and the applicant as to what was actually being requested.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to defer the applications to September 24, 2001, at 9:00 a.m., to give staff time to work with

the applicant and their agent to present the material in a clearer fashion. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 531, August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FOX MILL WOODS SWIM & TENNIS CLUB, INC., SPA 81-C-093-5 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 previously approved for a community recreation facility to permit building addition and site modifications. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Admin moved from 5/29/01 and 7/3/01)

This application was administratively moved to September 18, 2001, at 9:00 a.m.

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Page 531, August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FRANK AND ROSWITHA MCGLYNN, SP 01-Y-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 31.5 ft. from the front lot line. Located at 3816 Chantilly Rd. on approx. 30,000 sq. ft. of land zoned R-1. Sully District. Tax Map 34-4 ((5)) 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. Frank McGlynn, 3816 Chantilly Road, Chantilly, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. The applicant requested a reduction to minimum yard requirements based on error in building location to permit a dwelling to remain 31.5 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, the amount of error is 8.5 feet.

Vince Nystrom, general contractor, presented the special permit requirement as outlined in the statement of justification submitted with the application. Mr. Nystrom explained that there was an error made between the excavation and the concrete footing that was installed on the garage; therefore, the error was made in good faith.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 01-Y-040 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FRANK AND ROSWITHA MCGLYNN, SP 01-Y-040 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 31.5 ft. from front lot line. Located at 3816 Chantilly Rd. on approx. 30,000 sq. ft. of land zoned R-1. Sully District. Tax Map 34-4 ((5)) 13. 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 7, 2001;

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 William E. Ramsey, dated April 30, 2001, 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 App eals and became final on August 15, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 532, August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24. (moved from 5/1/01; continued from 7/10/01 and 7/24/01)

Mr. Pammel moved to defer SP 01-B-007 to August 21, 2001, at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 533, August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. SYMPHONY MEADOWS L.C., VC 01-H-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of the Dulles Airport Access Rd. Located at 9605 Chathams Ford Dr. on approx. 36,025 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((21)) 9. **(RECONSIDERATION GRANTED)**

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John Secas, Land Design Consultants, Inc., 8569-E Sudley Road, Manassas, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit construction of a single family detached dwelling to be located within 200 feet of the Dulles Airport Access Road. The Zoning Ordinance requires that residential structures be located at least 200 feet from the Dulles Airport Access Road; therefore, a variance of 40 feet was requested.

Mr. Hammack asked what happened to the original home. Ms. Josiah answered that the original home was demolished by fire.

Mr. Secas presented the variance application as outlined in the statement of justification submitted with the application. He explained that the original house was substandard therefore there were no footings. He said that upon meeting with the County he was informed that he would need a variance to build on the existing footprint because it did not comply with the current zoning. He said that the proposed house had been turned and set to the back of the property to be as far away from the Dulles Toll Road as possible. He stated that the house had been turned so the garage side, which only had three windows, faced the Toll Road. He said that a fence would run along the side of the rear yard to add an additional noise buffer.

Ms. Gibb asked staff if a house could have been constructed on the original footers. Ms. Josiah stated that it was possible.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-H-033 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SYMPHONY MEADOWS L.C., VC 01-H-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling within 200 ft. of the Dulles Airport Access Rd. Located at 9605 Chathams Ford Dr. on approx. 36,025 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((21)) 9. **(RECONSIDERATION APPROVED)** 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 August 7, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' testimony and statement of justification indicated compliance with the required standards for the granting of a variance.
3. The presentation was different from the earlier one, which lacked the testimony regarding the purchase of the property and the dwelling that was previously located on the site.
4. The applicants acquired the property in good faith with the belief that a home could be constructed on the foundation of the previous dwelling.
5. The applicants made an effort to reduce the noise impact by moving the house.
6. The variance request was reduced to 40 feet.
7. The house was also turned around to reduce the impact of noise from the Dulles Toll Road.
8. The lot is exceptionally narrow in consideration of the 200 foot restriction and the other zoning yard requirements under R-1 zoning.
9. An extraordinary situation is presented because without a variance there would only be an 18-foot building envelope.
10. The variance will not be a condition, which is so general or recurring nature as to make reasonably practical the formulation of a general regulation.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Land Design Consultants dated August, 2001, and signed July 30, 2001, submitted with this application and is not transferable to other land. 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 this lot.

2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.

3. A fence shall be installed from the northeast corner of the dwelling to the eastern lot line. The fence shall be a minimum of six (6) feet in height and no greater than seven (7) feet in height, and shall consist of solid wood with no gaps between the ground and the top of the fence; however, a secure fitting solid wood gate is allowable.

4. In order to reduce interior noise to a level of approximately DNL 45 DBA, the applicant shall utilize the following acoustical treatment measures in the construction of the dwelling:

   - Exterior walls shall have a laboratory sound transmission class (STC) rating of no less than 45.
   - Doors and windows shall have a laboratory sound transmission class (STC) rating of no less than 37 unless windows constitute more than 20% of any façade exposed to noise levels of DNL 65 dBA or above. If windows constitute more than 20% of an exposed façade, the windows shall have an STC rating of no less than 45.
   - All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 15, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 535, August 7, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CENTREVILLE PRESCHOOL, INC., SPA 90-S-091 Appl. under Sect(s). 3-103 and 4-803 of the Zoning Ordinance to amend SP 90-S-091 previously approved for a child care center and nursery school to permit change in development conditions. Located at 13916 Braddock Rd. on approx. 1.07 ac. of land zoned C-8, R-1, WS, SC and HC. Sully District. Tax Map 54-4 ((1)) 32.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kim Carter, 1633 Birch Drive, Chantilly, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his participation in the meeting regarding this case.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicants sought approval to amend SP 90-S-091 previously approved for a child care center and nursery school to permit a change in development conditions specifically to eliminate reference to a term limit for operation of the facility. The applicants did not request any other changes. Staff recommended approval.

Ms. Carter presented the special permit amendment request as outlined in the statement of justification submitted with the application. She stated that the applicants wanted to eliminate the term limits for the life of the lease.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve SPA 90-S-091 for the reasons stated in the Resolution. //

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CENTREVILLE PRESCHOOL, INC., SPA 90-S-091 Appl. under Sect(s). 3-103 and 4-803 of the Zoning Ordinance to amend SP 90-S-091 previously approved for a child care center and nursery school to permit change in development conditions. Located at 13916 Braddock Rd. on approx. 1.07 ac. of land zoned C-8, R-1, WS, SC and HC. Sully District. Tax Map 54-4 ((1)) 32. 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 7, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the lessees of the property.

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). 3-102 and 4-803 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 and is not transferable without further action of this Board, and is for the location indicated on the application, 13916 Braddock Road (1.07 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 Basham Associates dated February 4, 1991, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, 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 daily enrollment of children in the nursery school/child care center shall not exceed sixty-six (66) children, a maximum of thirty-three (33) students shall be permitted in each of the morning and afternoon sessions.

6. The maximum number of employees shall be limited to seven (7).

7. Hours of operation for the child care/nursery school sessions shall be limited to 8:50 a.m. until 11:35 a.m. and 12:30 p.m. until 3:30 p.m., Monday through Friday. Occasional after-hour meetings related to school activities may be held provided all parking for such meetings can be accommodated on site.

8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11

and shall be a maximum of nineteen (19) spaces. All parking shall be on site and be designed according to the Public Facilities Manual (PFM) requirements. Compliance with the requirements shall be determined at site plan review by the Director, DPWES.

9. Transitional Screening 1, and the Barrier requirement D, E or F shall be waived along the southernmost lot line, within the area abutting land zoned R-1. Evergreen landscaped plantings shall be provided completely around the play area to screen this play area from the adjacent properties. Trees which are appropriate for parking lot landscaping shall be provided within and around the perimeter of the parking area. The size, type and location of the plantings shall be approved by the Urban Forester.

10. Ancillary easements shall be provided along the southern and western boundary lines to facilitate the future realignment of Braddock Road and the future extension of Leland Road at the time of site plan approval. The easements shall be provided as determined by the Virginia Department of Transportation (VDOT) and the Director of the Office of Transportation.

11. At such time as the proposed Leland Road is constructed, the applicant shall file for an amendment to the existing special permit to show the redesign of a northern two-way entrance, closure of the southern entrance, and a redesign of the interior driveways which would allow for safe entrances and circulation which will not conflict with the traffic on Leland Road and Braddock Road. This redesign of the entrance on the applicant's property shall be coordinated with the construction of Leland Road.

12. The entrance drives shall be located a minimum of 12.5 feet from the northernmost and southernmost property lines and shall be adequately signed with standard traffic directional signs that are in conformance with the requirements of VDOT and DPWES.

13. The nursery school and child care center shall comply with the requirements of Chapter 30 of the Fairfax County Code, "Minimum Private School and Child Care Facility Standards," and all other applicable regulations as determined by the Fairfax County Health Department.

14. Best Management Practices shall be provided on site to the satisfaction of DPWES in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

These development conditions incorporate and supersede all previous development conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless a new Non-Residential Use Permit has been issued. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 August 15, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. JOHN C. LEMKE, VC 01-S-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 7004 Ballast Ct. on

approx. 10,156 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 230.

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 Lemke, 7004 Ballast Court, Burke, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a kitchen and sunroom addition to the dwelling to be located 17 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 8.0 feet was requested.

Mr. Lemke presented the variance request as outlined in the statement of justification submitted with the application. He explained that the home was located on an irregularly shaped lot with extensively wooded side yard lines. He said that he wanted to expand and renovate the kitchen area.

Mr. Hammack asked how far away the proposed addition was from the house on lot 204. Mr. Lemke replied approximately 30 to 35 feet.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-S-082 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN C. LEMKE, VC 01-S-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.0 ft. from rear lot line. Located at 7004 Ballast Ct. on approx. 10,156 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-3 ((3)) 230. 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 7, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The rear property line is irregular and it converges across the back so that only one corner of the proposed addition requires the variance.
4. The house to the rear is 61 feet from the rear property line, so the addition will not have any detrimental impact on that property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;

F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Cook & Miller, Ltd., dated January 17, 1980 as revised by Gilbert M. Glaubinger, Architects, through April 27, 2001, 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. 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 15, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 539 August 7, 2001, (Tape 1) Scheduled case of:

9:30 A.M. BIKELID SYSTEMS LLC, A 2001-SU-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a proposal to install bike parking units (BikeLids) at the Fairfax Towne Center and to display signs on such units and on triangular-shaped structures (Starlites) mounted on parking lot lighting poles is not in substantial conformance with approved Comprehensive Sign Plan (CSP) 83-P-107. Located at 12100-12220 Fairfax Towne Ci. on approx. 22.79 ac. of land zoned PDC. Sully District. Tax Map 46-3 ((1)) 24A.

There was no motion, and A 2001-SU-010 was withdrawn.

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Page 540, August 7, 2001, (Tape 1) Scheduled case of:

9:30 A.M. DELANO CONTAINER SERVICES, INC., A 2001-LE-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating a recycling center without site plan approval or a Non-Residential Use Permit in violation of Zoning Ordinance provisions. Located at 5520 Vine St. on approx. 18,703 sq. ft. of land zoned I-5. Lee District. Tax Map 81-2 ((4)) 10. (moved from 4/24/01)

Mr. Hammack moved to defer A 2001-LE-001, to November 13, 2001, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 540, August 7, 2001, (Tape 1) Scheduled case of:

9:30 A.M. WOODLAKE TOWERS CONDOMINIUM UNIT OWNERS ASSOCIATION, A 2001-MA-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a proposal by the owner of the subject property to conduct an activity involving the processing of orders for sporting goods and firearms is most similar to a hobby which is a permitted accessory use to a dwelling and does not require a home occupation permit. Located at 3101 S. Manchester St., Unit 905 on approx. 1,054 sq. ft. of land zoned R-30. Mason District. Tax Map 51-4 ((13)) (3) 905. (Admin moved from 7/3/01)

Susan Epstein, Zoning Administration, presented staff's position as contained in the staff report. The appeal was of a determination that a proposal by a condominium owner, Mr. Fatahi, to conduct an activity involving the processing and ordering of sporting goods and firearms was more similar to a hobby. This was a permitted accessory use to a dwelling and did not require a home occupation permit. The appellant was Woodlake Towers Condominium Unit Association. The property in question was Unit 905 within the Woodlake Towers Condominium development which was located at 3101 South Manchester Street and was zoned R-3. Mr. Fatahi requested a determination from the Zoning Administration Division whether he could conduct an activity from his residence in which it was estimated that there would be no more than 10 transactions a year and that the materials would be shipped directly to family or friends or picked up during routine social visits at his home. By a letter dated September 20, 2000, it was determined that the proposed level of activity was most similar to a hobby, not a home based business and; therefore, did not require a home occupation permit nor was subject to those use limitations. By a letter dated January 31, 2001, the Woodlake Towers Condominium Unit Owners Association wrote to the Zoning Administration Division requesting a reconsideration of the September 20, 2000, determination. Staff reaffirmed its determination on February 26, 2001, and it was that determination which was the subject of the appeal. Firearm sales from a home has long been an issue that the Zoning Administration Division has had to address. The request to conduct such an activity was reviewed in the context of the home occupation provisions; however it had become apparent that gun collectors and others conducting such low-scale sales activity were being precluded from performing that activity from their homes. It was recognized that the level of activity was no different than those involved in hobbies such as stamp collecting or sports memorabilia collecting. Accordingly, it was determined that the low scale sales activity by gun collectors would be deemed a hobby and allowed by right as an accessory use. Mr. Fatahi had proposed to buy and sell no more than 10 firearms per year for family and friends, a level that was clearly subordinate to the principal residential activity. It was requested that the BZA take action to uphold the determination of the Zoning Administrator.

Ms. Gibb asked staff how a "hobby" was defined with regard to the selling of guns. Ms. Epstein replied that it was similar to when stamp collectors sold stamps to other fellow stamp collectors. Ms. Gibb stated that anything of a retail nature could not be a home occupation. Ms. Epstein reiterated that the request was for a low scale activity which was incidental to the primary use and Mr. Fatahi was not using the gun sales as a primary source of income. Ms. Gibb stated Mr. Fatahi had indicated that he wanted to develop the gun sales into a commercial activity. Ms. Epstein explained that when Mr. Fatahi did build up his business he would have to go to a commercial location to be run as a full scale business, but until that point it was deemed to be a hobby. Ms. Gibb asked where the firearms would be stored until the sale. Ms. Epstein replied that the

transactions would be done primarily through the internet and on the phone and would be shipped directly to the customer.

Mr. Hart asked staff if there was a specific definition in the Ordinance of what a hobby was. Ms. Epstein replied that there was not. Mr. Hart asked if there was an ongoing monitoring of the frequency of the transactions. Mr. Shoup replied that there was not any monitoring by the County however; any complaints of excessive traffic would be investigated. Mr. Hart asked if there was a separate entrance. Ms. Epstein replied that there was not and the unit was located on the ninth floor.

Mr. Hart questioned whether all of the required notices were mailed. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the notices were in order.

Mr. Hammack asked if the County was in support of all businesses starting up out of a private home. Mr. Shoup replied that it depended on the level of use.

Mr. Bunn, agent for appellant, explained that the sale of fire arms was a very highly regulated activity which required Mr. Fatahi to follow stringent federal regulations. He stated that Mr. Fatahi had recently requested to be a licensed fire arm dealer with the ATF. He said that some of the regulations would be hard to follow with the business being located out of a private residence, as any transactions with a person who lived out of state would have to be done at the residence, disclosure signs needed to be posted at the residence and the residence needed to be open for inspections by ATF Officers and all records needed to be maintained at the premises. He said that although Mr. Fatahi suggested the use was a hobby, it was considered to be a business under the federally regulated context. Mr. Bunn requested that the Board reverse the determination of the Zoning Administrator.

Mr. Hart asked the appellant if the Condominium Association had pursued any other avenues regarding the issue. Mr. Bunn explained that the ATF had refused to issue the permit so Mr. Fatahi was not able to undertake the activity in the residence. He said that Mr. Fatahi had leased space outside of the community.

Mr. Hammack asked if Mr. Fatahi was responsible for conducting background checks. Mr. Bunn replied that the federal regulations required the seller to conduct background checks.

Chairman DiGiulian called for speakers.

Lawrence Pulvanelli, President Woodlake Towers Condominium Association, came forward to speak in opposition to the Zoning Administrator's determination. He stated that the residents had concerns that the use was not a hobby. He explained that he had become aware of the use when the ATF contacted the site manager and indicated that Mr. Fatahi had made an application to pursue a business. Mr. Pulvanelli stated that Mr. Fatahi, at a neighborhood yard sale, displayed his guns and handed out fliers. He stated that Mr. Fatahi's intent was not as a hobby.

Mr. Hammack asked Mr. Pulvanelli if there had been any traffic concerns that were generated by the use. Mr. Pulvanelli replied that there had been no complaints except for the yard sale incident.

Sharon Wendland, Member, Woodlake Towers Condominium Association, came forward to speak in opposition to the Zoning Administrator's determination. She stated that the parents of all of the children in the condominium complex were opposed to the use but were afraid to come and speak in opposition because they felt threatened. She stated that for the safety of the 400 children who lived in the complex, the selling of firearms should not be allowed.

Farouk Fatahi, who was the subject of the appeal, came forward to speak. He explained the history of the requests to the County for a permit to sell firearms out of his home. He stated that there would be no strangers entering the building for the sale of firearms. He explained that his customers would only be close friends and family members. He said that there would not be any firearms stored on the premises because they would be delivered to the buyer that same day. He explained that the only way for him to purchase a firearm at a discounted price was to become a dealer and that was his intent. He said that he would not be doing any out of state sales.

Mr. Kelley asked Mr. Fatahi about what happened at the yard sale. Mr. Fatahi explained that he had asked

the Fairfax County Police, Virginia State Police, Federal ATF, whether or not he could display his firearms and he was told that there was nothing to prohibit him from doing so. Mr. Kelley asked Mr. Fatahi how many firearms he owned and whether or not he had ammunition for them. Mr. Fatahi replied that he owned between 5 and 10 firearms and had plenty of ammunition.

Ms. Gibb asked Mr. Fatahi what the purpose was of displaying the guns. Mr. Fatahi replied that he wanted to see if he could have generated a customer base in Springfield as he was not able to sustain paying rent in his commercial location. Ms. Gibb asked what would have happened if a person wanted to purchase one of the firearms that was displayed at the yard sale. Mr. Fatahi replied that the sale would have occurred at a bona fide gun show at a later time and not in his private home.

Mr. Pammel asked Mr. Fatahi if he had a Fairfax County Business License. Mr. Fatahi replied that he had a Loudoun County business license as that was where he was leasing commercial space for the sale of firearms.

Mr. Hart asked Mr. Fatahi asked if he still planned on soliciting sales through his website as he had stated that his sales would only be to family and close friends. Mr. Fatahi replied that federal regulations required him to have transactions other than himself; therefore, he would need to do under 10 transactions to maintain his license and he would be using his website as an aid in making those sales.

Mr. Hammack asked Mr. Fatahi how many transactions he had conducted during the current year. Mr. Fatahi replied that he had conducted 4 transactions to close friends in Loudoun County. Mr. Hammack asked Mr. Fatahi what he was advertising on the internet. Mr. Fatahi replied that he listed a phone number and an e-mail address for potential customers.

Richard Gardner, agent for Mr. Fatahi, stated that the appeal dealt solely with the home occupation permit and Mr. Fatahi was not seeking a home occupation permit. He suggested that on that ground the appeal should be denied. Mr. Gardner explained that although the ATF would be required to perform an inspection of the property, it would only occur once a year. He stated that Mr. Fatahi would be required to keep records regarding the sales however; it would have no impact on foot traffic into the condominium. He explained that the background checks were done by telephone and that also would not make any impact on the condominium development. Mr. Gardner stated that the Zoning Administrator focused on the accessory use aspect and Mr. Bunn had not addressed that issue; therefore, the appeal should be denied.

Nicolas Skadane, 6001 Arlington Boulevard, came forward to speak in support of Mr. Fatahi. He stated that the people who had spoken at the hearing did not represent the community. He said that he was present for the yard sale and he had heard no negative reactions from the community.

Mr. Shoup, in his rebuttal, stated that due to the stringent federal regulations regarding the sale of firearms, the County took the position of drawing a line between requests for a true home business operation, which was not permitted, and a low-level activity which would be allowed, so as not to preclude true enthusiasts and hobbyists.

Mr. Hammack asked if the County's opinion would have changed had they known that Mr. Fatahi had obtained a license through the federal government and that he had been struggling to maintain a commercial operation in Loudoun County. Mr. Shoup replied that they did find out about the business operation in Loudoun County however, it did not make a difference as they were basing the decision on the scale of activity that was to be in the home.

Mr. Hart asked whether or not Loudoun County had been notified. Mr. Shoup replied that the appellants did not have to notify Loudoun County.

Mr. Bunn, in his rebuttal, stated that they did challenge the Zoning Administrator's determination regarding accessory use.

Chairman DiGiulian closed the pubic hearing.

Mr. Pammel stated that it was clear that the activity required a license from the ATF, which allowed Mr. Fatahi to purchase firearms without paying sales tax, and through the purchase from another party, the sales

tax was paid. He said Mr. Fatahi's role was characterized as a dealer and that definition determined that activity was for business purposes rather than a hobby. He stated that the hobbies typically were activities carried on by collectors and the activity was collection and not sales.

Mr. Pammel moved to reverse the interpretation of the Zoning Administrator regarding A 2001-MA-008. Mr. Hart stated that he supported the motion. He said he did not believe that the activity satisfied several standards.

Ms. Gibb stated that the use was not a hobby and Mr. Fatahi's letter and testimony regarding the yard sale indicated that it was a business. She stated that she supported the motion.

Mr. Hart seconded the motion which carried by a vote of 7-0.

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Page 543 August 7, 2001, (Tape 1) After Agenda Item:

Approval of July 31, Resolutions

Mr. Pammel moved to approve the Resolutions. There was no second and the motion carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:23 p.m.

Minutes by: Lori M. Mallam

Approved on: February 26, 2002

Regina Thorn Corbett, 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, August 14, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies and procedures of the Board of Zoning Appeals and asked if there were any Board Matters to bring before the Board.

Mr. Ribble said he read in the paper that the Board of Zoning Appeals was being sued by the Board of Supervisors, and if that was the case, the BZA needed to hire Brian McCormack to represent them. Mr. Ribble moved to hire Mr. McCormack. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mr. Hart said there was a test scheduled to fly a balloon to see how high a monopole was proposed for an upcoming special permit application. He said the test was scheduled for September 8, 2001, and the Board would be in recess during that time.

There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 545, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DESMOND A. & CATHERINE A. WASSELL, VC 01-V-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 8542 Mt. Vernon Hwy. on approx. 10,650 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((10)) (5) 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. Desmond and Catherine Wassell, 8542 Mount Vernon Highway, 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 sunroom addition to be located 8.0 feet from a side lot line. A minimum side yard requirement of 15 feet is required; therefore, a variance of 7.0 feet was requested.

Mr. Hart asked whether the addition was already built. Mr. Bernal replied that his understanding was that it had not been built.

Mr. Wassell presented the variance request as outlined in the statement of justification submitted with the application. He said the request was to enclose an existing screened porch because allergies and asthma rendered the screened porch unusable. Mr. Wassell submitted letters in support from the neighbors. He said there was a high school located behind the property. He thanked Mr. Kelley for visiting the property. Mr. Wassell asked for a waiver of the 8-day waiting period.

Mr. Hammack asked would the sunroom follow the same footprint as the screened porch. Mr. Wassell replied yes.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-V-089 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DESMOND A. & CATHERINE A. WASSELL, VC 01-V-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 8542 Mt. Vernon Hwy. on

approx. 10,650 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((10)) (5) 7. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2001; 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. Because the existing screened porch currently appears to be enclosed, as depicted in the photographs, actually enclosing it to construct the sunroom addition will not be detrimental to the neighbors.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 April 17, 2001, 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 existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0. Mr. Kelley 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 August 14, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. GLENN V. & MARGARET B. ANGERMEIER, VC 01-P-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.4 ft. from side lot line. Located at 8311 McNeil St. on approx. 11,137 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 331. (Admin moved from 7/31)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Glenn and Margaret Angermeier, 8311 McNeil Street, Vienna, 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 Jennifer Josiah. The applicant requested a variance to permit the construction of an addition 6.4 feet from the side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 5.6 feet was requested.

Mr. Angermeier presented the variance request as outlined in the statement of justification submitted with the application. He said the garage addition would be built on the existing slab. Mr. Angermeier said the garage was needed for safety reasons.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-P-081 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GLENN V. & MARGARET B. ANGERMEIER, VC 01-P-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.4 ft. from side lot line. Located at 8311 McNeil St. on approx. 11,137 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 331. (Admin moved from 7/31) Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 14, 2001; and

continued from Page 547

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 unusually configured and tapers inward from the rear to the front of the lot thus minimizing the area at the building restriction line where an addition could be constructed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the garage addition shown on the plat prepared by Apex Surveys, dated January 15, 1997, as revised through April 2, 2001, 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 seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 549 August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. HOWARD BROCK, JR., TRUSTEE FOR HOWARD BROCK & AVA MARIE BROCK TRUSTEES, VC 01-D-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots and two parts of lots into two lots with proposed Lot 1 having a lot width of 32.0 ft. Located at 6215 Park Rd. and 1772 Alherst Ave. on approx. 1.02 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 ((1)) 91, 78G, 78E pt. and 93A pt.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Howard Brock Jr., 878 North Jackson Street, 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 consolidate two lots and parts of two lots and subdivide into two (2) lots, with proposed Lot 1 having a lot width less than the minimum required by the Zoning Ordinance. Lot 1 was proposed to have a lot width of 32.0 feet; a minimum width of 100 feet is required by the Zoning Ordinance for the R-2 District. The proposed lot width for Lot 2 is 105 feet. Both of the proposed lots would be located off Park Road and be accessed from a shared pipestem driveway. Lot 1 is proposed to contain 22,407 square feet, while Lot 2 is proposed to contain 23,074 square feet, which would result in a density of 1.92 dwelling units per acre. It was staff's judgment that the application did not meet all of the required standards for variances, as outlined in the staff report. Mr. Bernal noted that Irish Grandfield, Planning Division, was present to answer questions regarding the environment or land use issues.

Mr. Hart asked whether the request involved 4 separate parcels or parts of parcels. Mr. Bernal replied yes.

Mr. Hart asked if the applicant owned part of the application property and the contract purchasers part of it. Mr. Bernal replied yes.

Mr. Hart inquired whether the parts which the applicants contracted to purchase, were buildable lots. Mr. Grandfield said lots 78E and part of 93A were not buildable lots.

Mr. Hart asked that without part of 78E and part of 93A, would the other properties have enough area to subdivide. Susan Langdon, Chief, Special Permit and Variance Branch, replied no, that they would not have one acre.

Mr. Brock presented the variance request as outlined in the statement of justification submitted with the application. He presented drawings to identify the areas the Board was questioning. Mr. Brock said Parcel 91 was the original parcel acquired by his father in 1978, and there were 2 existing single family dwellings on the property. He said when his father purchased the property, it was his belief that what was commonly known as Alherst Avenue was a public right of way, but they found that it was a privately owned parcel. Mr. Brock stated when his father acquired the property, he was effectively land locked. He said in an attempt to relieve himself of that circumstance, his father acquired Parcel 78G, which gave him nominal frontage on Park Road. Mr. Brock said most of the area was in the floodplain. He said Parcels 93A and 78E were currently under contract. Mr. Brock said that if the variance request was granted and they were able to acquire the other properties, then they would propose to continue the existing access and rebuild the existing bridge. He said the proposal would be for a single existing driveway that followed the current driveway and entrance to the property, which would serve both lots. Mr. Brock said if the subdivision was done by right, they would have to disturb an undisturbed area and they would need to build new access. He said the variance would be less impact than a by-right subdivision. Mr. Brock said the neighbors supported the application.

Ms. Gibb asked who was the owner of Lot 93A. Mr. Howard replied Conrad Walter.

Ms. Gibb asked why the applicant felt he needed to cross the stream at the westerly location if the variance was not approved. Mr. Brock replied that was the only frontage they had. He said his purchase of the other lots was subject to the variance being approved.

Ms. Gibb asked if any trees would be removed. Mr. Brock stated that there would be minimal clearing.

Mr. Hart asked if Parcel 91 had any other ingress/egress. Mr. Brock replied no.

Chairman DiGiulian called for speakers.

Adrienne Whyte, McLean Citizens Association, came forward to speak in opposition. She said the variance request did not meet the required standards. She said there were no unusual conditions warranting the variance. Ms. Whyte stated that the applicant could develop the property sufficiently without a variance to avoid encroachment on the floodplain. She said the property would still be accessed the same way it had for 67 years. She stated that approval of the variance would add more impervious surface areas.

Ms. Gibb stated that variance approval would be less of a disturbance.

Mr. Brock stated in his rebuttal that he had met with all 12 of the neighbors and the Franklin Park Citizens Association and all were in favor of the variance.

Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny VC 01-D-092. He said the applicant failed to present testimony showing compliance with all of the required standards for a variance. Mr. Hart said the case was difficult because there might be some environmental advantage to a layout which would minimize the length of the crossing of the floodplain with the driveway. He said the principal problem he had with the application was the potential acquisition of the small parcels. Mr. Hart said the original property was not large enough for the variance and that had implications with several of the required standards. He said if this was not a distortion of the process, then this would encourage lots that were close but not quite enough to be subdivided to take little tips and corners here and there and otherwise get around a rezoning through the variance process. He said under the subject scenario, the original property is less than the minimal area for a subdivision and the other pieces were acquired solely to facilitate the variance. Mr. Hart said general standards 1,6, and 9 were not met. He said the property as is, had a reasonable use. Mr. Hart said there was no hardship and no eligibility for a variance.

Ms. Gibb seconded the motion.

Mr. Hammack said he agreed with Mr. Hart's motion, but the Board had allowed similar situations with the acretion of outlots. He said he felt the application satisfied the standards and he opposed the motion.

Chairman DiGiulian said he would oppose the motion because he felt it was a hardship.

Mr. Pammel said his major issue was the environmental impact. He said the impacts would be minimized with the approval of the variance.

The motion failed by a vote of 2-4. Chairman DiGiuilan, Mr. Pammel, Mr. Hammack and Mr. Ribble voted against the motion. Mr. Kelley was not present for the vote.

Mr. Hammack moved to approve VC 01-D-092 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HOWARD BROCK, JR., TRUSTEE FOR HOWARD BROCK & AVA MARIE BROCK TRUSTEES, VC 01-D-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots and two parts of lots into two lots with proposed Lot 1 having a lot width of 32.0 ft. Located at 6215 Park Rd. and 1772 Alherst Ave. on approx. 1.02 ac. of land zoned R-2. Dranesville District. Tax Map 31-3 ((1)) 91, 78G, 78E pt. and 93A pt. 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 14, 2001; 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 requirements for a variance.
3. The applicant had two houses on the property and the hardship is, in part, a result of the fact that the dwellings were permitted years ago and under the present Ordinance would be restricted from redevelopment to the level they were before.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 two (2) lots and parts of two (2) into two lots, with

proposed Lot 1 having a lot width of 32.0 feet in substantial conformance with the plat prepared by Charles F. Dunlop, dated March 21, 2001, as revised through July 17, 2001. 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. Lots 1 and 2 shall have access to Park Road from the shared driveway as depicted on the variance plat. The driveways shall be constructed in accordance with the Public Facilities Manual and shall not encroach into the floodplain area unless no other option is as determined by the Department of Public Works and Environmental Services (DPWES). A shared maintenance agreement for the proposed driveway shall be recorded among the land records

3. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Measures to ensure that trees designated to be saved shall be protected from damage by construction activity shall be implemented to the satisfaction of the Urban Forester.

4. The minimum limits of clearing and grading shall be the limits of disturbance as shown on the plat and shall be the minimum amount necessary to provide for the development shown on the approved plat. Prior to overlot grading plan approval, the Urban Forestry Division shall review the plan and final limits of clearing shall be designated to preserve as much vegetation as possible.

5. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 1 and 2 over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement to be recorded at the time of subdivision plat approval for the Application Property. Purchasers shall exercise a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

Pursuant 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 4-2. Mr. Hart and Ms. Gibb voted against the motion. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 552, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SAYOMPHORN E. DERNOVSEK, VC 01-M-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line. Located at 3426 Payne St. on approx. 15,315 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (C) 45.

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 Vander Myde, Agent, 5990 Richmond Highway, 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 second-story bedroom addition along the front of the dwelling to be located 10.1 feet from a side lot line. A minimum side yard of 12 feet is required; therefore, a variance of 1.9 feet was requested.

Mr. Vander Myde, 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 a second-story bedroom addition for

the applicant's mother. Mr. Vander Myde noted that there were two other properties in the neighborhood that had received variances.

Chairman DiGiulian asked if the addition would be any closer to the lot line. Mr. Vander Myde replied no.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-M-090 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SAYOMPHORN E. DERNOVSEK, VC 01-M-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line. Located at 3426 Payne St. on approx. 15,315 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (C) 45.
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 14, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. There is an extraordinary situation as set forth in the applicant's 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 addition(s) as shown on the plat prepared by Phillip L. Vander Myde, dated, April 25, 2001, as revised through May 14, 2001, as 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.

4. The accessory storage structures numbered 1, 2, and 3, shall be relocated as depicted on the special permit plat.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley 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 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 554, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. SOUTHERN FINANCIAL BANK, VC 01-P-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 23.0 ft. from front lot line. Located at 8414 Lee Hwy. on approx. 2.26 ac. of land zoned C-6 and HC. Providence District. Tax Map 49-3 ((1)) 72B, 72C, 73, 73A and 73D.

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.

William Mayland, Rezoning and Special Exception Branch, made staff's presentation as contained in the staff report. The applicant requested a variance to permit an existing building to remain 23.0 feet from the front lot line. A minimum front yard of 40 feet is required; therefore, a variance of 17 feet was requested. The variance was in associated with RZ 2001-PR-012 and SEA 94-D-061.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She stated that dedication approved by the Board of Supervisors caused the need for the variance. Ms. Strobel stated that the application met the required standards for a variance. She said the lot was triangular in nature and the request would not be detrimental to adjacent property owners. Ms. Strobel stated that the applicant was in agreement with the conditions proposed by staff.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-P-053 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SOUTHERN FINANCIAL BANK, VC 01-P-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing building to remain 23.0 ft. from front lot line. Located at 8414 Lee Hwy. on approx. 2.26 ac. of land zoned C-6 and HC. Providence District. Tax Map 49-3 ((1)) 72B, 72C, 73, 73A and 73D. 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 August 14, 2001; 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 applicant's statement of justification and testimony indicated that the property has an odd triangular shape with three front yards.
4. The variance will allow the existing building to remain in its current location.
5. The applicant is providing a dedication of street that creates the need for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a bank as shown on the plat prepared by Walter L. Phillips Inc., dated February 16, 2001, as revised through June 28, 2001, 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.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley 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 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 556 August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01).

Chairman DiGiulian indicated that the application had been deferred for decision only.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the application was deferred for decision only to allow the Board time to review the letters that came in at the previous public hearing.

Mr. Hart said he visited the existing house and he read the applicant's proposed changes to it, but he did not understand if the existing house would be something other than just the equipment building. He asked if development condition #16 contemplated multiple uses of the existing old house. He asked whether it would be a dwelling or would it be the container for the equipment for the tower.

William Mayland, Rezoning and Special Exception Branch, replied that the condition was contemplated to allow the applicants the option that if the telecommunications facility was never built, they would still be able to use the house as an accessory dwelling unit. He said if it was used as an equipment building, then the house could possibly be used as storage for the church.

Mr. Hart asked if the equipment was in the house, could someone live there. Mr. Mayland said his understanding was no one could live there. He said that would cause a security issue. Mr. Mayland said, from a practical stance, no one would live there. He said that there was not a condition prohibiting someone from living there.

Mr. Hart asked Ms. Rosati what the modifications would be to the dwelling. He said he thought that there would be walls behind what would look like windows. Ms. Rosati stated that was correct. She said there would be windows, but no one you could climb into the structure.

Mr. Hart asked how the property would be accessed. Ms. Rosati said there would be a secured door.

Mr. Hart asked if it was the applicant's intention to have multiple functions for the building besides the equipment. Ms. Rosati stated that there would be two functions for the building, one would be to hold the telecommunications switching equipment and the other would be to hold the Carillon equipment, the brains behind the bells of the bell tower. She said it was not anticipated that someone would live in the house while the use was established. Ms. Rosati said they would agree to a condition to that effect.

Mr. Hart asked how many trips per carrier would there be. Ms. Rosati said it would probably be once a month per carrier.

Mr. Hart said a wooden fence would surround the house and asked if there was any reason it was not more secure. Ms. Rosati replied the reason was because of aesthetics.

Mr. Hart asked whether the applicant would have a problem with a modification to the house. Ms. Rosati said the house would be structurally reinforced so no one could get in.

Mr. Pammel asked why the applicant modified the location of the facility from the northwest corner of the site closer to Route 7 to the current location. Ms. Rosati replied that there were a number of reasons. She said the existing special permit had a significant amount of parking in that area and construction in that part of the site would be difficult because of the slope. Ms. Rosati said the previous location would interfere with the approved parking. She said the ground was considerably lower and to achieve the same coverage, the structure would have to have been considerably taller. She said 85-foot trees at that location would not have screened the facility and it would have had a wide-open view to the people who live across Route 7. Ms. Rosati said since this would be a bell tower it would make more sense to have it nearer to the church structures.

Mr. Pammel said there were agreements between the applicants and the Reifsnyder property that the house would be maintained, restored, and kept as a functioning structure. He said the church had allowed the building to deteriorate which was in violation of the agreements they made when they purchased the property. Mr. Pammel said the church had not met their obligation of the agreement and the applicant would be solving that problem for them.

Mr. Hammack asked what the difference in elevation was between what was considered the mid-level site and the site that was approved under the 2253. Mr. Mayland said it was approximately 20 feet lower on the mid-hill site.

Ms. Gibb said that access to the house would be via the road through the parking lot. Ms. Rosati replied yes.

Ms. Gibb asked what would happen if the door was left open accidentally and asked if someone could be electrocuted by touching something. Ms. Rosati replied no one could get electrocuted and there was further security inside the building because there were multiple carriers' equipment and they did not want other people's workmen getting into their equipment.

Mr. Pammel said he felt that safety was a problem. Ms. Rosati stated that the site would meet all safety requirements.

Ms. Gibb said the site needed to be safe for its location. Ms. Rosati said this was not the first telecommunications facility approved on a residential parcel. She said there were a lot of facilities on school property.

Mr. Hammack asked Ms. Rosati to name some of the properties. Ms. Rosati replied that telecommunication facilities were located on Langley High School and South Lakes High School properties.

Ms. Rosati said the use of the Reifsnyder house was not driven by a safety need to have the equipment

locked, but it was largely aesthetic. She said since they were going to use the house they would make sure that it was structurally safe.

Mr. Hammack said he would like to have more information about the Reifsnyder house and the proximity of the tower to the house and what was going on there. He said he felt that he was not as well informed as he would like to be to vote on the application. Mr. Hammack moved to defer decision to October 16, 2001.

Mr. Pammel seconded the motion. He said he would like more information dealing with the emissions of harmful radiation.

Ms. Rosati stated federal law preempts local zoning bodies from making decisions based on health and safety concerns of RF emissions. She said that was the reason you did not see a lot about that in the application.

The motion carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Mr. Hammack moved that the Board go into Executive Session to discuss legal matters with the County Attorney on the status of the Dry Clean Depot location. Mr. Pammel seconded the motion.

The Board recessed at 11:05 a.m. and reconvened at 11:24 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 558, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS L. DEWBERRY, VC 01-P-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. and eave 4.0 ft. from side lot line. Located at 3219 Highland La. on approx. 1.15 ac. of land zoned R-1. Providence District. Tax Map 59-1 ((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. Jane Kelsey, Agent, 4041 Autumn Lane, Fairfax, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of an addition 5.0 feet from the side lot line and an eave 4.0 feet from the side lot line. A minimum side yard of 20 feet is required; therefore, variances of 15 and 13 feet were requested respectively. A 3-foot extension was permitted for an eave.

Ms. Kelsey, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the application met the required standards for a variance. Ms. Kelsey indicated that the request was to demolish an existing carport and build a 2-car garage. She said there was floodplain along the rear of the lot and the house was shifted to the left of the lot. Ms. Kelsey stated the requested location was most feasible for the addition. She said there was 40 feet from the common lot line and the addition would be in character with the neighborhood. She submitted a letter supporting the variance request. Ms. Kelsey noted that several variances had been granted in the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-P-087 for the reasons noted in the Resolution. //

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS L. DEWBERRY, VC 01-P-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. and eave 4.0 ft. from side lot line. Located at 3219 Highland La. on approx. 1.15 ac. of land zoned R-1. Providence District. Tax Map 59-1 ((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 August 14, 2001; 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.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Dewberry

and Davis LLC, dated May 14, 2001, 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 560 August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THE TRUSTEES OF THE CHURCH OF DUNN LORING, SPA 85-P-016 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-P-016 previously approved for a church and related facilities to permit building addition and increase in land area. Located at 2317 Morgan La. on approx. 2.86 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 161, 161A and 162.

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.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit amendment for an addition, consisting of a separate 2,800 square foot building and an additional 1,060 square feet of land area. Staff recommended approval of SPA 85-P-016, subject to the approval of the proposed development conditions dated August 7, 2001. Ms. Stanfield said the applicant had given staff 3 proposed changes to the development conditions. She said staff was amenable to the change to condition #13; however, the changes to conditions #7 and #10 would negate the original purpose of those conditions.

Ms. Strobel, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the applicant proposed an addition of 2,800 gross square feet to be located to the rear of the existing building. Ms. Strobel said the addition would primarily be used by younger church members for religious education and study. She said administrative offices and other uses would also be provided. Ms. Strobel stated that the improvements would be to serve the existing congregation members and there was no increase proposed to the number of seats in the existing meeting hall. She said the addition was centrally located on the site in an area that had been primarily cleared; therefore, the majority of the existing vegetation would not be disturbed and there was little visual impact on the surrounding community. Ms. Strobel said the applicant was concerned with 3 of the development conditions. She said condition #7 proposed that sidewalks associated with the proposed addition would be field located to minimize the loss of mature trees. Ms. Strobel said the applicant was concerned that they would be allowed to provide the sidewalks in the location best to serve the congregation members and to do so not at a great cost; therefore, the proposed adding the words "where practical". She said Condition #10 included a requirement to provide 5 feet of additional dedication of right-of-way along Morgan Lane. Ms. Strobel stated that the applicant had no objection to that; however, the condition continued to state that there would be dedication provided for the future expansion of I-495 as determined by the Virginia Department of Transportation (VDOT) at the time of site plan approval. She said the concern was that VDOT did not identify a current specific need. Ms. Strobel said the applicant had already provided substantial dedication to

I-495 most of which was in excess of the adjacent properties. She said the condition was so broadly worded that the existing improvements could be potentially impacted. Ms. Strobel stated that the applicant proposed to add the wording "except as may be waived or modified at time of site plan approval" to Condition #13. Ms. Strobel asked the members of the audience present to support the application to stand. She said there were no objections to the application from the adjacent property owners.

Mr. Hart asked whether staff knew what the future issue was with the width of right-of-way. Ms. Stanfield replied that there would be improvements made and there would be some right-of-way needed, but there was no information from VDOT with regard to how much would be required.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 85-P-016 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THE TRUSTEES OF THE CHURCH OF DUNN LORING, SPA 85-P-016 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-P-016 previously approved for a church and related facilities to permit building addition and increase in land area. Located at 2317 Morgan La. on approx. 2.86 ac. of land zoned R-1. Providence District. Tax Map 39-4 ((1)) 161, and part of 161A and 162. 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 14, 2001; 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 special permit standards.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-103 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 2317 Morgan Lane, 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 Bury + Partners, dated May 15, 2001, revised through August 1, 2001, 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 shall be limited to a total of 350 with a corresponding minimum of 95 parking spaces. Accessible parking shall be provided in accordance with Code requirements. All the parking spaces shall be of a size and the aisles of a width, which will meet the Zoning Ordinance and Public Facilities Manual standards. All parking shall be provided on-site in the areas shown on the Special Permit Plat.

6. Transitional screening and barrier requirements shall be modified and maintained as follows:

   - The 25 foot transitional screening yard shall be provided along the western, northern and southern lot lines; however, the planting requirements may be modified to permit shrubs and other low level plantings along the western lot line, as determined by DPWES.

   - The transitional screening requirement along the eastern lot line may be modified as determined by DPWES.

   - The barrier requirement shall be waived.

7. The sidewalks associated with the proposed addition shall be field located to minimize loss of mature trees and damage to the tree root systems, where practical, as determined by the Urban Forestry Division of DPWES.

8. The exterior of the proposed addition, including the roof, shall be architecturally compatible with the existing building and shall be constructed with wood frame, brick and panel facade. Documentation of the architecture of the existing building shall be submitted to DPWES with the building permit.

9. Parking lot landscaping shall be provided as required by Article 13 and shall be maintained. Landscaping on the perimeter of the proposed addition shall be consistent with the foundation plantings located on the perimeter of the existing sanctuary structure, as determined by the Urban Forestry Division of DPWES.

10. The applicant shall provide five (5) feet of additional dedication of right-of-way along Morgan Lane to match that of Lot 171 at the time of site plan approval or upon demand, whichever occurs first.

11. The entrances shall meet the requirements of VDOT.

12. The applicant shall correct the sight distance problem located at the northwest intersection of Oak Street and Morgan Lane as determined by DPWES.

13. The applicant shall provide storm water management and Best Management Practices (BMPs) as determined by DPWES except as may be waived of modified at time of site plan approval. The applicant shall provide innovative, low-impact design techniques for BMPs, filtration a nd storm water management, as determined feasible by the Department of Public Works and Environmental Services.

14. Any proposed lighting of the parking lot areas shall be in accordance with the following:

    - The combined height of the light standard and fixtures shall not exceed twelve (12) feet.

    - The lights shall be low intensity design, full-cut-off fixtures, which focuses the light directly onto the subject property.

    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the structures.

15. In order to achieve a maximum interior noise level of approximately 45 dBA L_{dn}, the subject structure

shall be constructed with the following acoustical attributes:

- Exterior walls shall have a laboratory sound transmission class (STC) of rating of at least 39.
- Doors and glazing shall have a laboratory STC rating of a t least 28. If glazing constitutes more than 20% of any façade they should have the same laboratory STC rating as walls.
- Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

16. The existing two-story dwelling located on the church property may only be used as a residence for the church pastor or church staff/caretaker and family.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hart seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 563, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. LARRY AND LAURIE TYREE, SP 01-D-036 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 accessory structure to remain 17.6 ft. from side lot line. Located at 706 Seneca Rd. on approx. 2.00 ac. of land zoned R-E. Dranesville District. Tax Map 6-2 ((5)) 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. Mark Stires, Bowman Construction, replied that it was.

Mavis Stanfield Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit based on an error in building location to permit an accessory structure to remain 17.6 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 2.4 feet was requested.

Mr. Stires, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said upon trying to obtain a building permit for interior work, the garage was determined to have been built in error. Mr. Stires said the garage was built prior to the applicant's purchased the property.

Mr. Hammack asked how long the applicants had owned the property. Mr. Stires responded since 1997.

Mr. Hart asked if the fence was on the property line. Mr. Stires responded yes.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 01-D-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

LARRY AND LAURIE TYREE, SP 01-D-036 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 accessory structure to remain 17.6 ft. from side lot line. Located at 706 Seneca Rd. on approx. 2.00 ac. of land zoned R-E. Dranesville District. Tax Map 6-2 ((5)) 4. 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 August 14, 2001; 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 as shown on the plat prepared by Bowman Consulting Group, dated March 14, 2001, as revised through May 17, 2001, 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. Kelley was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 565, August 14, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CAPITAL RESTAURANTS, INC., SPA 00-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 00-M-037 previously approved for a billiard hall to permit site modifications and change in permittee. Located at 7010 Columbia Pi. on approx. 5.30 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Helena Choi, 7010 Columbia Pike, Annandale, 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 Jennifer Josiah. The applicant requested a special permit amendment to amend the previously approved application for a billiard hall. The amendment request was to permit site modifications and a change in permittee. Staff recommended approval of SPA 00-M-037.

Ms. Choi, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said she was in agreement with the proposed development conditions.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 00-M-037 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CAPITAL RESTAURANTS, INC., SPA 00-M-037 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 00-M-037 previously approved for a billiard hall to permit site modifications and change in permittee. Located at 7010 Columbia Pi. on approx. 5.30 ac. of land zoned C-6, HC, SC and CRD. Mason District. Tax Map 60-3 ((1)) 21, 21A and 21B. 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 14, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee 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). 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 only, Capital Restaurants, Inc., and is not transferable without further action of this Board, and is for the location indicated on the application, 7010 Columbia Pike, 8,136 square feet of tenant space within the 5.3 acre site, and is not transferable to other land. Other by-right, Special Exception and Special Permit uses may be permitted on the lot without a 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 McWhorter & Associates, Inc. dated May 1, 2001, as signed June 5, 2001, 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 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 parking lot renovations for the shopping center which include the provision of 29 additional parking spaces shall be completed prior to the issuance of a Non-RUP for the billiard hall use.

6. The maximum daily hours of operation will be from 6:00 a.m. until 2:00 a.m., daily.

7. After 10:00 p.m., the rear door on the north side of the building shall remain closed.

8. The maximum number of employees on site at any one time for this use shall be ten (10); the maximum number of patrons on-site at any one time shall be 170; the maximum occupancy shall be posted at 180.

9. The maximum number of billiard shall be eighteen (18); the eating establishment is permitted as an accessory use, with a maximum of 92 seats and a counter with twenty (20) seats within the billiard hall.

10. The applicant shall comply with all alcoholic beverage control laws of the Commonwealth of Virginia.

11. Transitional screening requirements shall be waived and barrier requirements shall be modified in favor of conditions shown on the plat.

These conditions incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. 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 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. BONNIE L. RAYBURN & EUGENE BRAGANZA, VC 01-H-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 14.78 ft. and proposed Lot 2 having a lot width of 88.69 ft. Located at 9638 Clarks Crossing Rd. on approx. 2.32 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 6.

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.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Jennifer Josiah. The applicant requested a variance to permit the subdivision of one lot into two lots with proposed Lot 1 having a lot width of 14.78 feet and proposed Lot 2 having a lot width of 88.69 feet. A minimum lot width of 150 feet is required; therefore, variances of 135.22 and 61.31 were requested respectively. The lots were proposed to be developed with single family dwellings.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said the lot could be subdivided by right but would cause the existing vegetation to be removed. She said the variance request would be more compatible with the neighborhood. Ms. Strobel stated that the Virginia Department of Transportation (VDOT) and the Fairfax County Department of Transportation preferred subdivision by variance as opposed to by right subdivision. She said the lot was unusually shaped with multiple side yards. Ms. Strobel stated that each lot would contain one acre. She said the neighbors were in support of the application.

Ms. Gibb asked if the outlet road was on the boundary. Ms. Strobel stated that the outlet road did not serve the subject property.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-H-091 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STONEMARK CORPORATION, FORMERLY BONNIE L. RAYBURN & EUGENE BRAGANZA, VC 01-H-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 1 having a lot width of 14.78 ft. and proposed Lot 2 having a lot width of 88.69 ft. Located at 9638 Clarks Crossing Rd. on approx. 2.32 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-3 ((1)) 6. 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 August 14, 2001; 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 unusually shaped with unusual frontage on Clarks Crossing Road.
4. The creation of two lots will be consistent with the current zoning and the Comprehensive Plan.
5. The layout proposed was an attempt to minimize impact on existing trees which the by-right subdivision process would preclude.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 1 and 2 as shown on the plat prepared by Dalton & Kendall, dated March, 2001, as signed through May 14, 2001. 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. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities for 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. 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. Any utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible, duly considering the cost and engineering feasibility of their installation.

3. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as determined by DPWES.

4. All access to the site shall be via Elgin Drive and not Clarks Crossing Road. Prior to approval of any grading or subdivision plans, Pee Gee Way shall be vacated and a twenty-four (24) foot wide ingress/egress easement shall be provided for the benefit of proposed Lots 1 and 2, or, in the alternative, if VDOT does not give permission to build a private pipestem drive within the right of way of Pee Gee Way, this variance shall be null and void.

Pursuant 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. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 22, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 569, August 14, 2001, (Tape 1), Scheduled case of:

9:30 A.M. DONALD E. CRUMP AND CHESLEY CRUMP, A 2000-SP-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance. Appeal of determination that previously cited violations regarding the addition of structures and storage display areas on the appellants' property continue. Located at 7600 Clifton Rd. on approx. 2.89 ac. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15. (moved from 1/16/01 and 4/17/01).

Chairman DiGiulian recused himself from the public hearing because his firm prepared the appellants' site plans.

William Shoup, Deputy Zoning Administrator, stated that Thomas Williams, attorney for the appellants, indicated to staff that his clients would remove the items by mid-January; therefore, staff would support a deferral to January 15, 2002 and the Notice of Violation would be resolved.

Mr. Hammack moved to defer A 2000-SP-029 to January 15, 2002, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Kelley were not present for the vote.

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Page 569, August 14, 2001, (Tape 2), After Agenda:

Approval of March 27, 2001 Minutes

Mr. Pammel moved to approve the Minutes. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 570 August 14, 2001, (Tape 2), After Agenda:

Request for Reconsideration
Christopher & Patricia Inglese SP 01-D-035

Ms. Gibb indicated that the neighbor who originally objected to the application now supported the application. She said there was more information about fewer trips generated and a petition signed by all the neighbors.

Mr. Hammack moved to approve the Request for Reconsideration. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote. The application was scheduled for October 23, 2001.

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Page 570 August 14, 2001, (Tape 2), After Agenda:

Approval of August 7, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions with the exception of SP 01-D-035. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:26 p.m.

Minutes by: Regina Thorn Corbett

Approved on: March 5, 2002

Regina Thorn Corbett

Regina Thorn Corbett, 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 21, 2001. The following Board Members were present: Chairman DiGiulian, Nancy Gibb, Paul Hammack, James Hart, John Ribble, and James Pammel. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:00 a.m. Chairman DiGiulian discussed the policies 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 571, August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. MARK T. LE, VC 01-L-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition to dwelling less than 200 ft. from railroad tracks. Located at 6103 Deer Ridge Tr. on approx. 10,039 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((47)) 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. Mark Le, 6103 Deer Ridge Trail, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought approval of a variance to permit construction of a sunroom addition which would be located 180 feet from the railroad tracks. He said the minimum distance required for a residence to be located from railroad tracks was 200 feet; therefore, a variance of 20 feet was requested.

Mr. Hammack asked if acoustical construction was to be part of the sunroom. Mr. Bernal replied that staff had originally made that recommendation, but after reviewing the distance from the tracks, it was decided that acoustical construction would not be necessary at 180 feet.

Mr. Le presented the variance request as outlined in the statement of justification submitted with the application. He stated that construction of the proposed sunroom would be only 20 feet into the buffer zone of the railroad tracks. He said he had looked into other alternatives for the placement for the sunroom, but found that the most feasible option was to place the addition to the rear of the house. He stated that he had four letters supporting his application from his closest neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve variance application VC 01-L-098 for the reasons noted in the Resolution.

Mr. Pammel moved to waive the eight-day waiting period for all of cases approved on August 21, 2001. Mr. Ribble seconded the motion which carried by a vote of 5-0. Ms. Gibb recused herself from the vote, and Mr. Kelley was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARK T. LE, VC 01-L-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition to dwelling less than 200 ft. from railroad tracks. Located at 6103 Deer Ridge Tr. on approx. 10,039 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((47)) 117. 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 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

2. The applicants presented testimony indicating compliance with the required standards for the granting of a variance.
3. The sunroom addition is within 200 feet of the Metro Line and actually exceeds 200 feet from the railroad that is outside the Metro 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 an addition as shown on the plat prepared by Phillip A. Blevins dated May 19, 2000, as revised through May 15, 2001, 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. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing.

Mr. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0, 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RONALD V. & MARY A. SEARS, VC 01-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 2.4 ft. from side lot line such that side yards total 11.0 ft. Located at 12012 Cheviot Dr. on approx. 11,043 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((3)) 6.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary A. Sears, 12012 Cheviot Drive, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicants sought approval of a variance to permit construction of a carport addition to be located 2.4 feet from the side lot line with the side yards totaling 11 feet. He said the minimum side yard requirement for the R-3 cluster was 8 feet and the minimum total side yard requirement was 20 feet; therefore, a variance of 2.6 feet for the carport addition and 4.0 feet for the total side yard had been requested.

Mrs. Sears presented the variance request as outlined in the statement of justification submitted with the application. She stated her property was very narrow in the front and proposed that the carport be erected over the existing concrete pad. She said that her house had a driveway that could fit three cars and she wanted to be able to put a cover over the area for the third car next to the house. Mrs. Sears said she believed that having a carport would be beneficial during inclement weather, and would give a neater appearance to the exterior of the house. She said the carport would be architecturally compatible with the surrounding homes and the neighbors were supportive of her application.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve variance application VC 01-D-097 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD V. & MARY A. SEARS, VC 01-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a carport 2.4 ft. from side lot line such that side yards total 11.0 ft. Located at 12012 Cheviot Dr. on approx. 11,043 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-3 ((3)) 6. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 21, 2001; 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. The placement of the house on the property creates a problem.

4. The house is only 66-70 feet from the front lot line.
5. The lot has an unusual shape that tapers inward.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Peter R. Moran, dated April 14, 2001, 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 seconded the motion which carried by a vote of 6-0. Mr. Pammel 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.

Page 575, August 21, 2001, (Tape 1), RONALD V. & MARY A. SEARS, VC 01-D-097, continued from Page 574

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 575, August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY A. & DEBORAH M. PICKELL, VC 01-L-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from the rear lot line. Located at 8232 Woodstown Ct. on approx. 12,581 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 99-3 ((2)) 89.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Reames, Agent, Patio Enclosures, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicants sought a variance to permit construction of a sunroom addition to be located 22.0 feet from the rear lot line. He said the minimum requirement for the district was 25 feet; therefore, a variance of 3.0 feet was requested.

Mr. Reames presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had reviewed the house and property to see if there was any other viable option for the sunroom. He said that after talking with the applicants, they decided the best option was to reduce the size of the room and to build over top of the existing deck area.

Mr. Hart clarified that the sunroom would replace the deck and would not extend out any further than the existing deck. Mr. Reames replied that was correct.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve variance application VC 01-L-096 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GREGORY A. & DEBORAH M. PICKELL, VC 01-L-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line. Located at 8232 Woodstown Ct. on approx. 12,581 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 99-3 ((2)) 89. 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 August 21, 2001; 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. The lot has an unusual shape.
4. The house is set at an angle to all sides of the property.
5. The sunroom addition is in the same location as the existing deck with the structure above it.
6. The dimension of the variance is minimal.

7. There would be no impact on the surrounding 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 an addition as shown on the plat prepared by Kenneth W. White, dated April 17, 2001, 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 seconded the motion which carried by a vote of 6-0. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 577, August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. RONALD B. NATALIE, JR., VC 01-Y-094 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 33.7 ft. Located at 12305 Folkstone Dr. on approx. 36,186 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-1 ((11)) 56.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ronald B. Natalie, Jr., 12305 Folkstone Drive, Herndon, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant had submitted a revised plat for the construction of a porch. He said Mr. Natalie sought approval of a variance for the construction of a screened porch addition, which would be 8.1 feet from the side lot line. He said the minimum side yard requirement for R-1 Cluster was 12 feet, with a total side yard minimum of 40 feet; therefore, a variance of 3.9 feet was requested for the porch and a variance of 6.3 feet was requested for the total side yards.

Mr. Natalie presented the variance request as outlined in the statement of justification submitted with the application. He stated that he had purchased the house in October 1989. He said the deck, which had been constructed by the previous owner, had not been in good condition at that time.

Mr. Natalie stated that the shape of his lot was odd and the house had been built at the narrowest portion of the property. He said he had already torn down the old deck and proposed construction of a screened porch in the same place where the deck had been, as there was no other place to put the porch. He said the subject property was wooded and the adjacent property where the porch would face was owned by the County and also heavily wooded.

Mr. Hammack asked Mr. Natalie if the land behind him was to remain undeveloped. Mr. Natalie replied that the lot was actually a flood plain and it was considered unbuildable by the County.

Chairman DiGiulian called for speakers in support or opposition to the application.

Mary Ann Gravensteader came forward to speak in support of the application. She stated that her property abutted a portion of the Natalie's lot. She stated that most of the houses in the Folkstone neighborhood already had screened porches and she was in full support of Mr. Natalie's application.

There were no other speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve variance application VC 01-Y-094 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RONALD B. NATALIE, JR., VC 01-Y-094 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 33.7 ft. Located at 12305 Folkstone Dr. on approx. 36,186 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-1 ((11)) 56. 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 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The house is placed at the narrowest point of the property.
4. The lot is exceptionally narrow.
5. The property is located next to County owned land and cannot be built upon.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Karie L. Colburn, dated March 27, 2001, as revised through May 31, 2001, 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.

Ms. Gibb seconded the motion which carried by a vote of 6-0. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 579 August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ALI HONARVAR, VC 01-D-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.75 ft. from side lot line such that side yards total 37.25 ft. Located at 9706 Locust Hill Dr. on approx. 21,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 19-1 ((9)) 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. Rafik Bazikan, Agent, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. He stated that the applicant sought approval of a variance to permit construction of a library addition to be located 13.75 feet from the side lot line, with the side yards totaling 37.25 feet. He said the minimum side yard requirement for R-1 Cluster was 12 feet, with a total side yard minimum requirement of 40 feet; therefore, a variance of 2.7 feet was requested. Mr. Bernal noted that the applicant had submitted an affidavit just prior to the hearing, which had been approved by the County Attorney's Office.

Mr. Hammack stated that the opposition was a client of his and recused himself from the hearing.

Mr. Bazikan presented the variance request as outlined in the statement of justification submitted with the application. He said Mr. Honarvar had submitted five letters of support from his neighbors and he had not been aware of any opposition until the day before the hearing. Mr. Bazikan stated that the opposing letter was a very general letter that could be applied to any application, and the closest neighbors showed their support for the applicant with their letters.

Mr. Hart asked staff if there was a minimum lot width in R-1 Cluster. Susan Langdon, Chief, Special Permit and Variance Branch, replied that an interior lot had no minimum lot width requirement.

Ms. Gibb asked if the land had any unusual features and whether there was any other place that the library could be located. Mr. Bazikan replied that the subject property was pie-shaped and that the location of the proposed library was the best option to fit with the floor plan.

Ali Honarvar, 9706 Locust Hill Drive, Great Falls, Virginia, came forward to speak in support of his application. He said the minimum side yard requirement was 12 feet, and he had 13 ½ feet. He said he was only asking for a 2.7 foot variance in order to upgrade his home, which was very common in his neighborhood, and that all of his immediate neighbors were in support of his application. Mr. Honarvar stated that he and his wife were expecting a baby and the library on the first floor would also be used for the baby.

There were no other speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve variance application VC 01-D-093 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI HONARVAR, VC 01-D-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.75 ft. from side lot line such that side yards total 37.25 ft. Located at 9706 Locust Hill Dr. on approx. 21,000 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 19-1 ((9)) 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 August 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot has an unusual shape, which narrows toward the back.
4. The variance of 2.75 feet is 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 an addition as shown on the plat prepared by Rafik Bazikan, dated April 12, 2001, 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. Pammel seconded the motion which carried by a vote of 5-0. Mr. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Hammack recused himself from the hearing. 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MRS. LYNNE REID AND MR. GERALD REID, VC 01-P-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 11.0 ft. from side lot line. Located at 7319 Fairwood La. on approx. 10,560 sq. ft. of land zoned R-3. Providence District. Tax Map 50-1 ((13)) 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. Robert Beach, Architect/Agent, 417 West Broad Street, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She said the applicant sought a variance to permit construction of a 2-story addition 11 feet from the side lot line. She said the minimum side yard requirement for that district was 12 feet; therefore, a variance of 1 foot was requested.

Mr. Beach presented the variance request as outlined in the statement of justification submitted with the application. He stated that the addition was needed to accommodate an elevator, a lift, and a wheelchair accessible bathroom for the second story of the house. He said Mr. Reid was a Viet Nam veteran and there was documentation from his doctors regarding his medical condition which justified the need for the addition.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve variance application VC 01-P-103 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MRS. LYNNE REID AND MR. GERALD REID, VC 01-P-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 11.0 ft. from side lot line. Located at 7319 Fairwood La. on approx. 10,560 sq. ft. of land zoned R-3. Providence District. Tax Map 50-1 ((13)) 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 August 21, 2001; 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 variance.
3. The variance requested is a very minor 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 an addition, shown on the plat prepared by Stephen T. Palmer, as revised by Robert Beach, dated September 12, 1986, as revised through May 16, 2001, 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. Hart seconded the motion which carried by a vote of 6-0. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 583 August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DAVID & LESLIE KOLUDER, VC 01-Y-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from rear lot line. Located at 13100 Cross Keys Ct. on approx. 5,635 sq. ft. of land zoned PDH-3. Sully District. Tax Map 35-3 ((23)) (6) 14.

Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Leslie Koluder, 13100 Cross Keys Court, Fairfax, Virginia, replied that it was.

Ms. Gibb made the disclosure that Mrs. Koluder had been a member of a partnership that she had represented last year and recused herself from the hearing.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit construction of an addition 6.3 feet from the rear lot line. She said the minimum rear yard requirement for R-3 Cluster was 25 feet; therefore, a variance of 18.7 feet was requested.

Mrs. Koluder presented the variance request as outlined in the statement of justification submitted with the application. She stated that she wanted to enlarge the family room and eating area, and had submitted a letter from the Box Wood Association which approved the addition pending BZA approval.

Mr. Hart asked if there was a pipeline running behind the property in the easement. Mrs. Koluder stated that the homeowners owned the property behind her lot, and there was an AT&T easement there, but there was not a pipeline on that easement.

Mr. Hammack asked Mrs. Koluder the nature of the proposed addition. She replied that she currently had a deck on the back of the house, and she wanted to take it down and replace it with an addition to the house in order to have more living space.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve variance application VC 01-Y-102 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID & LESLIE KOLUDER, VC 01-Y-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.3 ft. from rear lot line. Located at 13100 Cross Keys Ct. on approx. 5,635 sq. ft. of

land zoned PDH-3. Sully District. Tax Map 35-3 ((23)) (6) 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 August 21, 2001; 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 variance.
3. The house is placed on the rear half of the property.
4. The lot backs up to common space and should not have any impact on the community or 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 an addition, shown on the plat prepared by Richard Smith, dated March 19, 2001, 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. Pammel seconded the motion which carried by a vote of 5-0. Ms. Gibb recused herself from the hearing. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 585, August 21, 2001, (Tape 1), Scheduled case of

9:00 A.M. MATTHEW HAGAN, VC 01-V-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line and 4.4 ft. high fence to remain in front yard. Located at 1100 Arcturus La. on approx. 24,661 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((13)) 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. Matthew Hagan, 1100 Arcturus Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought a variance to permit construction of an addition 10 feet from the side lot line and to allow a 4.4 foot high fence to remain in the front yard. She said the Zoning Ordinance required a minimum side yard of 15 feet; therefore, a variance of 5 feet was requested for the addition. Ms. Stanfield said that a maximum height of 4 feet was allowed for a fence in the front yard; therefore, a variance of 0.4 feet was requested.

Mr. Hagan presented the variance request as outlined in the statement of justification submitted with the application. He stated that due to his growing family, he would like to convert an existing carport to a family room, which would allow for the creation of an additional bedroom in the existing living room area. He said he had consulted with several architects, and they all advised that the conversion of the carport would be the most practical and esthetically pleasing.

Mr. Hagan stated that his immediate neighbor, Lonnie Landers, 1106 Arcturus Lane, made a similar renovation to his carport several years ago. He said he had submitted a copy of Mr. Landers' letter of support to the Board and his other neighbors were supportive of his application.

Mr. Hart asked why the fence was 0.4 feet higher than required. Mr. Hagan said that there appeared to be an area of the ground that raised the fence up in one area; however, his abutting neighbor did not object to it. Ms. Stanfield stated that she had recently worked with another applicant who had a similar fence installed. She said when the surveyor came out, they found the fence was higher in one place due to the variation of the grade in the yard and she believed that this was probably the same problem.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve variance application VC 01-V-102 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MATTHEW HAGAN, VC 01-V-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line and 4.4 ft. high fence to remain in front yard. Located at 1100 Arcturus La. on approx. 24,661 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((13)) 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 August 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The lot is exceptionally narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of an addition, shown on the plat prepared by Kenneth W. White, dated May 15, 2001, 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.

Ms. Gibb seconded the motion which carried by a 6-0. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 587, August 21, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24. (moved from 5/1/01; continued from 7/10/01 and 7/24/01) (deferred from 8/7/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sang Park, stated that this hearing had been deferred from August 7, 2001.

Mr. Hammack stated that he had requested further written information from Mr. Park on whether Mr. Kim's corporation qualified as a professional corporation. He said he had not yet received any further information from him.

Mr. Park replied that he had conferred with the Staff Attorney at the Virginia State Corporation Commission. He said that when Mr. Kim's business was incorporated in 1988, the profession of acupuncturist had not been listed as a profession under the appropriate articles of the Virginia Codes, and Mr. Kim had not been eligible to form a professional corporation as an acupuncturist at that time.

Mr. Park stated that Mr. Kim had been unaware that in July 2000, the Virginia General Assembly amended the Code to include acupuncturists. Mr. Park stated that on August 20, 2001, he had started the process of submitting amendments in order for Mr. Kim to become a professional corporation. He said he believed the process would take 7 to10 days.

Mr. Hammack asked staff if another deferral would require a re-advertisement. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the County Attorney's office had said they would not need to do that. Mr. Hammack noted that since Mr. Kim's corporation would officially become a different corporation, he believed that it would require a new application.

Mr. Park stated that he had not talked directly with the County Attorney, but had spoken with his office staff. He said he did not believe that it would be necessary to re-advertise or reapply, but he would do whatever the Board asked him to do.

Mr. Hammack stated that he could not support the application because he did not believe Mr. Kim qualified as a professional corporation or for a home professional office. He said that he also had reservations regarding the location, hours of operation, and the sale of retail products.

Mr. Hammack made a motion to deny the application and Mr. Pammel seconded the motion.

Ms. Gibb stated that she believed that the business met the standards for a home professional office. She said she did have a problem with the parking issues, suitability of this business in the neighborhood, and with the cement grids in Mr. Kim's front yard which were not compatible to a residential neighborhood.

Mr. Hart agreed with Ms. Gibb and stated that he also had a problem with the retail component of the application.

Mr. Hammack clarified his position on the motion. He stated that multiple issues hampered the application, including the retail aspect, parking and traffic.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIM'S ORIENTAL HERB & ACUPUNCTURE, INC., SP 01-B-007 Appl. under Sect(s).3-203 of the Zoning Ordinance to permit a home professional office. Located at 8317 Little River Tnpk. on approx. 23,002 sq. ft. of land zoned R-2. Braddock District. Tax Map 59-3 ((11)) 24. (moved from 5/1/01; continued from 7/10/01 and 7/24/01) (deferred from 8/7/01). 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 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s).3-203 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and becomes final on September 11, 2001.

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Page 588, August 21, 2001, (Tape 1 and 2), Scheduled case of:

9:00 A.M. JUDITH W. CLARKE, DBA DESIGNS FOR EARLY LEARNING, INC. AND THE TRUSTEES FOR THE FRIENDSHIP UNITED METHODIST CHURCH, SPA 87-P-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-D-034 previously approved for a church and related facilities and private school of general education to permit change in development conditions. Located at 3527 Gallows Rd. on approx. 2.86 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((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. Molly Harbin, Agent, McGuire/ Woods, 2525 N. 10th Street, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, made staff's presentation as contained in the staff report. She stated that the applicant sought to amend a previously approved special permit. She said the applicant requested expansion of the existing hours of operation from 9:00 a.m. to 2:30 p.m. to the proposed hours of 7:30 a.m. to 5:00 p.m. She stated that the application included the reduction in the number of students from 75 to 68. Ms. Stanfield said that the change in hours for the school would allow for typical before school studies and after school activities.

Ms. Stanfield concluded that the subject application was in harmony with the Comprehensive Plan and conformed to the applicable Zoning Ordinance provisions. She said staff recommended limiting the number of vehicle trips into the school site to 10 during peak traffic hours on weekday mornings and afternoons. Ms. Stanfield stated that staff recommended approval with the inclusion of development condition Number 7 of the staff report.

Ms. Stanfield said that on the day prior to the hearing, the applicant had submitted a revised set of development conditions. She said in Revised Development Condition Number 7, the applicant had changed the number of vehicles entering the site from 10 to 15. She said the applicant proposed to designate one of their employees to serve as traffic director and coordinator during morning and afternoon peak hours.

Ms. Stanfield stated that Alan Kessler, Department of Transportation, had done an on-site traffic count at the subject property. She said that the transportation study had been used in determining the number of vehicles that would be allowed to enter the site, and staff did not recommend the requested change by the applicant.

Ms. Harbin presented the variance request as outlined in the statement of justification submitted with the application. She stated that the application was small in that it only requested an expansion of the hours to allow additional time for test preparation before school and for clubs in the afternoon. She said the applicant wanted the additional hours as many of the students and parents had requested such service from the school.

Ms. Harbin stated that staff's Development Condition Number 7 was restrictive and the Revised Development Condition Number 7 would offer a wider window of time for parents to drop off and pick up their children. She said that the limitation of 15 vehicle trips into the site was more realistic to accommodate students, school employees, and church employees.

Ms. Harbin stated that the applicant had never received any complaints regarding negative traffic impacts caused by the school and that the applicant had agreed to decrease the previously approved number of students from 75 to only 68 students. She said that 44% of the students took advantage of the bus service provided by the school and many families carpooled. She said that under the Revised Development Condition Number 7, the school proposed to have a school employee responsible for the direction and coordination of traffic to ensure the safety of the children.

Mr. Hammack asked staff how the number of vehicle trips had been determined. Mr. Kessler replied that VDOT had certain policies that determined whether a left-turn lane was within the geometric design of highways and streets. He said VDOT took into consideration the opposing and advancing volume of traffic, and ascertained what number of left-hand turns off Gallows Road would be a detriment to traffic mobility. Ms. Stanfield stated that there was a letter in Appendix 6 of the Staff Report that supported the determination.

Mr. Hart noted that the supporting documentation was a letter from a VDOT employee in 1987 and asked if a more recent study had been done. Mr. Kessler replied that the original letter referred to the current timeframe used by the school, which did not include the peak traffic hours proposed. He said he had returned to the school site two weeks earlier to verify that the numbers were still accurate.

Ms. Harbin stated that probably only 10 to 15 students would use the extended hours and that did not include the school staff or the church employee. She said she had done an informal traffic study herself at the

subject site. She stated that she had called Mr. Kessler afterwards and questioned if the study was still current and accurate, as she did not find the traffic to be bad. She said she spoke to Ms. Stanfield on the phone and that Ms. Stanfield told her she, too, had gone to the site and made two left turns onto the property during the afternoon hours and did not have any problems.

Mr. Hart clarified that in the time between 1987 and August, 2001, staff had decided that a left-turn lane would not be requested, but would limit the number of cars entering the site. He asked if the applicant had been aware of that option. Ms. Stanfield replied that the options had been provided to the applicant and the applicant determined that it would be preferable to add a development condition limiting the number of trips.

Mr. Hart asked how the number of cars turning left into the property would be enforced and Ms. Stanfield replied that staff would rely on the applicant's good faith to see that the development condition was dealt with properly. She said that if there appeared to be an overflow of traffic, neighbors could call Zoning Enforcement who would go out and take numbers.

Mr. Hart asked if the cost of a left-turn lane had been considered and Ms. Harbin replied that a left-turn lane was cost prohibitive, as the school was very small. She said the plat indicated that the school had a circular drive which would help prevent the stacking of cars on Gallows Road. Ms. Harbin stated that the hours of operation had not been limited before and the applicant would prefer to have it remain that way.

Chairman DiGiulian called for speakers in support of the application.

Steve McClearnan, 3420 Arnold Lane, came forward to speak in support of the application. He said he wanted his child to be able to have additional school programs. He stated that at the time he dropped his son off at school around 8:45, he found the traffic on Gallows Road was beginning to die down. He said since Gallows Road had four lanes at that particular section, there did not appear to be a problem with traffic backup.

Ruth Rosenberg, 3320 Hartwell Court, came forward to speak in support of the application. She stated that she had lived in the community for 39 years, and she had never heard any complaints about the traffic in the 28 years the school had been in existence. She said she was in favor of the enhancement of the programs and believed that the extended hours would be beneficial to both parents and students.

Chairman DiGiulian questioned why, after 30 years of school operation at that site, had the left-turn become an issue. Susan Langdon, Chief, Special Permit and Variance Branch, stated that since the school had requested extended hours into peak traffic hours, it could impact the traffic flow.

Daphne Hendricks, 710 Park Street, Vienna, Virginia came forward to speak in support of the application. She said she drove a carpool of 2 to 3 children to the school from Vienna daily and arrived at approximately 8:45. She said she never had a problem with turning into the school. She stated that she also supported the broader programs that the school would offer.

There were no other speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SPA 87-B-034 for the reasons as noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUDITH W. CLARKE, DBA DESIGNS FOR EARLY LEARNING, INC. AND THE TRUSTEES FOR THE FRIENDSHIP UNITED METHODIST CHURCH, SPA 87-P-034 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 87-D-034 previously approved for a church and related facilities and private school of general education to permit change in development conditions. Located at 3527 Gallows Rd. on approx. 2.86 ac. of land zoned R-3. Providence District. Tax Map 60-1 ((1)) 25. 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 date August 21, 2001; 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 variance.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s) 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, 3527 Gallows Road (2.86 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 Hunsberger and Monaco, P.C., dated March 1987, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. 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 seating capacity of the main worship area shall not exceed 186.

6. The maximum daily enrollment for the private school of general education shall be 68.

7. Upon issuance of the Non-Residential Use Permit for SPA 87-P-034, the hours of operation for the private school of general education shall be a maximum of 7:30 a.m. to 5:00 p.m., Monday through Friday; no more than ten 15 vehicles shall enter the site during peak morning traffic hours (7:30 a.m. to 8:30 a.m.) and during peak afternoon traffic hours (4:00 p.m. to 5:00 p.m.). An employee shall be designated to serve as traffic director and coordinator during the morning and afternoon peak hours to facilitate safe and expedient vehicular movement on the subject property.

8. A maximum of eight (8) full-time employees shall be associated with the private school of general education.

9. Landscaping and screening shall be provided and maintained as follows:

   - Existing vegetation shall be allowed to satisfy the transitional screening requirement on the eastern, northern and western lot lines.

- Along the front lot line, the existing tree and surrounding vegetation which serve as a memorial shall be integrated into the screening required for the proposed use. Other existing vegetation shall be used to satisfy the screening requirement where possible and supplemented as necessary to provide screening equivalent to Transitional Screening 1.

- Foundation plantings shall be provided along the front of the proposed building addition which will reduce the perceived bulk of the structure when viewed from Gallows Road and the adjacent properties.

- The nature, type and location of all supplemental plantings shall be determined by the Urban Forestry Division.

10. The barrier requirement shall be waived.

11. Signs shall be permitted in accordance with Article 12, Signs.

12. Parking lot lighting, if installed, shall be the low intensity type, on standards not to exceed twelve (12) feet in height, shall be full cut-off and/or shall be shielded in a manner that would prevent light or glare from projecting onto adjacent properties

13. If a shared parking agreement or parking reduction is approved by DPWES the number of parking spaces provided shall be forty-nine (49). 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 private school of general education must be reduced to correspond to a number that can be supported by the parking spaces provided on-site as determined by DPWES.

14. These conditions incorporate and supersede all previous conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. 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 5-1. Mr. Pammel voted against the motion. Mr. Pammel moved to waive the 8-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 21, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 592, August 21, 2001, (Tape 2), Scheduled case of:

9:00 A.M. BROOKFIELD WASHINGTON, INC., VC 01-V-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. from front lot line of a corner lot. Located at 9219 Ox Rd. on approx. 13,533 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning

Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 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. She stated that the applicant sought a variance to permit the construction of a dwelling to be located 25 feet from the front lot line of a corner lot. She said the Zoning Ordinance required a minimum front yard of 40 feet; therefore, a variance of 15 feet was requested.

Ms. Strobel, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She stated that the applicant requested a variance of the 40 foot minimum front yard requirement to permit a dwelling to be located 25 feet from the front property line. She stated that this lot was part of the old John Leary Subdivision which originally had 55 lots that had been platted in 1937 and were deemed recorded lots of record and approved by the County Surveyor in 1942. Ms. Strobel stated that this interpretation was confirmed in a letter issued by Laura Clark of the Zoning Administration Division in 1999. She said Ms. Clark had concluded that each lot within the John Leary Subdivision could be developed with a single family detached dwelling, and was not required to meet current R-1 minimum lot area and lot width requirements.

Ms. Strobel stated that the subject property had previously been developed with a single family home that had not met current R-1 standards and the house had since been removed. She said the applicant proposed construction of a new dwelling on the property that would be a size and style comparable to other homes being developed in the subdivision, but it required the approval of a variance.

Ms. Strobel stated that in addition to its unique circumstance of being part of a legal subdivision with lot areas smaller than what was normally permitted in the R-1 district, the lot met the variance criteria as detailed in the statement of justification in the staff report. Ms. Strobel said that the subject property was exceptionally narrow and bound on two sides by public streets, which created two front yards. She stated that these conditions placed substantial constraints on reasonable development of the lot and a strict application of the Ordinance would produce undue hardship on the applicant, who would be unable to construct a reasonably sized dwelling compatible with the community.

Ms. Strobel stated that she had brought an elevation of a proposed dwelling that had previously been presented and approved by the Board for similar variances. She said the applicant agreed to the condition that the house would be in substantial conformance with the elevation.

Ms. Gibb asked Ms. Strobel how the County Surveyor had approved the subdivision in 1942. Ms. Strobel replied that the lots had originally been recorded in 1937. She said there was a date and a seal on the plats. She said the plats had been signed by the County Surveyor in 1942 and the property was recorded among the land records at that time.

Ms. Strobel stated that all the information and supporting documentation had been submitted to Zoning Administration when the request was originally filed back in 1999. She said the determination had been made by the Zoning Administrator at that time that these were legal lots of record, even though they had not met current R-1 requirements. She said the lots would not have to meet minimum lot size or lot width, but had to meet the yard requirements, which created the current circumstances.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-B-099 for the reasons as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BROOKFIELD WASHINGTON, INC., VC 01-V-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 25.0 ft. from front lot line of a corner lot. Located at 9219 Ox Rd. on approx. 13,533 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 16. Mr. Pammel moved that the

Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 21, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The original plats were recorded in 1942 and are non-conforming based on the zoning that applies to them currently.
3. It has been declared by the County that these are buildable 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 location of the dwelling shown on the plat prepared by Land Design Consultants, dated May 8, 2001, 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 dwelling shall be in substantial conformance with the architectural elevations submitted at the public hearing and attached hereto as Attachment 1.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel 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 August 21, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 595 August 21, 2001, (Tape 2 and 3), Scheduled case of:

9:00 A.M. JEROME J. & JULIA A. KRISS, VC 01-M-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 2 & 3 having a lot width of 12.0 ft. Located at 7100 Woodland Dr. on approx. 2.32 ac. of land zoned R-2. Mason District. Tax Map 71-3 ((7)) 546B.

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, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report. She stated that the applicants sought approval to permit the subdivision of one lot into three lots, with proposed lots 2 and 3 having lot widths of 12 feet. She said a minimum lot width of 100 feet was required by the Ordinance for the R-2 Zoning District; therefore, variances of 88 feet were requested for the proposed lots.

Ms. Langdon stated that the proposed lots were to be developed with single family detached dwellings. She said staff did not believe that the application met the necessary variance standards, specifically 2, 3, 4, 5, 6, 8 and 9 as noted in the staff report. She said that a revised plat dated through August 3, 2000, which deleted reference to any ingress/egress easement had been distributed to the Board by the applicant just prior to the hearing. She said the revised development conditions also reflected the plat date of August 21, 2000.

Ms. Kelsey presented the variance request as outlined in the statement of justification submitted with the application. She stated that she believed the application met all the nine standards for a variance. Ms. Kelsey stated that Mr. and Mrs. Kriss had purchased the subject property in good faith in 1976 and over the last 25 years had substantially renovated the house and made many improvements to the land. She said that this lot was part of the old Lee-Woods Subdivision that ran along Woodland Drive. Ms. Kelsey stated that the lots in that area had been subdivided and re-subdivided over the years with clusters that had been approved both administratively and by the Board of Supervisors.

Ms. Kelsey briefly spoke of the problems caused by the lack of frontage for property and pipestems along Woodland Road.

Ms. Gibb recused herself from the hearing, stating that she had worked indirectly with Mrs. Kriss' engineer.

Julia Kriss, 7100 Woodland Drive, Springfield, Virginia came forward to speak in support of her application. She referred to a highlighted map shown on the view graph and discussed each area of it in detail.

Mrs. Kriss then walked the Board through a package she had submitted, explaining at length each page and

each photo that was included. She went into detail about each abutting property, each house, why it was built and how the land could have been developed.

Mrs. Kriss stated that strict application of the Zoning Ordinance would preclude a reasonable use of her land, which by right could potentially be four lots. She said that she owned the only large piece of land that lacked enough frontage to be subdivided into three lots. She stated that she felt the variance requested would not be a detriment to the adjacent properties and only one home would have a modified view beyond their own backyard.

Mrs. Kriss stated that she was in complete agreement with the six proposed development conditions as stated in the staff report. She said she was asking for parody and felt the application was logical and reasonable in light of all the factual information the she had presented.

Mr. Hart questioned Proposed Development Condition Number 6. He said it seemed to be different than what was on the latest plat, which dealt with ingress/egress. He clarified that there was a pipestem driveway for Lots 2 and 3. He said he saw that Lot 1 used a different driveway that was already in place. Mrs. Kriss replied that was correct. She said a memo from the Department of Transportation dated July 11, 2001, suggested that the driveways be combined and stated that she agreed that it would give a more harmonious effect. She said she presented a new plat to show they were in agreement and that the driveways would be combined.

Mr. Hart stated that he did not see any driveways depicted on the plat. Ms. Kelsey stated that the plat did not show the actual driveway as it was not a requirement until the time of subdivision. She said the driveway would come in off of the primary entrance of Woodland Drive, which would allow the three lots to go all the way to the back of the last lot.

Ms. Kelsey stated that the reason the exact location of the driveway was not depicted was to allow flexibility for the driveways to meander through the existing mature trees. She said if they had placed a driveway on the plat, it would have to go straight back.

Chairman DiGiulian questioned whether the existing gravel driveway would remain or if was to be removed and Ms. Kelsey replied that the gravel driveway would be removed.

Mr. Hart stated that the plat was unclear and did not show definitive plans for the lots. Ms. Kelsey spoke in depth about the gravel driveway, pipestem driveways and the proximity to easements.

Mr. Hart stated again that the plat was very confusing and unrealistic in its depiction. He said he was uncomfortable with both the plat and the contradictory information that had been given.

Mr. Hart then asked Mrs. Kriss to clarify the confusion regarding the three letters from her neighbor, Lorraine Doscher. Mrs. Kriss gave a lengthy, detailed explanation regarding Mrs. Doscher, the multiple letters, and her personal viewpoint as to which letter truly expressed Mrs. Doscher's wishes.

Mr. Hart asked staff if Lot 1 was large enough to be divided again, if the house was torn down and not in the middle of the land.

Mr. Hart and Ms. Langdon had a brief discussion regarding lot size requirements for the R-2 district, whether it was possible to add a public street or court, and what the repercussions would be.

Mr. Pammel asked how the owners of Lot 58 felt about the Krisses' request for a variance. Mrs. Kriss stated that it was very clear that they did not want any change.

Vice Chairman Ribble called for speakers in support or opposition to the application.

Larry Edmonds, 7013 Woodland Drive, Springfield, Virginia, came forward to speak in opposition to the application. He stated he was the Senior Minister at St. Johns Methodist Church and had spoken with Mrs. Doscher the previous evening. He clarified that Ms. Doscher had written a letter the previous evening that had been notarized while he was present and she was opposed to the application. He said Mrs. Doscher believed that all the trees would be taken down and she would not have any shade trees left.

Mr. Edmonds then addressed the issue of the statement that Mrs. Kriss had purchased the property in good faith in 1976. He stated that since Mrs. Kriss was a successful Realtor, he felt she was well aware of the County regulations when she originally purchased her home. He said he felt that she had always wanted to subdivide her land for financial gain at the loss for others.

Eileen Beam, 7024 Woodland Drive, Springfield, Virginia came forward to speak in opposition to the application. She stated that she was the property owner adjacent to Mrs. Kriss and would be most affected by the subdivision of Mrs. Kriss' property. She said she built her house in 1995 after she had verified through the County that the Krisses could not further develop their property as they did not have enough frontage. She said that before the construction on her house began, Mrs. Kriss approached her regarding subdividing her lot, and she refused. Ms. Beam addressed Standards Number 7, 8, and 9, which she felt Mrs. Kriss had not met.

Alice Roberts, 7105 Triad Way, Springfield, Virginia came forward to speak in opposition to the application. She stated that adding density would overtax the already overburdened roads. She said it would be an environmental detriment to take down large trees and remove ground foliage. Ms. Roberts was concerned at the number of mature trees that would be destroyed, the height of the new homes, and added drainage from a higher property elevation.

Jay Lowe, (no address given) came forward to speak in opposition to the application. He said he was the owner of Lot 46A, immediately west of Mrs. Kriss. He said he recently purchased his home based on lot size, woods, peace, quiet, and privacy. He said he bought the property knowing the restrictions and accepted them. Mr. Lowe was concerned that an additional pipestem next to his property would be detrimental. He said that his privacy would be invaded and he felt his son would not be safe playing in the yard along the pipestem, especially with the construction of two additional houses.

Gwendolyn Kinny, 7101 Triad Way, Springfield, Virginia, came forward to speak in opposition to the application. She said her concerns were much like her neighbors. She felt she would lose the privacy of her backyard since the two homes would face her backyard. She also stated that she was concerned for the loss of mature trees and diminished property value.

Gretchen Tackaberry, 5406 Backlick Woods Court, Springfield, Virginia came forward to speak in opposition to the application. She stated that her primary concern was additional drainage flowing down to her house. She said that she had approximately one acre of land and that her backyard was considered wetlands. She said the wetland balance would be severely affected by any further development.

Ann Marie Dolan, 7131 Woodland Drive, Lot 39, came forward to speak in opposition to the application. She stated that she was a long time resident. She said her professional background included a Masters Degree in urban and environmental development and that she was employed by the Arlington County Planning Department. She stated that Woodland Drive had already suffered from many bad planning decisions in the past and she had seen the destabilizing effect that inappropriate in-fill had on residential areas. She spoke in depth regarding environmental factors in the neighborhood.

Mrs. Kriss stated in rebuttal that her land originally had been a pig farm with pigs and chickens, and the trees were all well spaced with the larger trees toward the perimeter of the property giving the sense of woods. She said she felt that there would probably be only one person whose view would be affected by the new houses.

Mrs. Kriss stated she would not address innuendoes about some poor elderly resident.

Mrs. Kriss stated that the owners of Lot 58 had always known that she was going to subdivide her land as she had discussed that option with the father of the current owner many years ago. She said that Lot 39 could subdivide by right if they wanted to. Mrs. Kriss stated that she had sent out additional notifications to property owners as a courtesy on her part. She stated that the drainage and water issue was not caused by her, but from the Lee Woods Townhouses.

Mr. Hammack asked Mrs. Kriss how many lots she could get if she could do a by-right subdivision. She replied that she could not subdivide because she was the only person in that area who did not have enough road frontage to meet the requirements.

Ms. Kelsey stated that Mrs. Kriss owned enough land to have four lots, but did not want to demolish her own home and denude the lot.

Chairman DiGiulian closed the public hearing.

Mr. Hart stated that he was not prepared to go forward based on the information before him. He stated that he would like to get a deferral so that additional information could be obtained. He said he would like to look at the old plat that went with the variance granted June 27 1961, which involved not only the property next door, but reconfiguration from that. Mr. Hart said that the drawings before him showed all the houses facing each other, and he would like to better understand the proximity of the various houses, including Mrs. Doscher's.

Mr. Hart moved to defer the hearing to October 2, 2001, at 9:00 a.m. Mr. Ribble seconded the motion.

Mr. Pammel stated that he would not be present for that meeting, but wanted to go on record as being opposed to the variance. He also stated that, after hearing testimony, he felt the Kriss' neighbors wanted to tell the Kriss' what they could or could not do with their own land. He stated that there had been a lot of selfish issues brought forward and wanted to reiterate to the neighbors that Mr. and Mrs. Kriss owned that land.

The motion carried by a 5-0 vote. Ms. Gibb recused herself from the meeting. Mr. Kelley was absent from the meeting.

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Page 598 August 21, 2001, (Tape 3), Scheduled case of:

9:00 A.M. LESTER H. SMALLWOOD, JR., SP 01-L-037 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.8 ft. from side lot line and to permit an accessory dwelling unit. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Concurrent with VC 01-L-101).

9:00 A.M. LESTER H. SMALLWOOD, JR., VC 01-L-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 4.8 ft. from side lot line and 9.8 ft. from other side lot line. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Concurrent with SP 01-L-037).

Chairman DiGiulian stated that SP 01-L-037 and VC 01-L-101 had been administratively moved to October 23, 2001, at 9:00 a.m.

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Page 598 August 21, 2001, (Tape 3), After Agenda Items:

Approval of March 20, 2001 and April 3, 2001 Minutes

Mr. Pammel made a motion to approve the Minutes of March 20, 2001, and April 3, 2001. Mr. Hammack seconded the motion which carried with a 5-0 vote. Ms. Gibb was not present for the vote. Mr. Kelley was absent from the meeting.

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Page 598 August 21, 2001, (Tape 3), After Agenda Items:

Approval of August 14, 2001 Resolutions

Mr. Pammel made a motion to approve the Resolutions of August 14, 2001. Mr. Hammack seconded the motion which carried with a 5-0 vote. Ms. Gibb was not present for the vote. Mr. Kelley was absent from the

meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:08 p.m.

Minutes by: Judith A. Gobbi

Approved on: January 29, 2002

Regina Thorn Corbett, 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 11, 2001. 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 9:00 a.m. Chairman DiGiulian discussed the policies 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 601 September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF FAIRFAX COMMUNITY CHURCH, SP 01-S-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship and nursery school with an enrollment of less than 100 students daily. Located on the S. side of Braddock Rd., approx. 300 ft. W. of its intersection with Bentonbrook Dr. on approx. 14.30 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 13A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was. Ms. Strobel introduced Holly Tompkins, Planner, Walsh, Colucci, et al., and stated that she would assist with making the presentation.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit the construction of a church and related facilities. The proposed church would be centrally located on the site and would consist of a building containing 58,000 square feet and 1,000 seats. The applicant also proposed to operate a nursery school for up to 99 children. The proposed nursery school would operate Monday through Friday between the hours of 8:30 a.m. and 12:30 p.m. A 7,000 square foot fenced play yard would be located to the rear of the building. Mr. Bernal stated that access to the site was proposed via a main entrance from Braddock Road at the northwest corner of the site. He said a second access point was proposed from Braddock Road in the northeastern portion of the site and was proposed to be a right-out exit only. Mr. Bernal stated that a total of 394 parking spaces were proposed for the church and nursery school but only 269 spaces were required. The overall floor area ratio (FAR) would be 0.093. Staff recommended approval subject to the development conditions dated September 4, 2001. Mr. Bernal stated that revised development conditions from the applicant had been received on the afternoon of September 10, 2001. He said staff was amenable to revised conditions 4, 9, 11, 16, and 18.

Mr. Hart asked for clarification of condition #17 in the staff report. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the idea was to retain as much vegetation as possible across the front of the site. She said if a right turn lane was warranted, a lot of the vegetation would have to be removed to install the turn lane, so if the turn lane was warranted, staff would prefer that a right-in not be provided so that a right turn lane would not have to be constructed and the access would be right-out only. Ms. Langdon said the westernmost access would still have a right turn lane and would be a full intersection.

Mr. Hammack asked why no one knew whether a right turn lane was needed yet. Ms. Langdon said a traffic study had not been done yet.

Ms. Tompkins, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. She said the applicant was proposing a place of worship and a nursery school with an enrollment of 99 children or less. Ms. Tompkins stated that there would be 47.5% open space. She said the church proposed to have 1000 seats. Ms. Tompkins said the building would be centrally located on the parcel, which would provide for the greatest amount of tree preservation and undisturbed open space. She said the church access was directed towards Braddock Road, an arterial road, which was a condition that needed to be met by non-residential uses requiring a special permit. Ms. Tompkins said the church would be utilizing an existing median break that would prevent traffic from going through the residential neighborhoods. She said 394 parking spaces would be provided as opposed to the 269 that were required to ensure that all the parking would be on site. Ms. Tompkins said the hours of operation for the nursery would be 8:30 a.m. to 12:30 p.m. during the school year to avoid afternoon peak rush hour traffic. She said the church services would be on Saturdays from 6:00 p.m. to 9:00 p.m. and on Sundays from 9:00 a.m. to 12:30 p.m. which were also off peak traffic hours. Ms. Tompkins said that the applicant had worked extensively with the neighbors regarding landscaping, tree preservation, buffering, and drainage issues. She said as a result of meeting with the neighbors, the applicant agreed to provide evergreens within the tree save area and to landscape the parking lot. Ms. Tompkins indicated that Ms.

Strobel would address the development conditions.

Mr. Hammack asked how much of the undisturbed open space would fall within the utility easements. Ms. Strobel said approximately 1.8 acres of open space was within the utility easements. She said the area was vegetated and the applicant would not disturb that area. Ms. Strobel stated that it was not inconsistent with other cases.

Ms. Strobel said the revisions of the conditions were minor modifications which would provide flexibility with regard to approval. She said development condition #9 was modified to have the flexibility of having a chain link or wood fence for the play area for the nursery school. Ms. Strobel stated that the other condition would be to have uplighting at the main entrance of the building. She requested that Condition #13 reflect the wording "or landscape architect".

Mr. Pammel asked what agreement the applicant had with the adjacent property owner about part of the entrance being located on the adjacent property. Ms. Strobel stated that the applicant had several meetings with Mr. Kim, the adjacent property owner, and he agreed to dedicate a portion of his property to the applicant at the time of site plan.

Mr. Hart asked whether the dedication would be a public street. Ms. Strobel stated that a small portion would be a public street and the rest would be a private ingress/egress easement that would be open to the public.

Chairman DiGiulian called for speakers.

Robert Hayman, 4804 Bentonbrook Drive, came forward stating that the applicant had been cooperative about the flooding issue and redirecting the water flow. He said he wanted to ensure the property could handle the stormwater runoff. Mr. Hayman stated that there might not be enough parking in the long run.

Jim May, 4808 Bentonbrook Drive, came forward stating that he was concerned with the location of the septic field and runoff from the property.

Edith Huff, 11305 Lafferty Lane, came forward stating that she would like to have a traffic management plan. She asked the Board to defer the application until a traffic study was done. Ms. Huff introduced a letter from a neighbor, Catherine Potter, and submitted the letter for the record.

Ms. Strobel introduced David Stigler, Patton, Harris, Rust and Associates to give comments addressing the drainage concerns. Mr. Stigler stated that the drainage issues had been satisfied by diverting 2 acres of water flow in another direction.

Ms. Strobel stated that applicant was providing parking in excess of the Ordinance requirements, and with the development conditions, they had adequately mitigated issues associated with traffic.

Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that some of the issues raised needed further investigation and review. He moved to defer SP 01-S-038 to October 2, 2001, at 9:00 a.m. Mr. Kelley and Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb was not present for the vote.

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Page 602 September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. GOLD'S GYM INTERNATIONAL, INC. & FAIRFAX PLAZA COMPANY LIMITED PARTNERSHIP, SP 01-P-041 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at 2982 Gallows Rd. on approx. 4.13 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) pt. 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. William Thomas, Fagelson, Schonberger, Payne and Deichmeister, P.C., 11320 Random Hills Road, Suite 690, 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 in order to establish a health club on the second floor of an existing building within the Fairfax Plaza Center. The Fairfax Plaza is 13.16 acres in size and the portion proposed under the special permit use contained 4.13 acres. The total area of the second floor that the health club and its administrative offices proposed to occupy would be 29,671 square feet. The applicant estimated number of patrons utilizing the facility to be approximately 120 persons per day. The applicants anticipated that the peak hours would primarily be during the morning and evening hours (before and after work hours). Mr. Bernal stated that the proposed total number of employees would be 40; however, a maximum of ten (10) health club employees were proposed to be at the site at any one time. The proposed hours of operation were 24 hours per day, seven days a week. Mr. Bernal stated that the development conditions had been revised in order to provide a much needed inter-parcel access and an easement to the adjacent Jackson intermediate School. He said the inter-parcel access was recommended in the Comprehensive Plan. Mr. Bernal stated that Revised Development Conditions were distributed dated September 11, 2001. Staff recommended approval subject to the Revised Proposed Development Conditions dated September 11, 2001.

Mr. Hammack asked why there would be interparcel access between the school and a commercial property. Mr. Bernal stated that the school wanted to have access to a traffic light.

Mr. Thomas, the applicant's agent, presented the request as outlined in the statement of justification submitted with the application. He said the owner had been discussing interparcel access with the school prior to the special permit application. Mr. Thomas indicated that interparcel access was the right thing to do because it would help the school. He verbally submitted proposed language changes to conditions #5 and #6 to add clarification.

Mr. Hart asked whether there was some litigation about the parking lot and would any of that be implicated with the 68 parking spaces. Mr. Thomas said there was litigation about whether the new use next door was inconsistent with the design for the center and not the number parking spaces.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SP 01-P-041for the reasons noted in the Resolution with the suggested condition modifications from the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GOLD'S GYM INTERNATIONAL, INC. & FAIRFAX PLAZA COMPANY LIMITED PARTNERSHIP, SP 01-P-041 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at 2982 Gallows Rd. on approx. 4.13 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((1)) pt. 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 September 11, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee 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 applicants, Gold's Gym International, Inc. and Fairfax Plaza, L. P. 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 site 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 C. B. DeLashmutt, dated April 19, 2001, as revised through August 27, 2001, and stamp dated August 28, 2001, and approved with this application, as qualified by these development conditions. This approval shall only govern the 4.13 acre area to be occupied by the approved health club located at 2982 (second floor) Gallows Road.

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. Other by-right special Exception uses may be permitted without amendment to the special permit.

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 health club (non administrative) employees on site at any one time shall be ten (10).

6. There shall be a minimum of 68 parking spaces provided as shown on the special permit plat. All parking for the use shall be on-site

7. The applicant shall provide an inter-parcel access and easement to the adjacent Jackson Intermediate School subject to the approval of the Fairfax County School Board and the Department of Public Works and Environmental Services (DPWES).

8. Any signs and awnings associated with this use that are affixed to the building shall be architecturally consistent with those of the shopping center. All Signs shall be subject to and in compliance with Article 12 of the Zoning Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. 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 19, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. THOMAS L. & MARY J. SUTTON, SP 01-P-045 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 addition to remain 14.9 ft. from side lot line. Located at 8616 McHenry St. on approx. 22,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (5) 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. Thomas L. and Mary J. Sutton, 8616 McHenry Street, Vienna, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a special permit to permit a reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 14.9 feet from a side lot line. A minimum side yard of 20 feet is required; therefore, a modification of 5.1 feet was requested.

Mr. Sutton presented the request as outlined in the statement of justification submitted with the application. He said the addition was built 19 years ago, which had been an enclosure of the carport. He said the error was discovered when they were trying to sell their home. Mr. Sutton said there was no objection from the neighbors. He requested a waiver of the 8-day waiting period.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve SP 01-P-045 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 L. & MARY J. SUTTON, SP 01-P-045 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 addition to remain 14.9 ft. from side lot line. Located at 8616 McHenry St. on approx. 22,000 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((5)) (5) 43. 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 September 11, 2001; and

WHEREAS, the Board has made the following findings of fact:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon

the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This Special Permit is approved for the location of an addition as shown on the plat prepared by Guy H. Briggs, Land Surveyor, dated June 20, 2001, as revised through July 31, 2001, 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. Hart and 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 and Mr. Kelley were not present for the votes.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 11, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 606 September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JULIAN, JR. & MARIA ATIENZA, VC 01-V-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 7608 Springfield Hills Dr. on approx. 9,911 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 99-3 ((2)) 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. Julian and Maria Atienza, 7608 Springfield Hills Drive, Springfield, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition to be located 19.0 feet from the rear lot line. A minimum rear yard of 25 feet is required; therefore, a variance of 6.0 feet was required for the addition.

Ms. Atienza presented the variance request as outlined in the statement of justification submitted with the application. She said the property was angled to the rear and the existing deck would be removed and a smaller deck would be added.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-V-105 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JULIAN, JR. & MARIA ATIENZA, VC 01-V-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.0 ft. from rear lot line. Located at 7608 Springfield Hills Dr. on approx. 9,911 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 99-3 ((2)) 12. Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 11, 2001; 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 unusually shaped.
4. Only one corner of the addition requires the variance 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 the addition shown on the plat prepared by Dewberry & Davis, LLC, dated May 15, 2001, 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.

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 19, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 608 September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. KEVIN J. & SYLVIA F. MCGREEVY, VA 92-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 11.0 ft. from side lot line, 23.3 ft. from front lot line and 6.0 ft. and 4.5 ft. high fences to remain in front yard of a corner lot. Located at 2161 Chain Bridge Rd. on approx. 29,263 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 39-1 ((4)) 11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sylvia McGreevy, 2161 Chain Bridge Road, Vienna, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested variances to permit the construction of a two-story covered deck addition 11.0 feet from the south side lot line, the construction of an eave 23.3 feet from the Horse Shoe Drive front lot line and to allow 4.5 foot and 6.0 foot high fences to remain in the front yard of a corner lot. The Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 9.0 feet was requested for the deck addition. The Ordinance requires a minimum front yard of 40 feet with a permitted extension of 3 feet for an eave, therefore a variance of 13.7 feet was requested for the eave addition. The Ordinance allows a maximum fence height of 4.0 feet in the front yard; therefore, variances of 0.5 feet and 2.0 feet were requested for the fences.

Ms. Gibb asked whether the property contained 2 front yards. Ms. Josiah replied yes.

Ms. McGreevy presented the variance requests as outlined in the statement of justification submitted with the application. She said her front yard bordered Route 123 and she would like to use the fence as a barrier from traffic. Ms. McGreevy said the 6-foot fence was needed to keep people from viewing the pool and coming onto her property. She said the property was screened from the adjacent neighbors.

Ms. Gibb asked how far the most affected property was. Ms. McGreevy replied approximately 20 or 30 feet.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Gibb moved to approve VA 92-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

KEVIN J. & SYLVIA F. MCGREEVY, VA 92-P-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 11.0 ft. from side lot line, 23.3 ft. from front lot line and 6.0 ft. and 4.5 ft. high fences to remain in front yard of a corner lot. Located at 2161 Chain Bridge Rd. on approx. 29,263 sq. ft. of land zoned R-1 and HC. Providence District. Tax Map 39-1 ((4)) 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 September 11, 2001; 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 covered deck and eave will have a minimal impact on the adjacent property.
4. The fence heights were reasonable because of the pool.
5. The lot has double front yards that border an outlet road, which makes it difficult 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** with the following limitations:

1. This variance is approved for the location of the additions and fences shown on the plat prepared by Alexandria Surveys International, LLC, dated February 28, 2001, as revised through August 7, 2001, 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.

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. 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 19, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble stated that two airplanes had crashed into the World Trade Center and it collapsed, and the Pentagon had been bombed. He said the Capital had been evacuated, and if anyone in the audience had relatives at the Pentagon, the Board could continue those cases until a later date.

Mr. Pammel noted that all air traffic was down and all flights had been cancelled and the White House had been evacuated. He said the news indicated that a hijacked plane had been flown in the World Trade Center.

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Page 610, September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DONALD AND IRMA REISER, VC 01-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and one outlot with proposed Lot 2 having a lot width of 12.0 ft. and proposed Lot 3 having a lot width of 17.5 ft. Located at 4042 and 4044 Hunt Rd. on approx. 1.50 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 14 and 14A. (moved from 7/24/01)

Mr. Hart gave a disclosure, but indicated that would not affect his ability to participate in the public hearing.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. H. Kendrick Sanders, 3905 Railroad Avenue, 200N, Fairfax, 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 Jennifer Josiah. The applicant requested a variance to permit the subdivision of three (3) lots and one (1) outlot, with proposed Lot 2 having a lot width of 12.0 feet and proposed Lot 3 having a lot width of 17.5 feet. A minimum lot width of 100 feet is required by the Ordinance; therefore, variances of 88.0 feet and 82.5 feet were requested for proposed Lots 2 and 3, respectively. The three (3)

lots were proposed to be developed with single family detached dwellings. Staff believed that the application did not meet Variance Standards 2 through 6 and 8 and 9 as set forth in the Zoning Ordinance.

Mr. Sanders, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the property was unusually shaped and narrow. He said without a variance, reasonable development of the property could not be achieved. Mr. Sanders stated that the 3 houses would share a single driveway. Mr. Sanders said the current driveway's location was in the safest place, at the crest of the road. He said the proposed plan would avoid major clearing and provide substantial tree save. Mr. Sanders stated that the closest house to the property would be 150 feet from the shared property line. He said there was an old house currently on the property, which would be removed. Mr. Sanders said the applicant requested the addition of language to staff's development condition regarding Best Management Practices (BMP).

Mr. Ribble asked if Outlot A would be conveyed to a homeowner's association. Mr. Sanders replied yes.

Mr. Hart asked if there was a stormwater pond required, would it be placed on the outlot. Mr. Sanders said it was anticipated, because of the small development, that the Department of Public Works and Environmental Services (DPWES) would like for the applicant not to have to provide stormwater. He said the applicant anticipated being able to justify a waiver if they could dedicate conservation areas.

Mr. Hart asked if the BMP structure would go on Outlot A. Mr. Hart stated that because of the way the house was proposed to be placed on Lot 3, it would be very close to the corner and very tight for equipment that would need to get back there. Mr. Sanders replied that they would have to go through site plan to get approval.

Mr. Hart asked would there be any trees saved by not aligning the driveway with Sherman Road as recommended by the Department of Transportation. Jennifer Josiah, Senior Staff Coordinator, replied that there would be significant tree save by not aligning the driveway with Sherman Road.

Mr. Hart asked if Outlot A remained as a conservation easement, could the owners of the 3 lots access it. Mr. Sanders replied that there would have to be some sort of easement given probably through the rear of lot 3, for walking purposes, if the homeowners association owned it.

Chairman DiGiulian called for speakers.

Gordon Levine, 4052 Hunt Road; Jane Frost Swetnam and Warren Swetnam, 4041 Taylor Drive; Fred Welther, no address given; Kathleen Church, 4113 Hunt Road; Laura Neal, 4046 Hunt Road; and Thomas Smith, 4041 Hunt Road; came forward to speak in opposition. They expressed concerns relating to loss of trees and vegetation, water runoff, incompatibility with the neighborhood, and there being no justification for 3 houses.

Mr. Sanders stated in his rebuttal that without the variance there would be a worse impact on the neighbors. He said the applicant's plan provided the best way to save a maximum of trees. Mr. Sanders stated that the Taylor Street residents were more than 150 feet from the subject property. He said the drainage issues would be taken up at the time of site plan.

Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to deny VC 01-B-071. He said the standards required for a variance had not been met. Mr. Pammel said the variance request would change the character of the area. Mr. Hamamck seconded the motion.

Mr. Hart stated that this was a difficult case because while there were concerns from the community about tree save and the character of the neighborhood, the by-right development might end up with less trees and more changes to the neighborhood than the neighbors might otherwise like. He said if there were two houses, there wouldn't be any restriction on clearing of the lot. Mr. Hart said the application had some issues that could be resolved with additional conditions. He said he would have supported a deferral to allow the applicant to work on the issues.

Page 612 September 11, 2001, (Tape 1), DONALD AND IRMA REISER, VC 01-B-071, continued from Page 611

The motion failed by a vote of 2-5. Chairman DiGiulian, Mr. Kelley, Mr. Hart, Ms. Gibb and Mr. Ribble voted against the motion.

Mr. Hart moved to defer VC 01-B-071 to October 23, 2001 at 9:00 a.m. to revisit the conditions about the outlot, allowing Lots 1 and 2 access to the outlot, and a commitment for supplemental vegetation. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 612 September 11, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CHARLOTTE ROBINSON, VA 00-M-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.5 ft. from side lot line. Located at 6324 Crosswoods Dr. on approx. 16,705 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 613.

Chairman DiGiulian noted that VA 00-M-097 was withdrawn.

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Page 612 September 11, 2001, (Tape 1), Scheduled case of:

9:30 A.M. MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are occupying the subject property without having obtained a Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 12509 Easter La. on approx. 1.07 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((5)) 40. (Admin moved from 10/9/01)

Chairman DiGiulian stated that he was informed that the Government Center was closing. He stated that the subject appeal needed to be continued to a date and time certain. Ms. Gibb moved to continue A 2001-SP-016 to September 18, 2001, at 9:30 a.m. Mr. Hart seconded the motion which carried by a vote of 7-0.

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The Board deferred the After Agenda Items to September 18, 2001.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Minutes by: Regina Thorn Corbett

Approved on: February 5, 2002

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 18, 2001. 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 policies 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 613, September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. WAYNE PIERCE, VC 01-M-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 22.4 ft., **(THE BOARD APPROVED THE GARAGE ADDITION TO BE 24.4 FEET FROM THE FRONT LOT LINE)**, and 27.3 ft. from front lot line. Located at 5207 Columbia Rd. on approx. 11,600 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (24) 134.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wayne Pierce, 5207 Columbia Road, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested variances to permit construction of a garage addition to be located 22.4 feet from the front lot line and to permit the construction of an addition to enlarge the living room to be located 27.3 feet from the lot line. The Zoning Ordinance requires a minimum front yard of 30 feet; therefore, variances of 7.6 feet for the garage and 2.7 feet for the living room addition were requested.

Mr. Pierce presented the variance requests as outlined in the statement of justification submitted with the application. He stated that he was willing to change the garage addition to locate it a total of 24.4 feet from the front lot line. He explained that the garage was needed to provide shelter for him and his wife when entering and exiting the house. He said that the addition was needed to provide additional living space for his family. Mr. Pierce stated that he had full neighborhood support.

Chairman DiGiulian noted that there was a letter of opposition and asked the applicant to respond to those concerns. Mr. Pierce stated that the complainant was mistaken in several statements. He reiterated that the additions to the home were due to the need for more living space. He stated that the additions would be in character with the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-M-104 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

WAYNE PIERCE, VC 01-M-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 22.4 ft. and 27.3 ft. from front lot line. **(THE BOARD APPROVED THE GARAGE ADDITION TO BE 24.4 FEET FROM THE FRONT LOT LINE)** Located at 5207 Columbia Rd. on approx. 11,600 sq. ft. of land zoned R-3. Mason District. Tax Map 71-4 ((5)) (24) 134. 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 18, 2001; 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 prescribed standards for the granting of a variance.
3. The unusual topography restricts development to the rear of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of additions as shown on the plat, **(THE BOARD APPROVED THE GARAGE ADDITION TO BE 24.4 FEET FROM THE FRONT LOT LINE),** prepared by Kenneth W. White, dated, May 1, 2001, 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. 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 October 2, 2001. This date shall be deemed to be the final approval date of this

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Page 615, September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. GIOAN VAN NGUYEN, SP 01-M-039 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 2963 Sleepy Hollow Rd. on approx. 13,123 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((14)) 2A.

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 Nguyen, 2963 Sleepy Hollow Road, Falls Church, Virginia, replied that it was.

Mr. Bernal presented the special permit request as contained in the staff report. The applicant requested approval of a special permit for a home professional office to provide certified public accounting and law services from the garage of his home to serve one client at a time with a maximum of four clients per day. The public accounting service and law office consisted of just the applicant. The proposed office was to be located in the garage of the dwelling that had access to the side yard. Approximately 501.6 square feet of the 3,447 square foot dwelling was proposed to be utilized for the home professional office or 14.5% of the dwelling. There was no new construction or other physical changes proposed for the site other than the additional asphalt for four vehicles. The proposed hours of operation for the home professional office were from 9:00 a.m. to 5:00 p.m., Monday through Friday. Staff recommended approval.

Mr. Nyugen presented the special permit application as outlined in the statement of justification submitted with the application. He stated that he agreed with and would abide by the development conditions suggested by staff. He said that he understood the traffic concerns that several neighbors had and he assured that all clients would park on the site. He submitted six letters of support to the Board.

Mr. Hart and the applicant discussed the layout of the parking lot. Mr. Nyugen explained the parking situation and pointed out where he would be parking. He stated that he also had a space for a part-time employee to park; however, he had not yet hired that person.

Mr. Hart asked staff if they were in agreement with the parking situation. Mr. Bernal replied that they had requested that there be at least four parking spaces. He stated that staff was under the impression that Mr. Nyugen would be the only employee.

Mr. Hart asked if staff preferred a different parking situation. Mr. Bernal replied that the goal was to keep the parking to the rear of the property to keep the property in character with the neighborhood. He stated that staff preferred only one employee parking to the side of the home.

Mr. Kelly asked the applicant if his workload intensified during tax season. Mr. Nyugen replied that he specialized in handling tax audits and did not prepare any tax returns; therefore, his business did not intensify during tax season.

Mr. Ribble noted that there was a dental office in the neighborhood and asked staff how long it had been in existence. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the dental office had been in existence for more than 30 years.

Chairman DiGiulian called for speakers.

George Fitzgerald, on behalf of Bill Cross, President of Buffalo Hills Citizens Association, came forward to speak in opposition. He explained that the dental office had been in existence since the 1960's and had made several attempts to expand and the citizens were concerned that the same would happen with the home professional office in question.

Mr. Nguyen, in his rebuttal, stated that he would abide by the development conditions and requested that the

Board approve the special permit.

Ms. Gibb asked the applicant if he was in agreement with the development condition that restricted him to be the only employee of the business. Mr. Nguyen stated that he was in agreement with that condition.

Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he could not support the application because there was professional space available to rent in the area and the parking was totally inadequate.

Mr. Hart moved to approve SP 01-M-039 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GIOAN VAN NGUYEN, SP 01-M-039 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a home professional office. Located at 2963 Sleepy Hollow Rd. on approx. 13,123 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((14)) 2A. 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 September 18, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The parking layout to the side of the property is necessary to keep the front of the property in character with the neighborhood.
3. Staff is in support of the application.
4. The special permit will not change the character of the neighborhood, as there are commercial uses located in the general area of the subject property.
5. The development conditions will mitigate any negative impact the use could have on the neighborhood and any infraction of the development conditions can be reported to the Zoning Enforcement Division.

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, 2963 Sleepy Hollow Road, 13,123 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 K. M. Kamel, dated August 23, 2001, 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 d etermined 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 hours of operation of the home professional office shall be limited to a maximum of 9:00 a.m. to 5:00 p.m., Monday through Friday.

6. The maximum number of employees shall be limited to one (1) on-site at any one time.

7. The area utilized for the home professional office shall not exceed 501.6 square feet.

8. The home professional office shall only be for an office of a Lawyer/Certified Public Accountant.

9. The dwelling that contains the home professional office shall also be the primary residence of the applicant.

10. Parking shall be limited to two (2) spaces for the dwelling and two (2) spaces for the Home Professional Office. All parking shall be on-site as shown on the special permit plat.

11. There shall be only one client at any one time on site and the maximum number of clients per day shall be limited to four (4).

12. There shall be no signage associated with the home professional office.

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.

Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Kelley and Mr. Ribble voted against the motion 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 October 2, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 617, September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KATHLEEN M. & ROBERT G. CHENEY, VC 01-S-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line. Located at 6911 Brisbane St. on approx. 12,314 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((7)) 64.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kathleen Cheney, 6911 Brisbane Street, Springfield, Virginia, replied that it was.

Mr. Bernal presented the variance request as contained in the staff report. The applicant requested a

variance to permit the construction of a sunroom addition to be located 8.7 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3.3 feet was requested.

Ms. Cheney presented the variance request as outlined in the statement of justification submitted with the application. She explained that the property was irregularly shaped and the house was situated at an irregular angle on the property; therefore, the only feasible location for the sunroom was what was requested. She stated that the addition would not be detrimental to any adjacent properties and there was full neighborhood support.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-S-107 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KATHLEEN M. & ROBERT G. CHENEY, VC 01-S-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line. Located at 6911 Brisbane St. on approx. 12,314 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((7)) 64. 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 18, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants provided testimony indicating compliance with the prescribed criteria for the granting of a variance.
3. The property has an extraordinary situation with regard to its shape and the siting of the house 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 addition as shown on the plat prepared by Charles E. Janson, dated, May 22, 2001, as certified trough June 14, 2001, as 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.

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 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 619, September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. MARY K. HIGHAM & DAVID A. SMITH, VC 01-L-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 15.0 ft. from side lot line. Located at 6403 Briarmoor La. on approx. 20,000 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((15)) 30.

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. Bill Higham, 6214 Higham Drive, Franconia, Virginia, replied that it was.

Chairman DiGiulian recused himself from the hearing because his office prepared the plats for the applicants.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit an existing detached garage to remain 15 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 5.0 feet was requested.

Mr. Higham, agent for applicant, presented the variance as outlined in the statement of justification submitted with the application. He provided the Board with a history of the garage on the property. He stated that the variance was to allow the existing garage to remain on the property and not have to be torn down.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 01-L-110 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY K. HIGHAM & DAVID A. SMITH, VC 01-L-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 15.0 ft. from side lot line. Located at 6403 Briarmoor La. on approx. 20,000 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((15)) 30. 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 18, 2001; 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. The garage was built in 1984, and at that time if the lot had stood alone, it would not have complied with the Zoning Ordinance, but was used in conjunction with an adjacent lot.
4. There will be no additional impact by granting the variance, as it is an existing structure and will allow the applicant to build a house adjacent to it and not tear it down.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the detached garage shown on the plat prepared by John P. DiGiulian, dated April 12, 2001, signed May 1, 2001, submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulation, or adopted standards.

Mr. Kelley seconded the motion which carried by a vote of 6-0-1. Chairman DiGiulian recused himself from the hearing.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 621 September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. KEO S. KELLY, KOSAL KELLY AND DOAN M. TRAN, VC 01-P-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 2A having a lot width of 72.4 ft. and dwelling 11.7 ft. from side lot line. Located at 2400 and 2402 Spring St. on approx. 29,341 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((4)) (B) 1A and 2A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sara Hall, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his ability to participate in the hearing.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the subdivision of two lots into two lots with proposed Lot 2A having a lot width of 72.4 feet where 80 feet was required and to permit the existing dwelling on Lot 2A to be located 11.7 feet from the north side lot line. The proposal involved a lot line adjustment of 7.6 feet south of the existing lot line between Lots 1A and 2A in order to resolve litigation between the two property owners. Staff recommended support of the application.

Ms. Hall presented the variance request as outlined in the statement of justification submitted with the application. She explained that the house on Lot 1 was built in 1943 and Lot 1 and Lot 2 were in common ownership and the boundary line between the lots did not matter. She said that the owners of the lots wanted to build a house on Lot 2 and acquired variances for Lot 1 which were based on easements that were proved unworkable. Ms. Hall stated that the owners of the properties had been engaged in litigation and the variance was the premise their settlement agreement to make both of the properties acceptable under the current Zoning Ordinance.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve VC 01-P-109 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

KEO S. KELLY, KOSAL KELLY AND DOAN M. TRAN, VC 01-P-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into two lots with proposed Lot 2A having a lot width of 72.4 ft. and dwelling 11.7 ft. from side lot line. Located at 2400 and 2402 Spring St. on approx. 29,341 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((4)) (B) 1A and 2A. 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 18, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants' presentation and statement of justification indicate compliance with the required standards for the granting of a variance.
3. Staff recommended approval of 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 subdivision of Lots 1A and 2A, and for the location of the dwelling on Lot 2A as shown on the plat prepared by Alexandria Surveys, Inc., dated July 13, 2000, as revised through May 23, 2001. 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 portion of the concrete patio that encroaches on Lot 2A shall be removed prior to the recordation of the subdivision.

This approval, contingent upon above-noted conditions, 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 the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 623 September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF FLORIS UNITED METHODIST CHURCH, SP 01-H-011 Appl. under Sect(s). 3-103 and 5-503 of the Zoning Ordinance to permit a church with a child care center and nursery school which has an enrollment of 100 or more students daily. Located at 13600 Frying Pan Rd. on approx. 11.61 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A. (Def. from 6/5/01).(admin moved from 7/24/01)

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 Leigh, 4020 University Drive, Suite 312, Fairfax, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his ability to participate in the hearing.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit request as contained in the staff report. The applicants requested approval of a special permit to permit a church with a childcare center and nursery school, which had an enrollment of 100 or more students daily. The church use was allowed by-right however, the childcare center and nursery school portions of the application needed special permit approval. On June 5, 2001, the Board deferred the public hearing at the applicants' request to allow time to resolve issues with staff. The original request consisted of a special permit for a church with a childcare center and a nursery school for 250 students. The applicant proposed to build a structure with an ultimate size of 197,000 square feet measuring 75 feet in height containing a church, childcare center and nursery school with an FAR of 0.39. The construction was proposed in numerous phases. At completion of all phases a total of 342 parking spaces would have been provided along the western portion of the property and a total of 1,265 seats would have been provided in the sanctuary and chapel. Proposed hours of operation for the childcare center and nursery school were 8:30 a.m. to 3:30 p.m. Monday through Friday. The staff report identified several significant issues and noted that staff did not believe that the application met the general special

permit standards and recommended denial.

Ms. Josiah stated that on June 28, 2001, the applicants submitted an amended request and a revised plat dated through June 21, 2001. The amended request consisted of a reduction by 35,500 square feet for an ultimate build out of 161,500 square feet for the proposed structure resulting in an FAR of .32. The number of seats proposed in the sanctuary was 1,000. A total of 353 parking spaces was proposed. The proposal consisted of 3 phases and phase 1 would consist of the construction of the fellowship hall, administrative offices, the education wing, outdoor play area and 239 parking spaces. Phase 2 was proposed to consist of the implementation of the remainder of the 352 total parking spaces and the 1,000 seat sanctuary. Phase 3 was proposed to contain the construction of an additional education wing and 65-seat chapel. There were no changes proposed for the hours of operation, height of the building, size of the outdoor play area, number of children or stormwater management best management practices. The applicant had proposed minor revisions to development conditions number 8 and 13. Number 8 should read: "A minimum of 353 parking spaces shall be provided in phases as shown on the special permit plat." Number 13 was proposed to read: "The applicant shall provide for dedication of right-of-way for an ultimate width of 136 feet from the existing southern right-of-way line of Frying Pan Road." Staff had no objections to the revisions and recommended support of the application.

Mr. Leigh presented the special permit application as contained in the statement of justification submitted with the application. Mr. Leigh provided the Board with a history of the church. He stated that the church was in need of expansion due to an increased number of parishioners. He stated that the church, which was a by-right use, made up the majority of the property. He said that the childcare facility was needed in the area. Mr. Leigh contended that the application met all standards for the granting of a special permit. He stated that the church had met with the community and had favorable results.

Chairman DiGiulian called for speakers.

Tom Berlin, Senior Pastor of Floris United Methodist Church, came forward to speak. He stated that the church was valuable to the community and performed many services for the neighborhood and was in need for expansion to serve the growing number of parishioners.

Sherry Prescott, Squirrel Hills Subdivision, came forward to speak. She stated that she lived in an end townhouse that abutted the proposed development. She said that she was concerned that there was not adequate screening between the two properties. She submitted photographs of her property in relation to the property in question.

Mr. Hart asked staff if development condition number 12 addressed screening issues. Ms. Josiah replied that it did; however, no additional planting was required for that area.

Mark Walker, Community Manager for Squirrel Hills Subdivision, came forward to speak. He stated that the Board of Directors of the Squirrel Hills Subdivision was also concerned about the lack of screening. He stated that the community wanted a substantial buffer between the lighted parking lot and the homes that abutted the property.

Mr. Leigh, in his rebuttal, stated that the site was heavily wooded and the applicants had done more than necessary to preserve the wooded areas on the site. He said that the application site contained more than the required amounts of open space and tree cover. He said that there was a 50-foot buffer between the application site and the Squirrel Hill Subdivision.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve SP 01-H-011 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 FLORIS UNITED METHODIST CHURCH, SP 01-H-011 Appl. under Sect(s). 3-103 and 5-503 of the Zoning Ordinance to permit a church with a child care center and nursery school which has an enrollment of 100 or more students daily. Located at 13600 Frying Pan Rd. on approx. 11.61 ac. of land zoned I-5 and R-1. Hunter Mill District. Tax Map 24-2 ((1)) 8 and 25-1 ((1)) 2A. (Def. from 6/5/01).(admin moved from 7/24/01) 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 18, 2001; 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 general standards for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-103 and 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, 13600 Frying Pan Road (11.61 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, Incorporated, dated February 2, 2001, as revised through June 21, 2001, 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 total combined maximum daily enrollment for the nursery school and child care center shall be 250. The hours of operation for the nursery school and child care center shall be a maximum of 8:30 a.m. to 3:30 p.m., Monday through Friday.

6. The maximum number of seats in the church and chapel shall not exceed 1,065 at completion of all phases.

7. A sign permit shall be obtained and all signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance.

8. A minimum of three hundred fifty three (353) parking spaces shall be provided in phases as shown on the special permit plat. All parking for the use shall be on site as shown on the Special Permit Plat.

9. A tree preservation plan shall be submitted to the Urban Forester, for review and approval at the time of site plan review. This plan shall designate the limits of clearing no greater than as delineated on the special permit plat and all areas outside the limits of clearing to be preserved as undisturbed open space. The preservation plan shall be developed with the intention of delineating and preserving the maximum tree cover possible on site. There shall be no clearing or grading of any vegetation within the undisturbed open space except for dead, dying or hazardous vegetation.

10. Transitional Screening 2 requirements shall be provided along the eastern, northern and northwestern lot lines as shown on the special permit plat. The exact type, location, size and number of plantings shall be subject to the review and approval of the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES).

    Landscaping as shown on the special permit plat shall be provided along the western lot line in order to provide a visual vegetative screen from the adjacent uses. The exact type, location, size and number of plantings shall be subject to the review and approval of the Urban Forestry Branch of the Department of Public Works and Environmental Services (DPWES).

11. The barrier requirements shall be waived.

12. An outdoor play area, a maximum of 12,000 square feet in size, shall be provided as shown on the special permit plat.

13. The applicant shall dedicate right-of-way for an ultimate width of one-hundred thirty-six (136) feet of right of way from the existing southern right-of-way line of Frying Pan Road in fee simple to the Board of Supervisors at the time of site plan review or upon demand, whichever occurs first.

14. Notwithstanding what is depicted on the special permit plat, prior to site plan approval, the limits of the environmental quality corridor (EQC) shall be determined by the Department of Planning and Zoning, as per the Comprehensive Plan to extend north of the storm sewer easements identified in DB 7502 PG 458 and east to the forty (40) foot building restriction line. No disturbance of the EQC shall be permitted.

15. The maximum number of employees for the child care center shall not exceed twenty (20) at any one time.

16. Stormwater Management (SWM) and/or Best Management Practices (BMPs) shall be provided as required, unless waived by DPWES. If a structural SWM/BMP is required, then the type, location and size shall be determined by DPWES. The SWM/BMP shall be located outside the play area and transitional screening areas.

17. Any 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 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 buildings.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. Establishment of Phase 1 shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 627 September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAVID NARINS, VC 01-V-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.9 ft. from side lot line and 4.5 ft. high fence to remain in a front yard. Located at 1809 Cool Spring Dr. on approx. 14,483 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((14)) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Narins, 1809 Cool Spring Drive, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of an addition to be located 3.9 feet from a side lot line and to allow a fence to remain 4.5 feet from the front lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 8.1 feet was requested. The Zoning Ordinance requires a maximum fence height of 4.0 feet; therefore, a variance of 0.5 feet was requested.

Mr. Ribble asked staff what the distance was from the home on adjacent Lot 18. Ms. Stanfield replied 12.9 feet from the shared lot line.

Mr. Narins presented the variance application as outlined in the statement of justification submitted with the application. He said that the contract with the company that built the fence reflected that it should have been 4.0 feet in height and that it was the decorative posts that exceeded the height requirement. Mr. Narins stated that the house was situated to the back of a corner lot and the shape and layout of the home restricted the construction of an addition in any other location than what was requested.

Mr. Hart stated that the existing house contained an eave and asked if the eave had been included in the addition and whether or not the 3.9 feet was from the wall or eave. Mr. Narins replied that he did not know that information.

Mr. Hart asked staff if the eave had been included in the dimensions. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the applicant would be restricted to whatever the closest point was to the lot line.

Mr. Hammack asked the applicant what the addition consisted of. Mr. Narins replied that it was an extension of the master bedroom. Mr. Hammack asked the applicant if he had an elevation of what was proposed. Mr. Narins replied that he did not.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that 4.0 feet was a very shallow distant to the adjoining property. He stated that he would be in favor of a minimum distance of 5.0 feet.

Mr. Pammel moved to defer VC 01-V-111 for decision only until October 23, 2001, at 9:00 a.m., to allow the

applicant more time to meet with a builder to discuss different construction options. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 628, September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JOHN B. AND KAREN M. FOLEY, VA 01-S-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.9 ft. from side lot line. Located at 9108 Rockefeller La. on approx. 10,880 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 135.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bill Reames, 13230 Marina Way, Woodbridge, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance amendment request as contained in the staff report. The applicants requested a variance to permit the construction of a sunroom addition to be located 2.9 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 8.0 feet; therefore, a variance of 5.0 feet was requested.

Mr. Reames presented the variance amendment request as outlined in the statement of justification submitted with the application. He stated that the Board had approved the variance in May of 2001 and the initial request was to enclose an existing deck to project a total of 10 feet toward the side yard and to leave a 4.0-foot set back. He explained that the original plat was incorrect and the actual distance to the side lot line was 2.9 feet.

Chairman DiGiulian asked if the proposed structure was to be located on the deck or on the ground. Mr. Reames replied that it would be on the deck.

Mr. Hart asked the applicant if the 2.9 feet was from the floor of the deck or from the outside edge of the upper railing. Mr. Reames replied it was from the edge of the railing. Mr. Hart asked the applicant if there was anything else that would extend from the addition. Mr. Reames replied that there would be a gutter of 4 to 6 inches but it would not extend past the railing.

Mr. Hart asked staff if an additional 4 to 6 inches of gutter would change the 2.9 foot measurement. Susan Langdon, Chief, Special Permit and Variance Branch, replied that it was a determination to be made at the time of site plan.

Chairman DiGiulian asked for clarification that the gutter was included in the 2.9 feet. Mr. Reames replied that was correct.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that 2.9 feet to the side lot line was too close for maintenance and the addition, which towered above the adjoining property, would be used for family activities. He said that he was not convinced that the sunroom could be constructed in a different location.

Mr. Hammack stated that he agreed with Mr. Pammel's statements.

Mr. Hart moved to approve VA 01-S-027 for the reasons stated in Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. AND KAREN M. FOLEY, VA 01-S-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.9 ft. from side lot line. Located at 9108 Rockefeller La. on approx. 10,880

sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-2 ((7)) 135. 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 September 18, 2001; 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. The photographs of the property indicate substantial topographical conditions that justify the need for a variance.
4. The addition is 8 feet wide at one side and is about as small as a room can get.
5. There would be no negative impact on the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 January 23, 2001, revised through June 12, 2001, 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.

Ms. Gibb seconded the motion which carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted against the motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 630 September 18, 2001, (Tape 1) Scheduled case of:

9:00 A.M. FOX MILL WOODS SWIM & TENNIS CLUB, INC., SPA 81-C-093-5 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 previously approved for a community recreation facility to permit building addition and site modifications. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Admin moved from 5/29/01, 7/3/01, and 8/7/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brenda Davis Root, 2634-A Black Fir Court, Reston, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the special permit amendment request as contained in the staff report. The applicant sought approval to enlarge the previously approved snack bar from 384 square feet to 528 square feet and the previously approved pump house from 48 square feet to 189 square feet. The previously approved 700 square foot pavilion was also included in the application. Site modifications included an increase to the heights of all structures to a maximum height of 18 feet and a redesign of the parking area. Revised development conditions were submitted which included a condition that the swim and tennis club would be required to meet all requirements of the Fairfax County Swimming Pool and Health Spa Ordinance upon completion of the Phase I construction of the site. The applicant requested that the words "where applicable" be inserted into this condition, after the word Ordinance. Staff had no objection to this request. Staff recommended approval of SPA 81-C-093-5.

Ms. Root presented the special permit amendment request as outlined in the statement of justification submitted with the application. Ms. Root provided a history of the club for the Board. She explained that a mistake had been made with regard to the height of the existing and approved structures on the plat at the first special permit approval. She explained that Phase 1 improvements included a height correction to the club house and snack bar/tennis office to reflect 18 feet in height; an increase of the snack bar/tennis office from a 16 X 25 foot structure to a 22 X 24 foot structure and an increase in the parking spaces from 32 parking spaces to 45. She explained that Phase II improvements included the reconfiguration of the deck for a new pool shell with an extended diving well; the reconfiguration of a new baby pool; the relocation of the pavilion and pump house.

Ms. Root reiterated that no new structures or improvements were being requested and the requests were for corrections and minor modifications that would result in greater consolidation of land uses and less impact of improvements on the natural landscape.

Mr. Hammack asked if the applicant agreed with the development conditions. Ms. Root replied that she did. Mr. Hammack noted that there was a condition that bound the applicant to notify adjacent homes of upcoming parties at the club and he asked the applicant if they had ever had any violations or any opposition to any parties. Ms. Root replied that they had not. Mr. Hammack stated that there were several new development conditions that provided more flexibility on the notification process.

Chairman DiGiulian called for speakers in support of the application and the following citizens came forward: Mark Lindsey, 2536 Black Fir Court; Harry Linns, (no address given for record); Kathryn Linns, (no address given for record); Bev Jordan, 2630 Black Fir Court; and Pete Henry, 2656 Black Fir Court.

The speakers expressed their support for the following reasons:

The upkeep of the club was very important to the neighborhood. The improvements were very positive and would directly benefit the property values in the neighborhood. The only parking issue was that there was off site parking during swim meets. The club had an exemplary safety record.

Chairman DiGiulian called for speakers in opposition to the application.

Phil Rodreguez, 11811 Grey Birch Place, came forward to speak in opposition. He recalled an instance when the club had an activity that caused a large amount noise and off site parking that had an adverse impact on an event that he was hosting on his property. He stated that he was unaware of the club activity and had he known he would not have scheduled his event for the same day.

Diane Trentacost, (no address given for the record), came forward to speak in opposition. She stated that the four tennis courts, which were closest to her home than any other in the subdivision, recently had lighting installed which adversely impacted the use of her property. She said that she was concerned that lights would eventually be installed in the proposed pavilion.

Kate Perry, Black Fir Court, came forward to speak in opposition. She requested that the clubhouse modification that was required to comply with the County Health Code be implemented in Phase 1.

Ms. Root asked Bruce Puganowski, Member of Board, to speak to the rebuttal.

Mr. Puganowski stated that the club published a spring newsletter that had a calendar of events for upcoming season. He stated that the club also published the calendar on their website. He stated that there was a development condition that restricted lighting of the pavilion.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 81-C-093-5 for the reasons stated in the Resolution. Ms. Gibb seconded the motion.

Mr. Hammack amended the motion to include several development condition changes. The amended motion carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

FOX MILL WOODS SWIM & TENNIS CLUB, INC., SPA 81-C-093-5 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 81-C-093 previously approved for a community recreation facility to permit building additions and site modifications. Located at 2634-A Black Fir Ct. on approx. 5.12 ac. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 26-3 ((10)) F2. (Admin moved from 5/29/01, 7/3/01, and 8/7/01) 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 18, 2001; 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, 2634A Black Fir Court (5.12 acres), and is not transferable to other land.

2. This Special Permit Amendment is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Burgess and Niple, dated January 2001, as revised through July 13, 2001, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special permit amendment 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 family memberships shall not exceed 300.

6. The hours of operation for the tennis courts shall be limited to:

   - 8:00 a.m. to 10:00 p.m., May 1 through October 1; and
   - 8:00 a.m. to 8:00 p.m., October 2 through April 30.

   The hours of operation for the swimming pool shall be limited to:

   - 8:00 a.m. to 9:00 p.m., May 1 through Mid-June (first full week after County schools are dismissed)
   - 7:30 a.m. to 9:00 p.m., Mid-June through July 31; and
   - 8:00 a.m. to 9:00 p.m., August 1 through October 1

7. No children under the age of 12 shall be permitted to use the pool prior to 8:00 a.m.

8. No whistle, bell, buzzer, or starter clock shall be used prior to 8:00 a.m.

9. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance. A minimum of 45 parking spaces shall be provided in the location shown on the special permit plat, and shall be provided with Phase 1. All parking shall be on-site. An additional eight (8) spaces shall be provided with Phase 2.

10. Lighting of the tennis court shall be in accordance with the following:

    The combined height of the light standards and fixtures for the tennis courts shall not exceed twenty

(20) feet, while the combined height of the light standards and fixtures for the parking lot shall not exceed 12 feet. The height of all security lights mounted to buildings and fences shall not exceed 12 feet.

The lights shall focus directly onto the subject property. Shields shall be installed, if necessary, to ensure that the lights are focused directly onto the property.

The use of the tennis court lights shall be regulated by a key control system and an automatic shutoff device to ensure the lights are automatically cut off at 10:00 p.m. There shall be strict compliance with this Development Condition. Failure to comply with the Development Condition shall subject the applicant to discontinuance of the use of the lights in conjunction with the tennis courts.

11. After-hours parties for the Fox Mill Woods Swim and Tennis Club shall be governed by the following:

    - Limited to six (6) per season,
    - Limited to Friday, Saturday and pre-holiday evenings,
    - Week night parties limited to three (3) per year
    - Shall not exceed beyond 12:00 midnight,
    - The applicant shall provide a written notification to the Zoning Administrator at least ten (10) days in advance for each individual party or activity,
    - Requests shall be approved only if there are no pending violations of the Conditions of the Special Permit Amendment.

12. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during preseason pool cleaning, the applicant shall ensure that the chemicals are neutralized prior to discharge by using the following guidelines for all pool discharge materials:

    - All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during cleaning or draining operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately to equal that of the receiving stream and as close to neutral (a pH of 7) as possible.
    - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged, and filtered prior to discharge.
    - Pool water shall be discharged slowly at a constant rate to prevent adverse impacts to the sanitary sewer/or receiving streams.
    - The applicant will meet all Chesapeake Bay Preservation Ordinance requirements for discharge of pool water into a county stream, as determined by DPWES.

13. Landscaping and existing vegetation along all lot lines shown on the Special Permit Amendment Plat, as modified by these development conditions, shall be deemed to satisfy the transitional screening requirements. Prior to site plan approval, a landscape plan shall be submitted for review and approval of the Urban Forestry Division and additional landscaping in the following areas:

    Planting of the type and intensity of Transitional Screening Type 1 within the crosshatched area shown on the Special Permit Amendment Plat shall be provided. Existing vegetation may be used as transitional screening supplemented with evergreen plantings subject to the review and approval of the Urban Forestry Division.

14. Barrier requirements along all lot lines shall be waived.

15. A walkway shall be maintained from Black Fir Court to the facility, as shown on the Special Permit Plat.

16. Unauthorized use of the facility after its approved hours of operation shall be prohibited. The

applicant shall install a security gate or chain at the entrance to the facility in addition to the employment of a security guard as required to ensure compliance with this provision.

17. No property outside the limits of clearing and grading shown on the approved special permit plat will be utilized for fill elsewhere on the property.

18. The applicant shall construct the improvements shown on the approved Special Permit Amendment Plat, as modified by these conditions in a single phase or in accordance with the following: Phase 1 – the enlarged parking lot, to provide a minimum of forty-five (45) parking spaces, prior to further development, interior lot landscaping, transitional screening along lots 197, 201, 202, the stormwater management facility and culvert (if stormwater management facilities are not waived or modified), landscaping and pedestrian trail shall be constructed, subject to the review and approval of DPWES. Once adequate parking is constructed, the pavilion and snack bar may also be constructed, in no specified order.

    Phase 2 - the pool, wading pool and deck enlargements, plantings around the pool area and in front of the clubhouse shall be constructed, subject to the review and approval of DPWES and the Urban Forestry Division.

19. A tree preservation and planting plan shall be submitted to the Urban Forestry Division for review and approval at the time of site plan review for phases 1 and 2 and shall be implemented in conjunction with the respective phase. This plan shall depict the limits of clearing and grading as delineated on the Special Permit Amendment Plat and shall provide for the preservation of all areas shown outside of the limits of clearing to be preserved. In addition, the applicant shall locate and preserve, where feasible, to the maximum extent possible, trees located within the limits of clearing and grading, subject to the review of the Urban Forestry Division.

20. The pavilion structure adjacent to the tennis courts shall be an open-air structure and shall be unlighted.

21. The applicant shall institute a grounds policing policy to ensure that litter is disposed of at least once per week.

22. The applicant shall coordinate with the owners of lots 202, 203, 204 and 205 regarding the materials for the pedestrian trail from Black fir Court to the pool facility. The trail shall be constructed in accordance with all standards outlined in the Public Facilities Manual, subject to the review and approval of DPWES.

23. The number of swim meets (A and B Leagues) shall not exceed that number which is dictated by the Northern Virginia Swim League (NVSL) or its successor.

24. The pool facility shall not be rented to non-members.

25. The Fox Mill Swim and Tennis Club shall meet all the requirements of the Fairfax County Swimming Pool and Health Spa Ordinance upon the completion of Phase I of the site, as noted in these conditions.

These conditions incorporate and supersede all previous conditions. This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit amendment 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 October 2, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 635 September 18, 2001, (Tape 1) Scheduled case of:

9:30 A.M. APOLONIA GLORIA FUENTES-PASTOR, A 2000-PR-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is operating the child care center use authorized under Special Permit SP 99-P-050 in violation of certain conditions set forth in the special permit approval and without first obtaining the required Non-Residential Use Permit. Located at 8615 Hilltop Rd. on approx. 31,750 sq. ft. of land zoned R-1. Providence District. Tax Map 49-1 ((5)) 17A. (Def from 12/12/00) (Def. Decision from 3/20/01)

William E. Shoup, Deputy Zoning Administrator, stated that the appellant had attempted to implement the childcare center use that was authorized under the special permit approval and recent inspections had revealed that the appellant was operating in compliance as an accessory use. Mr. Shoup requested that the BZA uphold the August 22, 2000 Notice of Violation and staff would continue to monitor the property until such time as the authorized use was established.

Ms. Gibb asked what effect the Board's decision would have on the appellant. Mr. Shoup answered that since the appellant was operating in compliance it would not affect her at all. He explained that if the appellant was found to be in violation staff would then have the opportunity to initiate legal action to try to bring the property into compliance.

Charles Chalfont, agent for the appellant explained that the appellant had received approval of a minor site plan. He stated that approval of a Land Disturbance Permit would be obtained within the upcoming weeks and construction would begin shortly afterward.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to uphold the determination of the Zoning Administrator regarding A 2000-PR-027. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 635 September 18, 2001, (Tape 1) Scheduled case of:

9:30 A.M. CLYDE W. PROFFITT, A 2001-LE-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant is maintaining two dwelling units on property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 3122 Clayborne Ave. on approx. 16,816 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((18)) (5) 27. (Admin moved from 8/14/01)

William E. Shoup, Deputy Zoning Administrator, explained that the appellant requested a deferral due to health problems. He suggested a date of December 11, 2001.

Mr. Ribble moved to defer A 2001-LE-014 until December 11, 2001, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 636, September 18, 2001, (Tape 1) Scheduled case of:

9:30 A.M. MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are occupying the subject property without having obtained a Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 12509 Easter La. on approx. 1.07 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((5)) 40. (Admin moved from 10/9/01)

William E. Shoup, Deputy Zoning Administrator, recommended a deferral until September 25, 2001, at 9:30 a.m.

Mr. Ribble moved to defer A 2001-SP-016 until September 25, 2001, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 636, September 18, 2001, (Tape 1) After Agenda Item:

Approval of Revised Minutes
Peyton & Joan C. Duncan, SP 00-V-017, VC 00-V-043

Mr. Pammel moved to approve the revised minutes. 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 636, September 18, 2001, (Tape 1) After Agenda Item:

Approval of April 17, 2001 and April 24, 2001 Minutes

Mr. Hammack moved to approve the minutes. 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 636, September 18, 2001, (Tape 1) After Agenda Item:

Approval of September 11, 2001 Resolutions

Mr. Pammel moved to approve the 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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Page 636, September 18, 2001, (Tape 1) After Agenda Item:

Intent to Defer
Alfred W. Reilly, A 2000-MA-034

William E. Shoup, Deputy Zoning Administrator, explained that the appellant had requested a deferral because of a death in the family. He said that the use that was cited in the Notice of Violation had ceased operation; however, there were site constraints and a requirement for road improvements that would make a special exception approval highly unlikely. He stated that staff was continually working with the appellant to search for any solutions. Mr. Shoup suggested a lengthy deferral due to the circumstances of the appeal.

Mr. Hammack moved to approve the intent to defer for A 2000-MA-034 for February 5, 2002, at 9:30 a.m. 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 637 September 18, 2001, (Tape 1) After Agenda Item:

Approval of April 10, 2001 and May 1, 2001 Minutes

Mr. Hart made several corrections to the April 10, 2001 Minutes and asked that they be accepted after the corrections had been made.

Mr. Pammel moved to approve May 1, 2001 Minutes. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 637 September 18, 2001, (Tape 1) After Agenda Item:

Request for Reconsideration
Kim's Oriental Herb & Acupuncture, SP 01-B-007

Mr. Kelley stated that he was not in favor of making a motion to reconsider the application. There was no motion made, and the request was denied.

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Page 637 September 18, 2001, (Tape 1) After Agenda Item:

Approval of August 21, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 637 September 18, 2001, (Tape 1) After Agenda Item:

Approval of the Proposed Meeting Dates for First Six Months of 2002

Mr. Pammel moved to approve the meeting dates. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 637 September 18, 2001, (Tape 1) After Agenda Item:

Approval of Retention of Legal Counsel
For At Law #197380
Board of Supervisors and Jane Gwinn
v.
Board of Zoning Appeals
RE: Richard & Kathrn Tubb, Victor & Dorine Blandburg, et al., A 2001-MA-006

Mr. Hammack moved to approve the retention of legal counsel. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 637 September 18, 2001, (Tape 1) After Agenda Item:

Intent to Defer
Golf Park, Inc. & Hunter Mill East, LLC, SPA 91-C-070-04

There was discussion between the Board and staff regarding an appropriate date to defer the case to.

Mr. Hammack moved to approve the intent to defer for October 16, 2001, at 9:00 a.m. 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 11:59 p.m.

Minutes by: Lori M. Mallam

Approved on: February 26, 2002

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

The special meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 18, 2001. 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 8:00 p.m. Chairman DiGiulian discussed the policies 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 639 September 18, 2001, (Tape 1), Scheduled case of:

7:30 P.M. ERIC H. AND JOYCE H. WYANT, A 2001-PR-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants' property did not meet minimum lot area requirements of the Zoning Ordinance when recorded in its current configuration, does not meet current minimum lot size requirements of the R-1 District, was not legally subdivided and is not buildable under Zoning Ordinance provisions. Located at 8405 Rainbow Rd. on approx. 27,269 sq. ft. of land zoned R-1. Providence District. Tax Map 39-1 ((1)) 46. (Deferred from 7/31/01)

Chairman DiGiulian noted that the appeal had been withdrawn.

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Page 639, September 18, 2001, (Tape 1), Scheduled case of:

8:00 P.M.-11:00 P.M. GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SPA 91-C-070-2 previously approved for outdoor recreation uses to permit modification of development conditions including but not limited to change in hours of operation, additional lighting, increased food service, addition of special events, and reduction of landscaping. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (OTH HEARING GRANTED) (Deferred from 6/5/01)

Chairman DiGiulian noted that an intent to defer was approved at the morning meeting of September 18, 2001, to defer the application to October 16, 2001, at 9:00 a.m., because the attorney was out of the country.

Mr. Hart gave a disclosure but indicated that it would not preclude him from participating in the public hearing.

Ms. Gibb gave a disclosure that her partner had hired the applicant's attorney on a personal matter but indicated that it would not preclude her from participating in the public hearing.

Mr. Hammack indicated that the applicant's attorney had been unavoidably detained and he moved to defer the application to October 16, 2001, at 9:00 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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As there was no other business to come before the Board, the meeting was adjourned at 8:03 p.m.

Minutes by: Regina Thorn Corbett

Approved on: February 5, 2002

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, September 25, 2001. The following Board Members were present: Chairman John DiGiulian, Paul Hammack, James Hart, 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. 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 641, September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. J. ALLEN BRANDT, VC 01-Y-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from side lot line. Located at 11928 Waples Mill Rd. on approx. 2.0 ac. of land zoned R-1. Sully District. Tax Map 46-1 ((1)) 32. (Admin moved from 9/11/01)

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. Allen and Shannon Brandt, 11928 Waples Mill Road, Oakton, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicants sought a variance to permit construction of an addition 14.2 feet from the side lot line. She said the minimum side yard required by the Zoning Ordinance was 20 feet; therefore, a variance of 5.8 feet was requested.

Mr. Brandt presented the variance request as outlined in the statement of justification submitted with the application. He stated that the house was originally built in 1935 and had undergone several renovations. He said that the previously modifications to the house did not totally utilize all the living space in the house and he would like to modernize the kitchen and downstairs. He proposed to bump out the front of the house under the existing porch and proposed to enclose the porch area with brick at the front of the house. Mr. Brandt said the improvements would not change any roof lines or characteristics of the house and he felt the upgrading of the house would improve the value of it and would have a positive impact on the neighborhood.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-Y-106 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

J. ALLEN BRANDT, VC 01-Y-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from side lot line. Located at 11928 Waples Mill Rd. on approx. 2.0 ac. of land zoned R-1. Sully District. Tax Map 46-1 ((1)) 32. (Moved at applicants request from 9/11/01). 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 25, 2001; 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 prescribed standards for the granting of a variance.
3. This is an exceptional situation as this is an older house, constructed in 1935, and plats indicate that

the entire side of the house is in violation of the current setback line.

4. The applicant would enclose only a corner of the dwelling and some of the porch, neither which would be a further encroachment than what already exists.
5. This is a reasonable request and would not change the character of the neighborhood.

This application meets all of the following Required Standards for Variances in Se ction 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 Karie L. Colburn, dated May 25, 2001, as revised through June 12, 2001, 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. Pammel seconded the motion which carried by 5-0. Mr. Ribble was not present for the vote and Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 643, September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. from both side lot lines. Located at on Holyoke Dr. on approx. 9,183 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 26. (Admin moved from 6/19/01and 7/3/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lori Greenlief, Agent, 14368 Nandina Court, Centreville, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought a variance to permit construction of a dwelling to be located 11 feet from both side lot lines. She said the minimum required side yards were 15 feet; therefore, a variance of 4 feet on both sides had been requested.

Ms. Greenlief presented the variance request as outlined in the statement of justification submitted with the application. She stated that the Lincolnia Educational Foundation, also known as the Leary School, was a private school located on Lincolnia Road and provided academic and vocational training to students with serious emotional, learning, and behavioral problems. She said that Fairfax County schools, as well as other localities, utilized the services of Leary School for students who could not thrive in the public school system. She said that Leary School had a program to teach students construction techniques. She said the school had purchased properties in the vicinity of the school grounds and students were taught how to construct homes from the ground up.

She said Leary School currently owned Lot 26, which was long and narrow, possessing less than the minimum lot width required by the Zoning Ordinance. Ms. Greenlief stated that there had been several variances granted on this street similar to this variance and she believed that this request was in character with the prior approvals.

Ms. Greenlief stated that the owner of Lot 25 requested that the dwelling be located centrally on the lot to allow equal room from each of the side lot line. She said that the house would be centered on the property 11 feet from both lot lines and the owner of Lot 25 no longer had any concerns.

Ms. Greenlief stated that this lot was exceptionally narrow and believed that a 28 foot wide house would allow good use of the property. She said the house would blend in with the other homes that had already been constructed in this neighborhood and the variance would not be detrimental to the adjoining properties. She said there had been no complaints from the neighbors.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-M-054 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LINCOLNIA EDUCATIONAL FOUNDATION, INC., VC 01-M-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 11.0 ft. from both side lot lines. Located at on Holyoke Dr. on

approx. 9,183 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((3)) 26. (Admin moved from 6/19/01and 7/3/01). 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 25, 2001; 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 prescribed standards for the granting of a variance.
3. This lot is exceptionally narrow and is located in a subdivision recorded in 1925.
4. There have been other variances approved by the Board for similar setbacks on similar lots within the subdivision.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Kenneth W.

White, dated November 7, 2000, as revised through June 22, 2001, 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 645 September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. THANH CHAU HUYNH, SP 01-L-033 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 accessory structure to remain 2.6 ft. from side lot line and 6.8 ft. from rear lot line and addition 14.8 ft. from side lot line. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 01-L-085). (Def. Decision only from 8/7/01).

9:00 A.M. THANH CHAU HUYNH, VC 01-L-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and to permit a 4.5 ft. high fence to remain in front yard. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with SP 01-L-033). (Def. Decision only from 8/7/01).

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 BaPham, Agent, 2922 Willston Place, Falls Church, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, stated that on August 7, 2001, the Board of Zoning Appeals deferred decision on special permit application SP 01-L-033 and variance application VC 01-L-085 to allow the applicant time to submit a revised plat to reduce the amount of variance required. She stated that a revised plat dated August 24, 2001, had been distributed to the Board and contained significant changes to the original application.

Ms. Stanfield stated that, according to the revised plat, the proposed two-story addition would be located 15 feet from the side lot line instead of the originally requested 7 feet. She said a portion of the addition had been reduced to a carport and the existing shed had been replaced with a smaller shed, located 10 feet from the side lot line and 19 feet from the rear lot line. She stated that the proposed parking pavement has been reduced to a width of 22 feet instead of the original 31 feet requested.

Ms. Stanfield stated that immediately after the case had been heard the first time, she had received a letter from Thomas Shannon who was a neighbor of the applicant. She said the letter addressed existing drainage problems that he felt were associated with the applicant's property. Ms. Stanfield said that the letter outlined and discussed the contacts Mr. Shannon had with the applicant and the Department of Public Works and Environmental Services. She stated that she subsequently discussed this case with the DPWES staff and was told that any additional construction on the subject property would exacerbate the existing drainage problems on Mr. Shannon's property. She said a memorandum had been received from DPWES dated August 17, 2001, which addressed this issue, and

a copy of the memo had been distributed to the Board.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to deny variance application VC 01-L-085 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

THANH CHAU HUYNH, VC 01-L-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and to permit a 4.5 ft. high fence to remain in front yard. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with SP 01-L-033). (Def. Decision only from 8/7/01). 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 September 25, 2001, and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has failed to present testimony showing compliance with the required standards for a variance.
3. There are exceptional storm drainage conditions as noted in the memo of September 17, 2001, from the Maintenance and Stormwater Management Division, DPWES.
4. The structure would not be in character with the neighborhood.
5. There was no justification presented for the 4.5 feet fence.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching

confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion which carried by a vote of 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 October 3, 3001.

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Mr. Hart moved to deny special permit application SP 01-L-033, and Mr. Ribble seconded the motion.

Mr. Pammel stated that the special permit also included the open porch, and the motion to deny the special permit would require the applicant to remove the porch. He suggested that the main structure not be included in the denial, and to address the issue of the shed only.

Mr. Hart stated that he would not have a problem leaving the porch and asked Ms. Stanfield if the addendum would need different development conditions relative to the porch. Ms. Stanfield replied that revised development conditions would be needed.

Mr. Hart moved to defer the vote on the special permit application SP 01-L-033 to allow for the development conditions to be changed to exclude the porch.

Mr. Ribble seconded the motion to defer SP 01-L-033 until October 2, 2001 which carried with a 6-0 vote. Ms. Gibb was absent from the meeting.

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Page 647 September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. GEORGE AND JUDY NGUYEN, VC 01-P-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line and 2.0 ft. from rear lot line. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B.

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 Nguyen, 3616 Woodburn Road, Falls Church, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a playhouse to be located 3.0 feet from the side lot line and 2.0 feet from the rear lot line. He said the minimum side yard requirement was 20 feet and the rear yard requirement was 12 feet in the R-1 district. He said that a variance of 17 feet for the side yard and 10 feet for the rear yard had been requested.

Mr. Nguyen presented the variance request as outlined in the statement of justification submitted with the

application. He stated that his four sons would like to have a playhouse on the property in order to have some privacy when their friends visit. He said his elderly father lived with him and that the children's noise bothered him. Mr. Nguyen stated that the playhouse was isolated from the neighbors and he did not believe it would cause any hardship. He said when the children no longer used the playhouse, he planned to use it as a storage shed and he felt that it would enhance his property.

Mr. Ribble asked Mr. Nguyen if there was any other area to put the playhouse. Mr. Nguyen replied that there were no other options because of the topography of the land.

Mr. Hammack stated that he was concerned because the proposed playhouse would be very close to abutting properties, it was a large structure, and there would probably be some difficulty in the maintenance. He asked if there were any other alternatives for the location of the dwelling and Mr. Nguyen replied that he felt the proposed location was the best place for the playhouse.

Mr. Hart briefly discussed alternative locations for the playhouse with Mr. Nguyen.

Mr. Kelley asked staff where the playhouse could be located on the property by right. Mr. Bernal stated that it would have to be at least 20 feet from the side lot line and 12 feet from the rear lot line.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to deny the variance application VC 01-P-120 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE AND JUDY NGUYEN, VC 01-P-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line and 2.0 ft. from rear lot line. Located at 3616 Woodburn Rd. on approx. 21,889 sq. ft. of land zoned R-1. Providence District. Tax Map 59-3 ((4)) 1B. 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 25, 2001;

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicant has failed to present testimony showing compliance with the required standards for a variance.
3. The structure is exceptionally large for the lot and its location.

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 was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 2001.

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Page 649 September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. SALVATORE & JOAN M. ESPOSITO, VC 01-D-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.5 ft. and stoop 8.7 ft. from front lot line. Located at 1446 Ingleside Ave. on approx. 5,813 sq. ft. of land zoned R-3, HC and SC. Dranesville District. Tax Map 30-2 ((7)) (1) 19 and 20A.

9:00 A.M. SALVATORE & JOAN M. ESPOSITO, VC 01-D-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.5 ft. and stoop 8.5 ft. from front lot line. Located at 1440 Ingleside Ave. on approx. 8,500 sq. ft. of land zoned R-3, HC and SC. Dranesville District. Tax Map 30-2 ((7)) (1) 21A, 22A and 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. Lynne Strobel, Agent, Walsh, Colucci, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was. She stated that the contract purchaser had recently become the owner of the property and that all the other information remained the same.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. He stated that the applicant sought a variance to permit construction of a dwelling on Lot 19 and Lot 20A to be located 12.5 feet from the front lot line and a stoop to be located 8.7 feet from the same front lot line. He said that the minimum front yard requirement for the R-3 district was 30 feet; therefore, a variance of 17.5 feet for the dwelling and 21.3 feet for the stoop had been requested.

Mr. Bernal stated that an approved affidavit dated August 22, 2001, had been submitted, but it had not been approved prior to the publishing of the staff report.

Mr. Bernal presented the second variance request as contained in the staff report. He stated that the second variance was very similar to the first, but involved Lots 21A, Lot 22A, and Lot 23. He said that the applicant sought a variance to permit construction of a dwelling to be located 12.5 feet from the front lot line and a stoop to be located 8.5 feet from the front lot line. He said that the minimum front yard requirement was 30 feet; therefore, a variance of 17.5 feet for the dwelling and 21.5 feet for the stoop had been requested.

Mr. Bernal stated that an approved affidavit had also been submitted for this variance, and a correct statement of justification had inadvertently been left out of the staff report, which would also be presented concurrently.

Ms. Strobel presented the variance requests simultaneously as outlined in the statements of justification submitted with the applications. She stated that the subject properties were existing lots of record and although exceptionally narrow, they could be developed with a single dwelling per lot. She said the applicant proposed to combine two lots for the construction of one home and three lots for the construction of a second home, which was in accordance with the Comprehensive Plan.

Ms. Strobel stated that the existing properties were unique in that they were exceptionally narrow and that the narrowness of the lots impacted the development of the subject properties even though they were legal lots. She stated that another unique factor was the prior use of the properties as offices, which had required a dedication of property frontage by the prior owner. She said the resulting road dedication had been according to site plan in order to accommodate parking for the previous commercial use. Ms. Strobel said that the development of these lots would not impact any other lots in the subdivision and that a strict application of the Ordinance would prohibit reasonable development in accordance with the area and the Comprehensive Plan which would create a hardship on the applicant. She stated that she also had letters of support from property owners in the area.

Mr. Pammel asked if Ms. Strobel had attempted to vacate the right-of-way in front of the lots. He said that without vacating, it would force the County to take on the additional responsibility of maintaining the right-of-way, water lines, and sewer lines. Ms. Strobel replied that she had spoken with Michael Davis in the Department of Transportation, and he did not think that would be an issue, and stated that he thought the variance would be an acceptable solution.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to approve variance application VC 01-D-108 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SALVATORE & JOAN M. ESPOSITO, VC 01-D-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.5 ft. and stoop 8.7 ft. from front lot line. Located at 1446 Ingleside Ave. on approx. 5,813 sq. ft. of land zoned R-3, HC and SC. Dranesville District. Tax Map 30-2 ((7)) (1) 19 and 20A. 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 25, 2001; 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 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 dwelling on Lots 19 and 20A as shown on the plat prepared by Reed M. Dudley, dated, April 3, 2001, and stamped dated May 11, 2001, as 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.

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 October 3, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley moved to approve variance application VC 01-D-140 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SALVATORE & JOAN M. ESPOSITO, VC 01-D-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12.5 ft. and stoop 8.5 ft. from front lot line. Located at 1440 Ingleside Ave. on approx. 8,500 sq. ft. of land zoned R-3, HC and SC. Dranesville District. Tax Map 30-2 ((7)) (1) 21A, 22A and 23. Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2001; 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 prescribed 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 dwelling on Lots 21A, 22A, 23 as shown on the plat prepared by Reed M. Dudley, dated, April 3, 2001, and stamped dated August 28, 2001, as submitted with this application and is not transferable to other land.

2. 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.

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 October 3, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 653, September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. JOSE M. BENTURA AND ERNESTO G. VENTURA, SP 01-M-044 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.5 ft.from side lot line and 9.0 ft. from rear lot line. Located at 6732 Barrett Rd. on approx. 10,320 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((20)) 273.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicant's notices were not in order and the case had been administratively moved.

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Page 653 September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. TRUSTEES OF HARVESTER PRESBYTERIAN CHURCH, SPA 83-S-102 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 83-S-102 previously approved for a church and related facilities to permit building additions, site modifications, change in development conditions and change in permittee. Located at 7800 Rolling Rd. on approx. 3.94 ac. of land zoned R-3. Mt. Vernon District. Tax Map 98-2 ((1)) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steven Fox, Agent, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit amendment application request as

contained in the staff report. The applicant sought approval to amend special permit SP 83-S-102, previously approved for a church and related facilities, to permit building additions, site modifications, a change in development conditions, and a change in permittee. The applicant proposed to construct a 21,480 square foot addition to the church, to increase the number of seats from 400 to 500, and add administrative and classroom space. She said the applicant also proposed to increase parking on the site from 102 spaces to 155 spaces.

Ms. Josiah stated that the day prior to the hearing, staff had received revisions to development condition Number 6 from the applicant relating to supplemental plantings and a trash receptacle enclosure, which had been distributed to the Board that morning. She said staff had reviewed the proposal and had no objections to it and said that staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Ms. Josiah stated that staff recommended approval of SPA83-S-102, subject to the proposed development conditions.

Mr. Fox presented the variance request as outlined in the statement of justification submitted with the application. He stated that the plan was for a three-phase expansion and explained how the proposed application would be done. He stated that lack of parking was one of the restrictions that kept the church from growing, but this was consistent with the church's mission, as they would like to have a congregation of about 450-500 members.

Mr. Fox stated that on the west side of the site, there was a 50 foot transition yard which was part of the generic zoning that was put into place many years ago. He said that upon meeting with citizens in the community earlier, the applicant had agreed to plant additional evergreen trees on the western side of the proposed expansion of the parking lot.

Mr. Fox stated that he wanted to propose a modification of development condition Number 6. He proposed to add the language "Supplemental evergreen trees shall be planted along the western side of the expanded parking area as shown on Exhibit 1, attached. In addition, a garbage receptacle enclosure shall be constructed in the location noted on Exhibit 1." Mr. Fox stated that the applicant had also agreed to plant two deciduous trees on the north side of the subject property adjacent to the Frentz property, Lot 3A, and he proposed that the additional language should include that.

Mr. Fox proposed two other slight modifications to development conditions Number 12 and Number 13. He said development Number 12 addressed the limits of clearing and grading, not to exceed what was shown on the special permit amendment plat. He proposed to add the language "Except where modified for installation of utilities or stormwater management facilities, and all modifications shall be subject to approval by the director of DPWES." He stated that the engineer felt that the site was tight and in the final engineering stages, some flexibility may be needed

Mr. Fox stated that in development condition Number 13, the last sentence read, "The size, species, number and type of the additional plantings shall be as determined by the urban forester." He proposed a slight modification to the language in that last sentence where it read "as determined." He proposed that the applicant would actually submit the plan and the urban forester would review and approve it. Mr. Fox said the applicant didn't have any difficulty at all with the urban forester having that authority, but suggested striking the words "as determined" and instead insert "subject to review and approval by the urban forester."

Mr. Hammack asked if staff had any comment on the proposed changes and Ms. Josiah replied that it was acceptable.

Mr. Hart discussed with Mr. Fox a proposed conservation easement that showed on the plat which had not been addressed by Mr. Fox. Mr. Hart stated that his concern was that if plat showed a conservation area, it should be understandable where it was to be located.

Mr. Hart stated that his other concern was that in the front of the Church there was playground equipment and surrounding fencing.

Mr. Fox stated that he had discussed that issue with the citizens at their meeting. He said, given the configuration of the church, that was the only place they could find to put the playground where the children would be visible from the administrative offices and during other church functions.

Mr. Hart had some detailed questions about the configuration of the fencing. John Gavarkovich, engineer with Walter L. Phillips, Inc. explained exactly how the fence would be erected and the variations of the grades, windows, etc.

Chairman DiGiulian called for speakers.

Bill Thompson, 7828 Addleboro Drive, came forward to speak in opposition to the application. He said the back of his property adjoined the Harvester Church on the southwest side and that he and several other homeowners did not support the expansion. He said that their concerns were based on maintaining their privacy and they felt that their well-being and quality of life which they presently enjoyed was not being sufficiently addressed. He stated that their concerns included the proposed reduction in the woodlands, a general increase in noise level by church members arriving and departing, the overhead glare from the parking lot, vehicle headlights disturbing the evenings, a substantial increase in noise levels by area youths who utilized the parking lot after hours and potential vandalism and crime increasing due to the reduced woodland barrier.

Mr. Thompson stated that even though the Church had proposed a modified plan to insert a row of evergreen trees along the west edge of the parking area. He stated that a more robust and functional landscaping plan would be needed to adequately address their concerns from becoming a reality with which they would have to live.

Mr. Fox stated in his rebuttal that Mr. Thompson was in attendance at the citizens meeting and that the issue about the reduction in the woods had been addressed at that time. He said the applicant was still leaving the 50 feet on the west side as required by the Board of Zoning Appeals since the 1980s. Mr. Fox stated that, at their community meeting, the citizens had requested a bevy of evergreen trees to be planted at the edge of the parking lot, because when the deciduous trees in the 50 foot buffer were denuded, as in fall and winter, they wanted further buffer. The applicant believed that he had already committed to a substantial buffer.

Mr. Fox stated that the citizens also said that they did not want trash and garbage cans out in the open, and that had been addressed by adding an enclosed trash receptacle, which would be shielded by the 50 foot of wooded buffer. He stated he believed that they had adequately responded given the odd shape of this lot.

Mr. Fox stated that the citizens had raised some issues at the meeting about people using the parking lot after church hours. He said these were clearly non-church functions and the church trustees have committed to determine who was making unauthorized use of the parking lot and to take steps to minimize or eliminate that issue. Mr. Fox stated that parking lots tend to become unused open space which, especially at night, allowed people to gather without permission. He said he felt that when the administrative wing of the church was back on site, this would be less of a problem.

Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve amendment application SPA 83-S-102 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 HARVESTER PRESBYTERIAN CHURCH, SPA 83-S-102 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 83-S-102 previously approved for a church and related facilities to permit building additions, site modifications, change in development conditions and change in permittee. Located at 7800 Rolling Rd. on approx. 3.94 ac. of land zoned R-3. Mt. Vernon District. Tax Map 98-2 ((1)) 6. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all

applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on date September 25, 2001; 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 prescribed standards for the special permit uses.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-303 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, 7800 Rolling Road (3.94 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, Incorporated, dated May 31, 2001, as revised through August 29, 2001, 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 d etermined 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. Development of this property shall be in accordance with all conditions of PCA 79- S-018-1.

6. The existing vegetation shall satisfy the transitional screening requirement along t he western property line. Supplemental evergreen trees shall be planted along the western side of the expanded parking area as shown on Exhibit 1 (attached). In addition, two additional deciduous trees shall be planted on the northern lot line adjacent to the Frenz property (Lot 3A) and a garbage receptacle enclosure shall be constructed in the location noted on Exhibit 1. Transitional screening shall be modified along the northern and southern lot lines to allow existing vegetation and the proposed landscaping shown on the special permit amendment plat to satisfy the Transitional Screening requirements. The barrier requirement shall be waived along all lot lines.

7. Interior parking lot landscaping shall be provided in accordance with Article 13.

8. The maximum seating capacity of the church shall not exceed five hundred (500).

9. A minimum of 155 parking spaces shall be provided. All parking for the church use shall be on site as shown on the special permit plat.

10. Any existing or proposed lighting of the parking lot and driveways shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall be a low-intensity design which focuses the light directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

11. Signs shall be permitted in accordance with Article 12, Signs.

12. The limits of clearing and grading shall not exceed that which is shown on the special permit amendment plat, except where modified for installation of utilities or stormwater management facilities. All modifications shall be subject to review and approval by the Director, DPWES.

13. Notwithstanding what is shown on the special permit amendment plat, additional supplemental plantings shall be installed around the perimeter of the stormwater management/best management practices dry pond for both aesthetic and screening purposes, to mitigate the loss of existing vegetation and to create a more natural setting for the pond. Size, species, number and type shall be subject to review and approval by the Urban Forester.

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 construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 October 3, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 657 September 25, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SPA 96-D-038 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 96-D-038 previously approved for a place of worship and child care center to permit increase in land area. Located at approx. 500 ft. W. of the intersection of Dranesville Rd. and Sugarland Rd. on approx. 7.20 ac. of land zoned R-3. Dranesville District. Tax Map 5-4 ((1)) 3, 4 pt. and 5B.

Chairman DiGiulian called the applicant to come forward. Susan Langdon, Chief, Special Permit and Variance Branch, stated that she had anticipated that someone would be present to represent the applicant, but it appeared that they had not yet arrived.

Chairman DiGiulian stated that he would recall the case at the end of the agenda. //

9:30 A.M. ALFRED W. REILLY, A 2000-MA-034 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellant is allowing a tenant to operate a Vehicle Light and Major Service Establishment in the C-8 District without Special Exception approval and to occupy the property without a valid Non-Residential Use Permit, all in violation of Zoning Ordinance provisions. Located at 5711A Center La. on approx. 8,776 sq. ft. of land zoned C-8, HC and SC. Mason District. Tax Map 61-2 ((20)) 9. (Def. From 2/13/01 and 2/27/01) (Def. From 5/1/01 and 5/29/01)

Chairman DiGiulian stated that appeal application A 2000-MA-034 had been deferred to February 5, 2002.

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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 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, 11/9/99 and 11/28/00). (Def. From 3/27/01)

William Shoup, Deputy Zoning Administrator, stated that the Division of Zoning Administration had issued a memorandum on September 17, 2001, recommending dismissal of this appeal.

Mr. Shoup stated that the remaining issue on the appeal involved a second dwelling unit that was being maintained on the appellants property in violation of the Zoning Ordinance. He said that this case was heard first on November 9, 1999 and had been continued several times to allow the appellant to pursue the possibility of obtaining additional land area so that he could possibly get the property rezoned and then re-subdivide. He said that would then resolve the violation.

Mr. Shoup stated that in the two years since the hearing, there had been very little progress and given the length of time, he recommended that the appeal be dismissed.

Ralph Duke, 9935 Corsica Street, Vienna, Virginia, came forward to speak on his behalf. He stated that when he purchased the property in 1999, the second dwelling had already existed on the property for over 30 years. He said that during the course of the two years, he had spoken to many people within the County and had documented his efforts to resolve the issue. He stated he had submitted a letter to the BZA at the last hearing in March 2001, which outlined what he intended to do to bring the property into compliance. Mr. Duke found that his only option to resolve the violation was to acquire an additional 6,000 square feet of land to have his property equal one acre and then he could legally subdivide the property.

Mr. Duke gave a detailed explanation of the numerous people within the County with whom he had spoken. He stated that he had been given a variety of solutions and who to call. He said he hired a survey company to survey the land, and they recommended that he should obtain a boundary line adjustment. Mr. Duke said that he showed the company's boundary line adjustment proposal to his neighbor. He said that the neighbor stated he had not agreed to a boundary line adjustment, but had agreed to sell some of his property to Mr. Duke. Mr. Duke stated that he was now waiting for the land survey results in order to know what the total cost of securing the extra property would cost him.

Mr. Duke stated that at the March hearing, he had outlined and detailed exactly what was necessary to finalize the whole process and he had since found out that it would take 2-3 years to get through the entire process. Mr. Duke stated that he was trying to resolve this matter but had found that almost everyone in the county he had spoken to gave him a different interpretation of what he needed to do. He stated that he just wanted the issue resolved. He said all he did was purchase property where the sewer and property tax had been charged for and paid to the County for the last 25 years, and then he found out he was in violation.

Mr. Hammack asked if the second dwelling unit was occupied. Mr. Duke replied that it was occupied by family members.

Mr. Hammack asked if Mr. Duke was exploring purchasing property from his neighbor. Mr. Duke replied that he and his neighbor had a verbal agreement, but still did not have the actual cost. Mr. Hammack asked staff if that type of solution would solve this particular problem.

Mr. Shoup stated that several things which needed to be done. He said Mr. Duke had to acquire enough land to own an entire acre in order to rezone the property to R-2. Mr. Duke would then have to go through the rezoning process and through the subdivision process, assuming that the property could be subdivided, etc. Mr. Shoup stated that all of this could probably take over a year's time.

Mr. Hammack stated that he would like to defer the appeal for 90 days to get some things in writing and obtain a signed agreement for the money issue.

Mr. Hart stated he would not have a problem with the time issue Mr. Hammack asked for. He stated he had some major concerns regarding Mr. Duke's acquiring the property and all the other intricate details of getting through this process.

Mr. Kelley stated that he would like to give Mr. Duke the time he needed. He said Mr. Duke had been diligent in trying to clear thing up. Mr. Kelley stated that it would probably take another year for everything to get done. He said that since the house had been there for 25 years, Mr. Duke had paid taxes, and the County had hooked him up, he could see no harm in letting Mr. Duke and his family to continue to reside there until they could get the matter worked out.

Mr. Pammel told Mr. Duke also had the option of obtaining a special permit for an accessory dwelling. He said there were also standards and criteria to be met for that, especially since he already had family currently living in the dwelling right. Mr. Duke replied that this was the first time he had heard about that that option.

Mr. Pammel moved to defer appeal 1999-HM-026 for one year. The motion was seconded by Mr. Ribbble which carried with a 6-0 vote. Ms. Gibb was absent from the meeting.

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Page 659 September 25, 2001, (Tape 2), Scheduled Case of:

9:30 A.M. KENNETH AND VIVIAN W. GANS, A 2001-DR-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination to approve Building Permits for the construction of three single family dwellings on property located at Tax Map Reference 21-3 ((22)) 2, 3 and 4A. Located at 1028, 1030 and 1034 Gelston Ci. on approx. 1.72 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((22)) 2, 3 and 4A.

Chairman DiGiulian stated that the appeal application A 2001-DR-019 had been withdrawn.

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Page 659, September 25, 2001, (Tape 2), Scheduled Case of:

9:30 A.M. MARK J. AND LAVONNE C. ROLINCIK, A 2001-SP-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are occupying the subject property without having obtained a Residential Use Permit in violation of Sect. 18-701 of the Zoning Ordinance. Located at 12509 Easter La. on approx. 1.07 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((5)) 40. (Admin moved from 10/9/01) (Def. From 9/11/01 and 9/18/01)

William Shoup, Deputy Zoning Administrator, stated that Margaret Stehman, Zoning Inspector, would make the presentation on the appeal.

Ms. Stehman stated the appeal was a Notice of Violation that the appellants were occupying a dwelling at 12509 Easter Lane without a Residential Use Permit (RUP). She said that the property was zoned RC and developed with a single family dwelling. She said Easter Lane was located within an older subdivision called

Lewis Park, which had been developed during the 1950's and 1960's. She said that Easter Lane was a County owned right-of-way that had been dedicated at the time Lewis Park was created, and unlike the rest of the development, Easter Lane had not been developed until the1990's.

Ms. Stehman referred to the Section 18-701 of the Zoning Ordinance which provided that a dwelling could not be used unless a RUP had been issued. She said that the minimum requirement for the issuance of a RUP was for all streets and driveways necessary to provide access to a public street be completed. She stated that was the major issue in this case that the RUP had not been issued.

Ms. Stehman stated that the County code provided that County-owned right-of-ways serving more than three driveways should be constructed to the standards and specifications approved by the BOS. She said that those were the specifications and improvements that would bring the street to VDOT standards so that the road could be accepted into the state system for maintenance.

Ms. Stehman stated that the appellant in this case would represent the fourth driveway on the street, and would therefore be required to provide some public improvements to Easter Lane. The appellant had been aware that improvements would be required. The Public Improvement Plan had been submitted by the appellant, which had been approved by staff, but had not yet been bonded. She stated that since the appellant had not bonded the plan, it had not been possible to start the implementation of the PI. She said that since there were no improvements thus far to Easter Lane, and the RUP had not been issued.

Ms. Stehman stated the two issues before the Board were that the appellant was occupying the subject property and that the appellants did not have a RUP. She stated John Foster, County Attorney's Office, and Asaud Ayoubi of DPWES, who both had been involved in this issue, were present to help answer any questions the Board had.

Mr. Pammel asked which lot had paid for the extension of the sewer. Ms. Stehman replied that Lot 39 had put forth the sum of money to bring in the sewer to serve all five lots, and in consideration of that expense, they had been relieved of any responsibility for street improvements.

Mr. Pammel asked if Lot 38 had paid anything. Ms. Stehman replied that Lot 38 escrowed $10,400 for street improvements, Lot 41 had paid nothing and that Lot 38 now had to put up $45,000 in escrow. She stated that there had been some dispute over the actual cost, and that Mr. Ayoubi had done estimates of what would be required.

Chairman DiGiulian asked if an estimate of the cost had been submitted. Mr. Ayoubi replied that the staff did an estimate of the cost for the improvement of the 300 foot segment of the road that was proposed by Mr. Rolincik with the PI Plan. He said that the cost would be approximately $12,000 to $13,000 and to build the entire road, which was about 500 feet in length, it would cost approximately $20,000. Mr. Ayoubi stated that In the case of the 500 foot road, they would be able to use the $10,400 escrow which was posted by parcel 39.

Chairman DiGiulian asked exactly what was covered under that estimate, and if it included grading and paving. Mr. Ayoubi stated that the estimate would be for a modified standard for the roadway, based on the request of Mr. Rolincik, DPWES, and VDOT, in order to minimize the cost of the of the road construction.

Mr. Ayoubi stated that three waivers had been approved for the Rolinciks. One was to reduce the width of the shoulders of the road, reduce the cul-de-sac radius, and the requirement of a streetlight. He said that all three waivers had been approved and now the width of the roadway would be 18 feet, and the shoulder only 2 feet, with a ditch line and no curb. Mr. Ayoubi stated that the grading would be very minimal based on the Public Improvement plan submitted by Mr. Rolincik's engineers and paving would be included.

The Board discussed in-depth the responsibility of the homeowners, the County, and the funding available for use for the Easter Lane properties. They also discussed the costs to each of the properties and the criteria used for each lot.

Ms. Potosak, Agent for the Rolinciks, stated in her presentation that there had been a couple of other issues

that needed to be resolved in addition to the road. She stated that when the County originally had issued the Notice of Violation, there were three reasons why the RUP had not been issued.

Ms. Potosak stated that the two other issues were the inability of the County Inspectors to find an outfall when doing the RUP inspection. She said that Calvert Builders and the superintendent from Calvert, who had built the house, came out and found it without a problem. She stated that a letter had been sent to the County advising them of this on September 18, 2001. Ms. Potosak said that County Inspector Nicholson then came out to inspect the house. Mrs. Rolincik was present when the outfall was located by the County Inspector, and it was located exactly where it was supposed to be, based on the grading plan. Ms. Potosak said she had spoken with Ms. Stehman about that incident, but did not know if that violation had been removed.

Ms. Potosak stated that the other issue was an engineering report that pertained to the footings and slabs of the house. She said that ECS, a geotechnical engineer, and Mr. Freeda performed the initial geotechnical inspection and did the geotech report in order to commence work on the footings and slabs. Ms. Potosak stated that Calvert Builders constructed the footings and slabs, then hired PIC Engineering to do the inspections for it. She stated that no Change of Engineering form had ever been filed, and could not be located in the County's records. She said that there was no engineering report stating that the footings and slabs had been constructed in conformance with the requirements of the geotechnical report which had been filed.

Ms. Potosak stated that that issue was not the Rolinciks' responsibility, although they had tried to resolve the issue with the County, the builder, etc. She said she had raised that issue with Ms. Stehman but still did not know the ultimate resolution. She stated that the appellants needed some response from the County.

Ms. Potosak stated that the most important issue was the road, and it was not the fact that the Rolinciks would have to construct a road. She said it was a matter of interpretation of the Ordinances that had become the issue. She stated that the County had interpreted the Ordinance and then enforced the interpretation or policy of the Ordinances. She said she felt it was not the Ordinances themselves that were invalid, but the way that the County had interpreted them.

None of the other property owners had faced this, and Section18-7046, which is the only Zoning Ordinance at issue, applied definitely to Lots 4, 5 and 6, if it applied at all. She said if the Ordinance required all individuals to build roads, then it should certainly apply to essentially landlocked roads where abutting driveways or pipestem driveways were needed to come out to a public road. She said the Rolinciks' driveway was complete, as it adjoined a public road, and the public road was serviceable and could be used.

Ms. Potosak stated that the Rolinciks had tried to cooperate with the County. She said the development of the additional Rolincik lot did not increase any of the traffic on the road, and if the road was built to the extent that the County and VDOT requested, the Rolinciks would lose 30 of their 40 feet off their front yard. She stated that they would have to give the County an easement of 30 feet because the County didn't have the proper amount of frontage or property on which to build the road, all due to the underlying ordinance.

Ms. Potosak stated that Section 18-704 did not require, by its terms, the construction of a road in order to get a RUP. She said it stated that a driveway had to access a public road, and the Rolinciks' driveway did. She said the Rolinciks had known that some sort of road construction would have to be done on their behalf. Ms. Potosak stated that the nature and character of the road along with the amount of money that the County required a single individual to contribute to a road that had no significant increased use were the flaws in the interpretation.

Ms. Potosak stated that the estimates made by the Rolinciks were about $45,000 for the construction of the road. She stated that the bond Mr. Rolincik would have to post was $25,000. She stated that the Rolinciks were more than willing to engage in some type of road construction as was noted originally, but they wanted it done in a fairly equitable fashion. She stated that it was the underlying enforcement of the County's policy that was at significant odds and that similar cases had arisen within the County of inequitably, unevenly enforced where some people paid escrow funds and others did not.

Ms. Potosak stated that the true issue was the essentially arbitrary unequal enforcement of the County's policies. She asked the Board to address and to overturn the County's interpretation of that policy.

Mr. Pammel briefly discussed with Ms. Potosak suggestions for an equitable solution regarding all the properties with sewer and road development that they had not paid for. She suggested that since this all was a County error, the County should share in the pro-rata share of the cost.

Mr. Hart asked when the Rolinciks had moved into their structure and who made the determination that they could move in without a RUP. Mr. Rolincik replied that they had moved in February and it had been a family decision to make the move.

Ms. Potosak stated that one reason the Rolinciks moved in was that they could not get anyone in the County to come out to do any of the final inspections. She stated that when she entered the case in March 2001, the homeowners were extremely frustrated because they had been unable to get anyone from the County to come out to do inspections.

Mr. Hart stated that he felt that a judge should have heard this case. He said that if a government official had failed to issue a permit, or it was being improperly administered, then someone needed to ask for an injunction. He stated that if there were rights in dispute regarding an escrow fund, or things that may affect other parties, etc., a court would have the ability to sort these things out, not the Board.

Ms. Potosak stated that Mr. and Mrs. Rolincik had made that decision, and she had discussed the other options with them. She said she was not free to go into the reasons at this time, based on attorney-client privilege.

Mr. Hart and Ms. Potosak spoke in depth regarding the County's policies, Ordinances and who had the authority to make decisions in cases such as this.

Mr. Hart asked if the road dimensions had been already set out in advance of the sale of the property. Mr. Rolincik stated that the dimensions were not set out until he submitted the Public Improvement plan in January. He stated that, at that time, he was assured that the ultimate size would change and would be reasonable and not like the drawing. Mr. Rolincik stated that Mr. Ayoubi required him to submit a plan in order to progress with the grading plan. He stated that he had been reassured by VDOT and DOT that they would work together to arrive at something much smaller.

Hart asked Mr. Rolincik if his builder had submitted the plans and if he had bought the house by that time. Mr. Rolincik replied that the builder had submitted the plans, and that he had not purchased the house until the end of February. He said he felt that the County was working well with him over several months and had reassured him they would work with him regarding the improvements.

Mr. Ayoubi stated that in his meetings with Mr. Rolincik since 2000, he had discussed Chapter 2 and the size of the road. Mr. Ayoubi told Mr. Rolincik that he wasn't asking him to build a road, but it was an alternative to get around the requirement of Chapter 2, so he would not be the 4th driveway.
Mr. Ayoubi stated that he gave Mr. Rolincik different options and had even met a couple of times with Ms. McConnell's office. Mr. Ayoubi stated that they had one large meeting with the Office of Transportation, the County Attorney's office, DPWES, and some of the neighbors were there. It was at that meeting that Mr. Rolincik chose the option to build a road to the front of his house and bond improvements.

Mr. Ayoubi stated that the PI plan that had been submitted by Mr. Rolincik was approved and sent to Bonds and Agreements, waiting for Mr. Rolincik to bond the project. Several months went by when a neighbor of Mr. Rolincik called to say that construction of Mr. Rolincik's house was underway, but nothing had been done about road construction. He said that was when he called Ms. McConnell's office and found out that Mr. Rolincik had not bonded the PI.

Mr. Ayoubi stated that in early 2001, Mr. Rolincik applied for two waivers to reduce the standards of the roadway. He said h worked very closely with VDOT and got both waivers approved within a month. He said that throughout the entire process, he worked diligently with Mr. Rolincik, and had told him several times

continued from Page 662

that he would not be able to move into his property or get an occupancy permit until the road was built.

Mr. Hart discussed in depth with Mr. Ayoubi the Public Improvement Plan, Chapter 2, VDOT requirements to build roads, who is responsible for the maintenance of various types of roads, and how the roads can become state maintained roads.

Jim Parish, Lot 39, stated it was very difficult to speak up on this issue as he liked the Rolinciks a lot and they had been a great asset to the neighborhood. He stated that he had to spend approximately $20,000 for the sewer to get connected. He said that because of that expense, he had asked for a waiver for the road which had been granted.

Mr. Parish stated that Easter Lane was an unimproved County right-of-way, and was not maintained by anyone. He stated that there had been a lot of mess ups with the County and how things had to be done. He said he didn't think it was fair that he had to pay for the entire sewer, but he had no choice as he had to have a sewer to move in. He said that each of the neighbors has had to deal with varying issues as they bought their houses. He stated that now there has been concessions made to the size of the road, and he still would not benefit from it because it will not go all the way down to his property.

Mr. Parish stated that he had paid for the sewer in 1992, and felt like he was a sucker for paying the whole thing. He said that regardless of the past, he still wanted the road to be built as he had been told for years that the County was going to pave the road and it would be a state maintained road.

Bruce Cathell, Lot 38, stated that it was mentioned he had put up $10,400 as bond, but that escrow money was actually a full amount he put forth.

Mr. Cathell stated Mr. Ayoubi's estimate of $20,000 if the cul-de-sac was moved all the way to the end did not account for the well which is in the front portion of the lot. He stated that as a side issue, he knew the whole division had water quality problems, and if the wells had to be moved it would be extremely costly, with estimates of $10,000 in hopes of finding another well.

Mr. Cathell stated that he had attended all the meetings for the residents of Easter Lane. He said that Mr. Rolincik had been at all the same meetings and had been notified by Craig Corinth of the Division of Environmental Facilities and Inspection about the issues with the road, costs and responsibilities.

Mr. Cathell stated that the $10,400 was in the escrow account clearly meant for improvements for his Lot 38 only. He stated that according to public tax records, Mr. Rolincik purchased his lot for $75,000 in March 2000, and according to tax records, from the time period of July 27, 1998 to August 6, 2000, comparable lots sold for $123,850. He stated that that difference of the average sales price and what Mr. Rolincik paid was almost $49,000. He stated that he believed the price difference was due to the road improvement issue as it was a well known fact.

Mr. Cathell stated that he had a copy of the petition Mr. Rolincik had been circulating, and after reading it, he felt Mr. Rolincik had gained community support by putting forth this petition which had a lot of incorrect and inconsistent statements made in it. Mr. Cathell stated that his property was at the end of the road, and he wanted their end paved also. He said he had been to many meetings and wasted a lot of time, but he just wanted what was agreed upon in the plan.

Lavonne Rolincik came forward to speak in support of her application. She stated that it was difficult to talk in front of her most of the neighbors, who were also friends. She said she planned to live in their house a long time and didn't want this issue to get any worse than it was.

Mr. Hammack asked Mrs. Rolincik if she had a solution. She replied that she disagreed a little with her attorney and felt that everyone who lived on Easter Lane wanted the road paved. She stated that she felt that the road should be paved all the way to the Parish's and Cathell's lots.

Mrs. Rolincik stated that she wanted the Board to know that many things had changed over the past year and a half. She stated that so many things had not been explained well and that minds had been changed

over time and that she felt she and her husband had been puppets throughout the entire process. She said they had tried to come up with a solution that would not alienate neighbors and without making this a bad situation. She stated that somehow, a solution was needed in order to get the road paved.

Ms. Rolincik stated that the county had made lots of mistakes along the way and she faulted them, but she also faulted VDOT. She said VDOT was still in a situation where they could make some concessions and could still take advantage of the homeowners. She stated that she and her husband were willing to front the money in order pave the entire road for everyone's benefit. She stated that they did not need a road larger than any other in the neighborhood nor a cul-de-sac right in front of their house.

Mr. Hammack asked staff for a State Code citation which supported this Code section in the policy.

John Foster, Office of the County Attorney, stated that there were two places in the state law where Chapter 2 was supported. He stated that the first was with a County dedicated right-of-way that was currently owned essentially by the County. He said that, in a sense, it was the same as any private driveway that would be owned by a property owner and the County was no different with individuals proposing to build house and driveways on the County's property. He stated that the County, as the owner, had the right to impose conditions to the proposed use of the County property.

Mr. Foster stated that in the Code Section 2-1-1B in Chapter 2, which was enclosed in the staff report, it provided that the Director of Environmental Management or his agent was authorized to attach such conditions to any permits issued as necessary to insure proper construction and use of the right-of-way or land.

Mr. Foster stated that the second basis was found at Section 15.2-20-18, part of the Virginia Code dealing with County cities and towns. He said he didn't think that this use was permitted for the general public, because a driveway was being built adjacent to the road to get access. He said that normally anyone who makes such use of the County's land without a permit would be guilty of a Class 4 Misdemeanor.

Mr. Foster stated that he felt the point was that the County, as the owner of this roadway, had the ability to impose such permits and conditions upon proposed uses. The said the County and BOS in Section 2-1-5 had chosen to draw that line at the fourth property owner and that decision had been made by the legislative body. He said that everyone could question and debate where the line should be drawn, but that was the prerogative of the legislative body.

Mr. Hammack asked Mr. Foster if the policy had ever been formally adopted by the County and Mr. Foster replied that none of the Board members had ever raised the issue of changing the policy,

Mr. Hammack asked if the County regularly deviated from the policy by allowing people to make other kinds of contributions, such as sewers, rather than following the terms of the policy of an escrow.

Mr. Ayoubi explained the policy in depth. Mr. Hammack replied that he felt that the policy was not consistently applied, and perhaps inadvertently ignored on one lot and then not applied the same way to a second lot.

Mr. Ayoubi stated that there was no provision to ignore a policy, and that was why the policy was in existence. He stated that from time to time staff did not ignore the requirement, but simply missed it.

Mr. Hammack asked if the County had made a mistake and had not collected an escrow from Lot 41. Mr. Ayoubi stated that was correct, the staff who reviewed that grading plan did not realize that that lot was proposed on a Chapter 2 road.

Mr. Hammack asked if the County had any plans to correct that oversight, and Mr. Ayoubi replied that the staff now had more emphasis and training on that subject. Mr. Hammack replied that he was specifically speaking of Lot 41, and asked if the County should go back and try to remedy the mistake for the benefit of the other lot owners. Mr. Ayoubi stated that would be very difficult to do, because the mistake was not a mistake of a Code related requirement, but that of a policy.

Mr. Foster stated that it would be difficult to identify any legal means of going back to the owner of Lot 41 for redress. He said that the fact the County had missed it on Lot 41, this did not erase or remove the requirement in this case, that Mr. Rolincik comply with the Zoning Ordinance.

Mr. Pammel stated that the error and burden of a financial mistake made by the County's had been placed on Mr. Rolincik. He stated that he felt that the County would have to work with the Rolinciks and bear some of the expense of the error.

Mr. Foster stated that three waivers had already been issued to reduce the scope of the road for Mr. Rolincik to reduce the cost. He stated that there were other avenues that were available to the Rolinciks legally that they could have been pursued, such as a declaratory judgment action at the time that they had some concerns about the Chapter 2 requirements, but that other options had not been pursued by the Rolinciks. He stated that he wanted to reiterate that in the appeal of the Notice of Violation, he could not identify any remedies that the Board provided in the limited scope of the hearing.

Mr. Foster stated that, as Ms. Stehman said at the outset, they were really limited to two issues. He said the first issue was if the Rolinciks were currently occupying the property, which they were found to be. He stated the second issue was if they had a RUP, which they did not. He said that as a matter of law, Notice of Violation should be affirmed.

Mr. Pammel stated he had prosecuted a case just like this one in Loudoun County, and finally took the builder to court and won. He stated that was one avenue for the Rolinciks to choose. He said he thought they should try to work with the community to get an acceptable solution, even if the County had to utilize discretionary funding. Mr. Pammel stated that this was the type of problem that had a solution and it did not need to go into the Court system.

Mr. Kelley stated that he felt the County had created this problem, and they should have to solve it. He said the County had an obligation to the citizens that live in that area to solve the problem. He stated that they created it by issuing a building permit and he said he agreed with Mr. Pammel that discretionary funding would be the solution.

Mr. Shoup stated in rebuttal that he did not feel that the County had created the problem. He said a building permit was issued, and that was a diversion from the regular practice. He said a building permit would not have been issued without the Public Improvement Plan being bonded. In trying to work with the Rolinciks, they had indicated that there was some concern about their loan.

Mr. Kelley stated that the fact was the County issued the building permit, and if it had not been issued there would not have been a hearing for this. Mr. Shoup stated that he had tried to work with the Rolinciks on their good faith representation that the road would be constructed before they moved in. He stated that often times they were often criticized for being too harsh and not trying to work with people. He said that DPWES had bent over backwards in this situation. He stated that they had followed the Code requirement that allowed only three driveways to come in, and that there was no authority for the director to allow that fourth one to come in. Mr. Shoup stated that he felt the Rolinciks had reneged on their agreement, and that the narrow issue was if the Rolinciks were occupying a house without a RUP, and the answer had been clear.

Mr. Pammel and Mr. Shoup briefly discussed the basis of how building permits were issued and how the County went forward after that.

Mr. Pammel stated that the other mistake that County made was its lack of collection of a corresponding bond from Lot 41 that precipitated much of this discussion. He said the Rolinciks were willing to put up some of the funds, but did not want to bear the full burden.

Mr. Shoup stated that there had been a lot of discussions involving the community, Supervisors office, and staff. He said the agreement and understanding was that the Rolinciks would build the road.

Ms. Potosak stated in her rebuttal that the issue was whether or not the DEM and DPWES policy was based appropriately in County Ordinances and state statutes, and whether or not it had been fairly applied across

the board. She said neither was true and it was within the purview of the Board to adjust the policy when it was inequitably enforced.

Ms. Potosak stated that a public road was accessible to vehicular traffic and was accessible to all pedestrian traffic without a permit. She stated that when a permit was needed for a County or City road, it was when it was necessary to close off the road to have some sort of function. She said that this was not in the case of a driveway going out onto a road.

Ms. Potosak stated that abutting driveways did not apply in this case, as there were not three abutting driveways on Easter Lane. She stated that three abutting driveways would arise in the situation on the other side of Easter Lane where Lots 4, 5, 6 and 7 were landlocked, and one would need either a pipestem driveway or adjacent driveway to come in.

Ms. Potosak stated that the County Ordinance required Mr. Rolincik's driveway be appropriately brought to and adjoined with the street, and the Rolinciks were more than willing to provide some sort of a road and they had been working with the County. She said that it had been the size and scope of the road that produced the inequitable and sporadic enforcement of the policy that the Rolinciks had questioned.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to defer decision of Appeal A 2001-SP-016 for a period of 90 days. He stated that he felt that the staff, County Attorney's office, and public works should work together with this community and find a solution that would benefit all parties. He stated he would like to see all parties return to the Board in 90 days to give the status of what had been accomplished by that time.

Mr. Kelley seconded the motion.

Mr. Hart stated the reasons why he supported the motion.

Mr. Pammel clarified that the case would be deferred until December 18, 2001.

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Chairman DiGiulian asked if representatives for the ALL DULLES MUSLIM SOCIETY, SPA 96-D-038 were present.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that she had tried to contact the agent but there was no answer. She stated that if the Board wanted, four cases had fallen off the Agenda for the following week, and she would try and contact the applicant to see if they were available and still desired the case to be heard.

Raymond Hogue, 119 Landerset Drive, Great Falls, Virginia, came forward to speak in support and welcome the Muslin Society members. He stated that he did have some problems with the proposed amendment, but he would prefer to yield his time until he had heard their presentation.

Mr. Hammack moved to defer SPA 96-D-038 until October 2, 2001 at 9:00 a.m.

Mr. Hart seconded the motion which carried by a vote of 6-0.

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Page 666 September 25, 2001, (Tape 2), After Agenda Items:

Request for Intent to Defer
Jerome J. and Julia Kriss, VC 01-M-095

Mr. Hammack made a motion for the intent to defer.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Susan Langdon stated that the date would be December 18, 2001, as requested.

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Page 667, September 25, 2001, (Tape 2), After Agenda Items:

Approval of Draft Resolutions
September 18, 2001

Mr. Hart stated that since the resolutions were not in their regular format due to the County's Computer System being down, he felt concerned regarding the approval of the Resolutions in draft format.

It was decided that the Approval of the Resolutions for September 18, 2001, would be deferred for one week in order to have the Resolutions finalized. Susan Langdon, Chief, Special Permit and Variance Branch, stated that the applicants would be notified that the final approval date would be moved back one week.

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As there was no other business to come before the Board, the meeting was adjourned at 10:22 a.m.

Minutes by: Judith A. Gobbi

Approved on: March 19, 2002

Regina Thorn Corbett, 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 2, 2001. The following Board Members were present: Chairman DiGiulian; Nancy Gibb; Paul Hammack; James Hart; and John Ribble. Robert Kelley and James Pammel were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. Chairman DiGiulian discussed the policies 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 After Agenda Item.

Page 669, October 2, 2001, (Tape 1), After Agenda Item:

Request for Intent to Defer
Sang T. Kim and Bong Y. Kim, A 2001-MA-014

Chairman DiGiulian noted that the appellant requested an Intent to Defer.

Robert Lawrence, Agent, came forward, stating that the appellant had purchased a dry cleaners and at the time of purchase, the business was subject to an occupancy permit issued by the County. He said when the appellant purchased the property, a Non-Residential Use Permit was issued for the use, but when he went to expand the mezzanine, the appellant was told by the County that the previous permits had been issued erroneously and there were errors in the review of the original site plan and the original permitting process. Mr. Lawrence said the appellant was told that the building was constructed too close to the property line, so he filed a special permit that was in the process of being reviewed by staff. He said they were also told that a variance needed to be filed as well. Mr. Lawrence asked the Board to defer the subject appeal to allow time for the special permit and variance to run its course.

Mr. Ribble moved to approve the Intent to Defer to January 8, 2002. Ms. Gibb seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 669 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TINA S. QUALL, VC 01-P-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 3.0 ft. from side lot line. Located at 2904 Rogers Dr. on approx. 9,209 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((15)) 111.

Chairman DiGiulian noted that VC 01-P-114 had been administratively moved to November 13, 2001.

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Page 669 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JAMES MOELLER & MARSHA MACBRIDE, VC 01-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line. Located at 1219 Earnestine St. on approx. 15,300 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-1 ((5)) 13.

Chairman DiGiulian noted that VC 01-D-117 had been administratively moved to November 27, 2001.

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Page 669 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ALI A. AALAI & NAHID AZADFROUZ, VC 01-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 52.0 ft. in height. Located at 612 Rivercrest Dr. on approx. 1.19 ac. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 19R.

Chairman DiGiulian noted that VC 01-D-125 had been indefinitely deferred.
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9:00 A.M. THANH CHAU HUYNH, SP 01-L-033 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 accessory structure to remain 2.6 ft. from side lot line and 6.8 ft. from rear lot line and addition 14.8 ft. from side lot line. Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 01-L-085). (Def. Decision only from 8/7/01 and 9/25/01).

Chairman DiGiulian noted that SP 01-L-033 had been deferred for decision only.

Mr. Hart stated that the applicant failed to present testimony indicating compliance with the required standards for a special permit for error in building location. He said the shed was too big and the Board had not received enough of an explanation about how the shed came to be placed there. Mr. Hart said it was appropriate for the porch to remain. He moved to approve-in-part SP 01-L-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

THANH CHAU HUYNH, SP 01-L-033 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 accessory structure to remain 2.6 ft. from side lot line and 6.8 ft. from rear lot line and addition 14.8 ft. from side lot line. **(THE ACCESSORY STRUCTURE WAS DENIED)** Located at 6259 Wills St. on approx. 12,877 sq. ft. of land zoned R-1. Lee District. Tax Map 91-1 ((6)) 13. (Concurrent with VC 01-L-085). Mr. Hart moved that the Board of Zoning Appeals adopt the following resolutions:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 2, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant failed to present testimony indicating compliance with the required standards for a special permit.
3. The shed is too big and there was not sufficient justification to indicate the circumstances to allow the large structure.
4. It is appropriate for the front porch to remain.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN- PART** with the following limitations:

1. This special permit is approved for the location of a porch, as shown on the plat prepared by Kenneth W. White, dated February 27, 2001, 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. Kelley and Mr. Pammel were absent

from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 671, October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR MARTIN & GENEVIEVE BUCK SZALANKIEWICZ, VC 01-P-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.3 ft. from both side lot lines. Located at 2883 Hibbard St. on approx. 14,000 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 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. Victor Martin Szlankiewicz, 2303 Sandburg Street, Dunn Loring, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a new dwelling to be located 10.3 feet from both side lot lines. A minimum side yard of 15 feet is required; therefore, variances of 4.7 feet from both side lot lines were requested.

Mr. Szlankiewicz presented the variance request as outlined in the statement of justification submitted with the application. He requested a waiver of the 8-day waiting period.

Mr. Ribble asked the applicant whether the lot was narrow as indicated in the statement of justification. Mr. Szlankiewicz replied yes.

Chairman DiGiulian noted a letter received in opposition and asked the applicant to respond to the letter. Mr. Szlankiewicz stated that he was in the Marine Corps Reserves and had been sent overseas which was the reason for the condition of the property. He said the Board of Health had come to investigate the property and found no problems.

Mr. Hammack asked why the dwelling was proposed in the requested location. Mr. Szlankiewicz stated that the grade of the yard was down hill.

Chairman DiGiulian called for speakers.

Amy Cleary, 2887 Hibbard Street, came forward stating that she wasn't completely in opposition of the application. She said she was concerned about the size of the dwelling and what it would look like once completed. Ms. Cleary stated that she wanted the Board to ensure that the construction would be completed in a timely fashion.

Mr. Hammack stated that the Board did not have control over those issues and indicated that she would need to pursue other avenues in the County.

Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-P-112 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

VICTOR MARTIN & GENEVIEVE BUCK SZALANKIEWICZ, VC 01-P-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.3 ft. from both side lot lines. Located at 2883 Hibbard St. on approx. 14,000 sq. ft. of land zoned R-2. Providence District. Tax Map 47-2 ((4)) 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 October 2, 2001; 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 standard for a variance.
3. The lot is narrow with exceptional topographical conditions that prevent the dwelling from being built elsewhere on the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a dwelling as shown on the plat prepared by Thomas F. Conlon Jr., dated, May 10, 2001, as revised through July 7, 2001, as 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. Ribble 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. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 2, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 673 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. TRUSTEES OF FAIRFAX COMMUNITY CHURCH, SP 01-S-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship and nursery school with an enrollment of less than 100 students daily. Located on the S. side of Braddock Rd., approx. 300 ft. W. of its intersection with Bentonbrook Dr. on approx. 14.30 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 13A. (Deferred from 9/11/01)

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.

Juan Bernal, Staff Coordinator, stated that decision was deferred from September 11, 2001, in order to allow the applicant to respond to three concerns from the neighborhood regarding the septic fields, parking, and traffic as well as two concerns from the Board regarding a traffic study and permission from the adjacent parcel owner, Mr. Kim. Staff noted that revised development conditions dated October 2, 2001, were distributed to the Board.

Ms. Strobel stated that there were a number of questions regarding traffic and whether a traffic study had been prepared. Ms. Strobel stated that since the initial public hearing, the applicant's representatives had performed traffic counts on Braddock Road. She noted a letter dated September 25, 2001, was submitted which discussed the traffic issues. Ms. Strobel said the conclusion of the letter indicated that Braddock Road had sufficient capacity to handle traffic during week day peaks; therefore, the church use, which was off peak, resulted in traffic numbers that Braddock Road could accommodate. Ms. Strobel said the applicant verified that there was adequate sight distance and there were a number of conditions proposed by the applicant and incorporated into staff's conditions that related to traffic. She said the applicant agreed to install directional signs on the property to direct traffic to the median break access point. Ms. Strobel said the applicant was willing to install Virginia Department of Transportation (VDOT) Signs east of Bentonbrook Drive cautioning motorist to watch for turning vehicles. She said the applicant would also retain the services of a police officer to direct traffic during Sunday morning services. Ms. Strobel said in the event there were large functions at the church, the applicant would obtain permission to park off site to ensure there would be no parking on Bentonbrook Drive or on Braddock Road. Ms. Strobel said there were concerns raised regarding the proposed septic field, but the applicant had addressed those issues. She said the applicant agreed to provide a row of evergreen trees between the septic field and the neighbor's property. Ms. Strobel stated that the applicant agreed to a condition to address the roof's drainage system, which would exceed the Code requirement by 40%. She presented a letter from Mr. Kim, the adjacent property owner, indicating that he agreed to dedicate a portion of his property for access. Ms. Strobel submitted revised proposed conditions to the Board.

Mr. Hart asked whether staff was in agreement with the condition changes. Susan Langdon, Chief, Special Permit and Variance Branch, replied yes.

Chairman DiGiulian called for speakers.

Robert Hayman, 4804 Bentonbrook Drive, came forward, stating that he would like the applicant's private forester to consult with the County's Urban Forester. Mr. Hayman stated that the church needed the ability to put more parking on site. He said the applicant had addressed all the neighbors' concerns.

Mr. Hart stated that as indicated in Condition #11, the County's Urban Forester would oversee the limits of clearing and grading.

Jim May, 4808 Bentonbrook Drive, came forward and commended the applicant for their application and working with the neighbors.

Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve SP 01-S-038 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

TRUSTEES OF FAIRFAX COMMUNITY CHURCH, SP 01-S-038 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit a place of worship and nursery school with an enrollment of less than 100 students daily. Located on the S. side of Braddock Rd., approx. 300 ft. W. of its intersection with Bentonbrook Dr. on approx. 14.30 ac. of land zoned R-C and WS. Springfield District. Tax Map 67-2 ((1)) 13A. 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 2, 2001; 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 special permit as indicated in the staff report and the applicant's testimony.

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, on Braddock Road (14.3 acres) and is not transferable to other land.

2. This Special Permit is granted only for a church and related facilities and nursery school with a maximum daily enrollment of ninety-nine (99) children as indicated on the special permit plat prepared by David H. Steigler, dated July 2000, as revised through August 6, 2001, 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.

continued from Page 674

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 1,000.

6. The maximum daily enrollment for the nursery school shall be 99 children.

7. The maximum hours of operation for the nursery school shall be limited to 8:30 a.m. to 12:30 p.m., Monday through Friday.

8. A maximum of three hundred ninety-four (394) parking spaces shall be provided. All parking shall be on site within the designated parking area as shown on the special permit plat.

9. The outdoor recreational area of 7,000 square feet as shown on the special permit plat shall be enclosed with a four (4) foot high chain link or wood fence.

10. Existing vegetation shall be maintained and shall be used to satisfy the Transitional Screening I requirement along all lot lines and shall be supplemented along the eastern and southern peripheries as shown on the special permit plat to meet the transitional screening requirements. A double row of staggered evergreens, planted approximately 10 feet on center while taking into account existing trees, will be provided along the eastern boundary of the septic field to provide screening to adjacent residential properties and installed prior to building occupancy. The northern lot line shall be supplemented as needed with evergreen plantings to obtain the effectiveness of Transitional Screening I as determined by the Urban Forestry Branch. The size, type and location of all vegetation shall be as approved by the Urban Forestry Branch of DPWES.

    The Barrier requirements shall be waived.

11. The limits of clearing and grading shall be no greater than as shown on the special permit plat and shall be strictly adhered to. A grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. The extent of clearing and grading of construction shall be the minimum amount feasible as determined by DPWES. Prior to any land disturbing activities, a pre-construction conference shall be held between DPWES, including the Urban Forestry Branch, 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. A silt fence will be installed (and inspected after rain events and properly maintained during construction) south of the septic field to intercept and detain sediments from leaving the area of disturbance or being transported to adjacent properties. All of the site outside the limits of clearing and grading shall remain as perpetually undisturbed open space and /or existing utility easements and if any feature such as the SWM pond is eliminated or reduced in size, the area of that feature shall become part of the perpetually undisturbed open space.

12. All areas within the Environmental Quality Corridor (EQC) shall remain as undisturbed open space. The construction of any structures or fences shall be prohibited. The undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass.

13. At the time of either site plan submission or grading plan submission, whichever occurs first, 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 20 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. Tree preservation shall be implemented pursuant to the study as approved by the Urban Forestry Branch.

14. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the DPWES. Foundation plantings around the church building shall be provided for the purpose of softening the visual impact of the 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 with particular emphasis along the northern lot line.

15. Stormwater Management/ Best Management Practices shall be provided in accordance with the Chesapeake Bay Preservation Ordinance and the Public Facilities Manual standards for developments in the Water Supply Protection Overlay District as approved by DPWES. If SWM or BMP's are waived or reduced in size, the area(s) presently depicted on the special permit plat for the ponds shall become part of the undisturbed open space on site.

16. No less than 47.5 % 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/or existing utility easements.

17. Right of way along Braddock Road shall be dedicated in fee simple to the Board of Supervisors at the time of site plan approval, or upon demand, whichever occurs first for the right turn lane of the main entrance. Frontage improvements shall be constructed and be subject to review and approval of VDOT and DPWES. The asphalt trail shall be relocated to the approval of DPWES. Should a right turn lane be warranted at the easternmost access point to provide right-in access to the site, the access point shall be designed and designated for right-out access only, and a right turn lane shall not be constructed

18. 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 buildings, to exclude the main entrance. Except for necessary low level security lighting, site and building lighting shall be turned off by 10:30 p.m.

19. The use of loudspeakers, music amplification systems, or bull horns shall not be permitted outside the building.

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. Irrespective of that shown and noted (#13) on the special permit plat regarding the proposed location of the septic field, the applicant shall obtain approval from the Fairfax County Health Department for the location of the septic field. Should approval not be obtained for the proposed location of the septic field(s) in substantial conformance with that shown on the special permit plat, this special permit shall become null and void.

22. All signs on the property shall be provided in accordance with the requirements of Article 12, Signs, of the Zoning Ordinance. If lighting is permitted for the sign, it shall only be as backlighting.

23. Directional signs approved in accordance with Article 12, of the Zoning Ordinance, shall be installed on the property to direct westbound traffic to the main entrance where a median break is located. In addition, subject to receipt of permission from the Virginia Department of Transportation (VDOT), VDOT standard signs shall be installed on east bound Braddock Road approximately 800 feet west of Bentonbrook Drive cautioning motorists to "watch for Turning Vehicles."

24. Development of the property may be phased. At such time as a minimum of 750 seats are available within the sanctuary, or prior to construction of 750 seats, if deemed necessary by the congregation, the services of an off-duty police officer shall be retained to direct traffic onto Braddock Road at the conclusion of any Sunday Morning Services. The police Officer shall be located at the main entrance to facilitate left hand turns at the median break.

25. In the event that additional parking is needed for special events, an offsite parking location shall be utilized and parishioners shuttled to the property to ensure that parking will not occur on Braddock Road or neighboring residential streets.

26. A copy of the Fairfax County Health Department standards and conditions, including testing and approval of the septic field, shall be provided to adjacent property owners located east of the septic field.

27. The building's roof drainage system (i.e., gutters, drains, laterals) for the rear portion of the building will be designed to exceed the standards of the applicable building code by approximately 70% to accommodate larger storm events and directed away from the adjacent residential properties to a suitable outfall as determined by 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. 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. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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9:00 A.M. HAL & SUE FERGUSON, VC 01-D-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and deck 15.2 ft. from side lot line such that side yards total 27.1 ft. Located at 12209 Heather Way on approx. 23,857 sq. ft. of land zoned PDH-1. Dranesville District. Tax Map 11-1 ((10)) 83.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hal Ferguson, 12209 Heather Way, Herndon, Virginia, replied that it was. Mr. Ferguson introduced his architect, Carter Jones.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to permit the construction of a sunroom and deck to be located 15.2 feet from a side lot line such that side yards totaled 27.1 feet. A minimum side yard of 12 feet, with a total minimum of 40 feet is required; therefore, the applicant met the side yard requirement but a variance of 12.9 feet for the total side yards was requested.

Mr. Jones, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. He said the lot was narrow, with a 92-foot deep front yard. Mr. Jones stated that the topography sloped down a wooded hill. He said that because of the slope, the vegetation, and the conservation easement the requested location was the only place for the addition.

Mr. Hart noted a letter from the next door neighbor regarding options for providing a privacy screen. He asked the applicant whether he had reviewed that letter. Mr. Ferguson replied that there was a 70-foot difference in where the houses sat. He said he would agree to plant a large tree to help further screen the addition.

Mr. Jones submitted photographs reflecting that the homes were far apart. He said there was already a considerable amount of screening, but that the applicant agreed to increase the screening.

Mr. Hammack asked what type of screening would be appropriate. Mr. Ferguson said he would provide screening that was equal to what was already there.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-D-119 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HAL & SUE FERGUSON, VC 01-D-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition and deck 15.2 ft. from side lot line such that side yards total 27.1 ft. Located at 12209 Heather Way on approx. 23,857 sq. ft. of land zoned PDH-1. Dranesville District. Tax Map 11-1 ((10)) 83. 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 2, 2001; 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 variance request is minimal.
4. The lot is narrow and deep with topographical conditions in the rear which justifies allowing the addition on the side.
5. The neighbor's property is offset causing no impact on the adjacent property owner.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a sunroom addition and deck as shown on the plat prepared by Thomas G, Gilbert, dated June 1, 2001, signed June 6, 2001, 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.

4. A large evergreen tree shall be planted in a location to provide privacy between the proposed sunroom and deck and the adjacent property owner located on Lot 82.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2001. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BROOKFIELD WASHINGTON, INC., VA 99-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 26.0 ft. from front lot line. 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.

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.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance amendment to a previously approved variance to permit the construction of a dwelling to be located 26.0 feet from a front lot line from a corner lot. A minimum front yard of 40 feet is required; therefore, a variance of 14.0 feet was requested. The Board approved VC 99-V-145 on December 21, 1999, that permitted the dwelling 24 feet from the same front lot line

Ms. Strobel, the applicant's agent, presented the variance amendment request as outlined in the statement of justification submitted with the application. She said the lot was unique with two front yards. Ms. Strobel indicated that the request was to change the footprint to lessen the variance. She presented elevations of the property to the Board.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VA 99-V-145 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BROOKFIELD WASHINGTON, INC., VA 99-V-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 26.0 ft. from front lot line. 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. 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 October 2, 2001; 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 subdivision was platted in 1937 and in those days, corner lots were not required to be as wide as they are currently and with two front yards, the setbacks made it difficult to construct a house.
4. Approximately 20 variances had already been granted for the houses that were already there.
5. There would be no significant impact on 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 dwelling shown on the plat prepared by Charles E. Powell, dated January, 2001, as certified stamped through July 19, 2001, as submitted with this application 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 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 681, October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. JEROME J. & JULIA A. KRISS, VC 01-M-095 Appl. under Sect(s). 18-401 of the Zoning

Ordinance to permit subdivision of one lot into three lots with proposed Lots 2 & 3 having a lot width of 12.0 ft. Located at 7100 Woodland Dr. on approx. 2.32 ac. of land zoned R-2. Mason District. Tax Map 71-3 ((7)) 546B. (def from 8/21/01 for dec. only)

Chairman DiGiulian noted that an intent to defer had been approved on September 25, 2001. Mr. Hammack moved to defer VC 01-M-095 to November 13, 2001. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 682 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE LIVING GOD, SP 01-V-028 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 6234 Quander Rd. on approx. 1.98 ac. of land zoned R-4, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((22)) 2. (Admin moved from 7/24/01)

Chairman DiGiulian noted that the SP 01-V-028 had been administratively moved to October 30, 2001.

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Page 682 October 2, 2001, (Tape 1), Scheduled case of:

9:00 A.M. ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SPA 96-D-038 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 96-D-038 previously approved for a place of worship and child care center to permit increase in land area. Located at approx. 500 ft. W. of the intersection of Dranesville Rd. and Sugarland Rd. on approx. 7.20 ac. of land zoned R-3. Dranesville District. Tax Map 5-4 ((1)) 3, 4 pt. and 5B. (Deferred from 9/25/01)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dr. Zubair Saleem, All Dulles Area Muslim Society (ADAMS), 500 Grove Street, Herndon, Virginia, replied that it was.

Susan Langdon, Chief, Special Permit and Variance Branch, made staff's presentation as contained in the staff report prepared by Jim Albright. She said the original approved special permit for a place of worship, included 2 acres in Fairfax County and an additional 3.8 acres in Loudoun County. Ms. Langdon said the center was approved for 900 worshippers, a childcare center for 75 children, and a minimum of 140 parking spaces on the portion of the site in Fairfax County with a combined total of 375 parking spaces for the entire center. The special permit amendment proposed adding an additional 5 acres of the site for future expansion of the parking lot for up to another 150 parking spaces as shown on the plat. Ms. Langdon stated that the special permit amendment was issued in association with PC 90-D-058, and the 5 acres proposed to be added to the ADAMS Center, was originally a part of the Starkey property which was planned for an 11-lot subdivision. The PCA that was approved by the Board of Supervisors on August 6, 2001, served to sever 5 acres from the Starkey property so that it could be included in the current special permit amendment application. Ms. Langdon stated that through the conditions approved with the original special permit, ADAMS committed to conducting a parking study following the first of three planned construction phases. The applicant had agreed to pursue the purchase of the Starkey property to accommodate a possible expansion of, or addition to, the proposed parking area. Staff recommended approval of the application subject to the proposed development conditions in the staff report dated May 30, 2001. Ms. Langdon noted that there was an additional time request for the original special permit amendment application on the Board's After Agenda.

Mr. Hart asked whether there would still be a few houses built on the Starkey property. Ms. Langdon replied that there would be 7 houses built on the remaining portion of the Starkey property.

Mr. Hammack asked whether the proposed parking was consistent with the original conditions. Ms. Langdon replied yes.

Mr. Saleem presented the request as outlined in the statement of justification submitted with the application. He said the purpose of the application was to bring the Starkey property into the special permit for additional

parking in accordance wit the conditions. Mr. Saleem stated that there would be no impact on the area.

Mr. Hammack asked whether the applicant was in agreement with the conditions. Mr. Saleem replied yes.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SPA 96-D-038 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

ALL DULLES AREA MUSLIM SOCIETY (ADAMS), SPA 96-D-038 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 96-D-038 previously approved for a place of worship and child care center to permit increase in land area. Located at approx. 500 ft. W. of the intersection of Dranesville Rd. and Sugarland Rd. on approx. 7.20 ac. of land zoned R-3. Dranesville District. Tax Map 5-4 ((1)) 3, 4 pt. and 5B. (Deferred from 9/25/01) 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 2, 2001; 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 (ADAMS Center) and is not transferable without further action of the Board, and is for the location indicated on the application, and is not transferable to other land.

2. This Special Permit Amendment is granted only for the purpose(s), structures and/or use(s) indicated on the special permit amendment plat prepared by Professional Design Group, Inc. revised through May 18, 2001, as qualified by these development conditions.

3. A copy of this Special Permit Amendment and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit Amendment is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit Amendment shall be in substantial conformance with the approved Special Permit Amendment plat and these development conditions. Minor modifications to the approved Special Permit Amendment may be permitted pursuant to Par. 4 of Sect. 8-004 of the Zoning Ordinance.

5. All site plans submitted to Loudoun County shall be submitted concurrently to Fairfax County for

informational purposes.

6. This approval is valid only for the same or the less intense use as described in the applicant's Statement of Justification, dated June 21, 1996 and updated October 1, 1997, and February 6, 1998, and January 26, 2001 (maximum 900 attendees at any one time; the 900 persons includes those attending the place of worship and the children in weekend school and/or the child care center). The maximum number of children in the weekend school shall be 300 and the maximum number of children in the child care center shall be 75. The hours of operation of the weekend school shall be limited to weekends between 10:00 a.m. and 4:30 p.m. and the hours of operation of the child care center shall be limited to 6:30 a.m. to 6:30 p.m.

7. During Phase 1 (not to exceed 25,509 square feet of the religious facility building), no more than 750 persons may occupy the building or participate in any activities on-site at any given time.

8. Notwithstanding the parking shown on Parcel 5B, there shall be a minimum of one hundred and forty (140) parking spaces provided on the portion of the original Special Permit site located in Fairfax County; provided, that in order to accommodate the landscaping and screening required by Development Conditions No. 11, 12 and 13 a fewer number of parking spaces may be provided in Fairfax County, so long as the combined total number of parking spaces is at least 375. All parking for this use shall be on site. The location of the parking spaces may also be modified to provide the landscaping and screening required by Development Conditions No. 11, 12 and 13.

9. Fulfillment of the requirement that all parking shall be on-site shall be a prerequisite to the right to maintain and to continue the use and occupancy of the subject property pursuant to SPA 96-D-038. Failure of the applicant, its agents or invitees to conform strictly to this condition shall be grounds for the commencement of immediate Fairfax County Zoning Enforcement actions and/or revocation of the special permit by the Board of Zoning Appeals (BZA).

   In furtherance of ensuring strict conformance with this development condition, the following shall be done:

   A. A comprehensive education program shall be instituted to educate all members and attendees of Adams Center events of these development conditions, including the prohibition against off-site parking and to encourage car pooling and other high occupancy use of vehicles by all attendees of events conducted on the subject property. This education program shall begin immediately upon approval of SP 96-D-038, with members at the current Adams facility in Herndon, shall continue at the center approved pursuant to this special permit immediately upon issuance of the Non-RUP, for Phase I and shall remain in effect thereafter on an on-going basis.

   B. At such time as the Zoning Administrator, after consultation with Department of Transportation, in her sole discretion determines that parking management agents are needed to facilitate proper and efficient parking on-site and to prohibit off-site parking, and thereafter, the applicant shall ensure that at all Friday afternoon prayer services and at services occurring on the holidays of Eid a minimum of two (2) parking management agents shall be stationed at the Sugarland Road entrances into the subject property and at critical vehicular movement point(s) within the subject property to direct vehicles to on site parking areas and to maximize the efficient utilization of parking spaces. The parking management agents shall be equipped with blaze orange vest, lighted signaling devices, two-way radios and/or other materials as may be necessary to direct vehicles to available spaces.

      One (1) additional parking management agent shall be stationed at the northwestern corner of the subject property on Sugarland Road, and, as necessary, at other public offsite areas to enforce the requirement that all persons attending events at the subject property park their vehicles on-site. The agent(s) shall maintain written records of notifications and warnings given, inclusive of the names of transgressors of this off-site parking prohibition and the license plate identifications of their vehicles. Such written records shall be made available for inspection by Fairfax County authorities.

   C. Upon issuance of the Non-RUP for Phase I, a "high occupancy vehicle" (HOV) preference

program shall be instituted whereby a minimum of forty (40) preferred parking spaces near the entrance to the Adams Center facility shall be dedicated for HOV-only use. For the purpose of this condition, HOV use shall be defined as three (3) or more persons per vehicle. When on duty pursuant to Condition B. above, the parking management agents shall direct high occupancy vehicles to the preferred spaces and single occupancy vehicles from utilizing those spaces:

10. If, after the completion of Phase I, the demand for parking exceeds that which has been provided on site, no permits (clearing and grading, building, or any other permit) shall be issued by Fairfax County for the construction of Phase II or Phase III unless and until it is demonstrated that adequate parking has been provided to accommodate the use as determined by the Fairfax County the Department of Transportation. A copy of the traffic study and onsite parking utilization study required by the Loudoun County Board of Supervisors pursuant to the approval of Special Exception Application SPEX 1996-0018 shall be submitted to the Fairfax County Zoning Administrator and Department of Transportation at such time as it is submitted to Loudoun County.

    Prior to the submission of a site plan for Phase II construction, but no sooner than one (1) year from the issuance of the Non-RUP for Phase I, a traffic study of then current parking conditions shall be submitted to the Fairfax County the Department of Transportation, unless the requirement for such is waived/deferred by the Office of Transportation. At such time as the site plan is submitted for Phase III construction, a traffic study of the then current parking conditions shall be submitted to the Fairfax County Division of Transportation, unless the requirement for such is waived/deferred by the Division of Transportation.

11. The Transitional Screening requirement on the north shall be modified such that a Transitional Screening area forty (40) feet in width shall be provided along the Sugarland Road property line in Fairfax County. Within this Transitional Screening area, existing quality vegetation shall be preserved to the maximum extent feasible as determined by the Urban Forester; the three (3) foot high berm and four (4) foot high board on board fence on top of the berm shown on the special permit plat shall be provided within the area and additional plantings shall be provided as determined appropriate by the Urban Forester.

    The purpose of this screening shall be to soften the visual impact of the proposed place of worship from the adjacent residences. Exact type, location, size and number of any additional plantings shall be reviewed and approved by the County Urban Forestry Division Within these Transitional Screening areas, existing quality vegetation shall be preserved to the maximum extent feasible as determined by the Urban Forester at the time of site plan review.

    The barrier requirement along the northern property line shall be modified to that shown on the special permit plat and by these development conditions. The barrier requirement along the southern and southeastern property lines shall be waived.

12. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-201 and 13-202 of the Zoning Ordinance. If necessary, interior and peripheral parking lot islands shall be designed in order to preserve existing vegetation, as determined by the Urban Forestry Division.

13. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Division prior to site plan approval which shows definitive limits of clearing and grading and emphasizes the preservation of existing mature trees, provided that the required number of parking spaces are not reduced. If it is determined by the Urban Forestry Division that trees previously designated to be preserved must be removed in order to locate utility lines, trails, etc. that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Division may be substituted at an alternative location on the site.

14. Typical tree planting details and specifications addressing proper planting and backfill techniques shall be incorporated into the landscape plan, as reviewed and approved by the County Urban Forestry Division. As determined by the Urban Forester, a specified area extending beyond tree rootballs shall be rototilled in order to promote faster root expansion of planted trees, provided that the required number of parking spaces are not reduced.

15. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be substantially in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook, and shall be coordinated- with the DPWES. These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation fencing. If determined by DPWES, at the time of site plan review, that additional erosion and sedimentation control measures beyond Public Facilities Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DPWES.

16. The Resource Protection Area (RPA) boundaries on the property shall be established in accordance with the criteria established by the Chesapeake Bay Protection Ordinance (CBPO) as determined by DPWES. No land disturbing activities shall occur within the RPA. Prior to site plan approval for Phase 1, the applicant shall record a covenant running to the benefit of the Fairfax County Board of Supervisors which shall provide that those portions of Tax Map parcel 54 ((I)) 4, to the north and south of Muddy Branch which are not included within SPA 96-D-038 but which are located within the 100-year floodplain and/or associated RPA, shall remain undisturbed in permanent open space. No structures, including fences, or clearing and grading shall occur within this area. The form of the covenant document utilized shall be subject to approval by the Fairfax County Attorney's office.

17. Stormwater Best Management Practices (BMPs) shall be provided as determined by the Director, DPWES at the time of site plan review to meet the requirements of the CBPO. If the underground stormwater management facility shown on the special permit amendment plat is not sufficient to provide BMPs as determined by DPWES and additional facility or facilities must be provided, no parking spaces, landscaping, or transitional screening shall be lost to provide such facilities, Any change to location of the stormwater management facilities within the Fairfax County portion of the site that is not in substantial conformance with the Special Permit Amendment Plat as determined by the Zoning Administrator shall require the approval of a special permit amendment.

18. Right-of-way to 35 feet of the centerline of Sugarland Road along the site's frontage shall be dedicated to the Board of Supervisors in fee simple along with any ancillary easements which may be necessary to construct a sidewalk and improvements to Sugarland Road at the time of site plan approval Phase 1 or upon demand by Fairfax County, whichever occurs first. Along the site's frontage, a fifty-two (52) foot cross section from north face of the curb to the south face of the curb shall be constructed for public street purposes as required by the Director, DPWES and/or the Virginia Department of Transportation (VDOT). A 5-foot concrete side walk shall be constructed within the right-of-way along the entire frontage of the property.

19. Any proposed lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and "shoebox" style fixtures shall not exceed twelve (12) feet.

    - Light standards shall be located on the interior of the site and shall not be located along the outside edges of the parking lot adjacent to the northern and eastern property lines.

    - The lights shall focus directly onto the subject property.

    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

    - The parking lot lights shall be used only in conjunction with the specified early morning and evening prayers and associated activities, and shall be connected to an automatic timing device which shuts off the lights at 10:00 p.m. at which time motion detectors on selected light fixtures may be utilized for security purposes.

20. Any building mounted lights shall focus downward and shall not be lit after 11:00 p.m., at which time motion detectors on selected light fixtures may be utilized for security purposes.

21. No trash dumpster shall be located in Fairfax County.

22. The structure shall be in conformance with the architectural elevations submitted with the special permit plat prepared by James Lee Koleszar, AIA Architect, dated April 10, 1997. The materials shall be primarily synthetic stucco, split-faced block, cast stone or polished block as well as dark bronze glass aluminum frames at the doors and windows, as indicated in the applicant's statement of justification. Structures shall not exceed 39 feet in height, except for the minaret and dome which may be up to 45 feet in height.

23. There shall be no permanent basketball standards located on that portion of the site in Fairfax County.

24. All signs shall be in conformance with Article 12, Signs of the Zoning Ordinance. All illuminated or lighted signs and shall be connected to an automatic timing device which shuts off the lights at 10:00 p.m.

25. The applicant shall limit site construction to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and 10:00 a.m. and 6:00 p.m. on weekends.

26. If a site plan for Phase I has not been approved at the time that the special permit amendment is approved, the site plan for Phase I shall include the "Starkey" property; if the site plan for Phase I has been approved previously, any site plan or minor site plan required to incorporate the "Starkey" property into the special permit property, as determined by DPWES, shall be filed within one hundred twenty (120) days of the final date of approval of the special permit amendment, and shall be diligently pursued.

    If after the completion of Phase 1, the demand for ADAMS related parking exceeds that which has been provided as demonstrated by the traffic/parking studies required by Condition #10 as determined by the Department of Transportation, or at such other time as may be determined by the Zoning Administrator in conjunction with the Department of Transportation upon a finding that onsite parking utilization problems or off-site problems exist, ADAMS shall, within forty-five (45) days of notification to do so, file and diligently pursue an additional special permit amendment if such is to establish parking on Parcel 5B subject to conditions as may be imposed pursuant to the approval of such applications. The applicant shall file a site plan to construct such parking within forty-five (45) days of the approval of the special permit amendment, if such is required and granted, or, if the special permit amendment is not required, within forty-five (45) from the notification by the Zoning Administrator. The applicant shall diligently pursue approval of the site plan, and shall construct such additional parking within four (4) months of the approval of the site plan.

    Additional time beyond the time periods set forth in this condition may be granted by the Zoning Administrator upon demonstration by the applicant that delays occurred through no fault of the applicant. Failure to comply by the terms of this condition regarding the incorporation of the "Starkey" property into this special permit shall be grounds for the revocation of this special permit.

27. If requested by DPWES at the time of site plan review for Phase 1, the applicant shall provide applicable wetland studies. If it is determined that wetlands are located on-site, the applicant shall acquire all of the required permits, including those from the U.S. Army Corps of Engineers. If it is determined that regulated wetlands are located in the area of the site shown to be developed, that a modification of the design shown on the special permit plat is therefore required, and that such modification is not in substantial conformance with the special permit plat, no site plan shall be approved unless and until a special permit amendment is approved by the Board of Zoning Appeals.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning

Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 688 October 2, 2001, (Tape 1), Scheduled case of:

9:30 A.M. EDMUND J. AND MIRIAM H. HARRIS, A 2000-MV-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants have established a junk yard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 9100 Furnance Rd. on approx. 7.67 ac. of land zoned R-1. Mt. Vernon District. Tax Map 106-2 ((1)) 23. (Def. from 12/5/00)(moved from 3/6/01) (Def. From 4/3/01).

Susan Epstein, Zoning Administration Division, stated that this was an appeal of the determination that the appellants had established a junkyard in the R-1 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. The property was located at 9100 Furnace Road, consisted of 7.6 acres and was developed with a single family detached dwelling. The appeal of an August 15, 2000 Notice of Violation had been deferred several times to allow the appellants time to clean up their property. Ms. Epstein said a junk yard was defined in the Zoning Ordinance, in pertinent part, as "the use of any space, ... for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof;". Ms. Epstein presented photographs taken on October 1, 2001, reflecting an inspection indicating the progress that had been made toward removing the junkyard items. She said the property clearly met the definition of a junkyard. Ms. Epstein noted that the items observed on the property during the recent inspections included: 1 rusted inoperable trash truck, 1 abandoned mobile home-type trailer, 5 to 6 trailer portions of tractor trailer trucks, tire rims, numerous discarded tires, a rusted generator, transmission, broken metal fence pieces, axles, car door, dismantled motors and other miscellaneous auto parts, a pile of bricks, a pile of stones, metal barrels, wood pile, cement mixer, rolls of chain link fence, iron piping, 4 snow shovels, rusted portions of iron gates, and other miscellaneous scrap metal and scrap materials. She said given the extent of the junkyard items remaining on the property, staff requested that the BZA take action to uphold the Notice of Violation.

Mr. Hammack asked whether the appellant had seen the photographs. Ms. Epstein replied no.

Roy Spence, the appellant's agent, said he had reviewed the photographs from six months ago and what the current photographs did not reflect was the items that had been removed. He said heaps of metal from torn down trailers had been removed from the property, along with inoperable vehicles. Mr. Spence stated that the property could not be cleaned in a short period of time and that the appellant was making progress.

Ms. Gibb asked what the appellant's schedule was concerning cleaning the property and how often. Mr. Spence stated that the appellant worked 5 or 6 days a week in the evening to clean up the property.

Mr. Spence stated that there was a contract offer to sell the property contingent on the property being cleaned up. He said no homes were affected nor was there a health hazard. Mr. Spence stated that if the contract was signed, maybe that would prompt the appellant to clean the property faster. He said the appellant was working as hard as he could to clean the property. Mr. Spence requested at least 6 months to allow the appellant time to continue to clean the property.

Ms. Gibb asked what happened if the Board upheld the determination of the Zoning Administrator. William Shoup, Deputy Zoning Administrator, stated that staff would pursue litigation to obtain a tight timeframe of cleaning the property.

Mr. Shoup stated that there had been progress, but it had been very slow and the appellant had a long way

to go to obtain compliance. He said he was not sure that much work would get done in the next 6 months because the winter months were approaching.

Mr. Hammack asked whether the applicant had hired anyone to help him clean the property. Edmund Harris, appellant, came forward, stating that he had not hired anyone to help but that he would.

Mr. Spence stated that he would ensure that the appellant obtained help to clean the property.

Mr. Hart said the appeal had been deferred 3 times and asked how long it would take to remove the junk. Mr. Harris replied 6 months.

Ms. Gibb gave a disclosure that she had just realized that she represented the appellant's sister, Toby Clark, in another matter, and that she would recuse herself from the public hearing.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that the Zoning Administrator's position was strong and justifiable. He said there had been some progress made and his thought was to defer decision for 30 days and have a review to see how much more progress was made. Mr. Hammack said he hoped that a substantial amount of progress would be made and the situation could be reviewed at that time. He said he had a hard time continuing the appeal for another six months or one year to allow the appellant to take it one brick at a time. Mr. Hammack said the appellant needed to hire someone and clear the violation. He said the violation was outstanding for over a year and he didn't think the appellant had been working as diligently as justified given the size of the violation.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Ms. Gibb was not present for the vote and Mr. Kelley and Mr. Pammel were absent from the meeting.

The appeal was deferred to November 6, 2001, for decision only.

Mr. Hammack asked staff to provide the Board with an update before that date to see what progress was made.

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Page 689, October 2, 2001, (Tape 1), Scheduled case of:

9:30 A.M. GEORGE & ANGELISA MCLEAN, A 2001-MV-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants are continuing to operate a vehicle major service establishment, a junkyard, and a storage yard in the R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 8532 Highland La. on approx. 12,468 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-3 ((7)) 37.

Susan Epstein, Zoning Administration Division, stated that this was an appeal of the determination that the appellants were continuing to operate a vehicle major service establishment, a junkyard, and a storage yard in the R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. The property is located at 8532 Highland Lane, is zoned R-2 and consists of 12,468 square feet of land developed with a single family detached dwelling, a two car garage, and a storage shed. As indicated in the staff report, since the appellants did not appeal the January 8, 2001, Notice of Violation, which cited them for operating a vehicle major service establishment, a junk yard and a storage yard, those determinations were no longer appealable and were not the issue of the appeal. Ms. Epstein said the activities, which were deemed to constitute the cited violations, could no longer be challenged. She stated that the appellants were advised of that fact in the May 7, 2001, Notice of Violation. Therefore, the only issue subject to challenge in the appeal was the determination that the violations cited in the January 8, 2001, Notice of Violation were continuing. Ms. Epstein stated that the appellants did not dispute the fact that violation activity was occurring at their property; therefore, the determination made in the May 7, 2001, Notice of Violation was correct and should be upheld. Ms. Epstein stated that in the appellant's submission, they stated that they had been repairing vehicles at the property since 1986 and implied that they had nonconforming rights to an auto repair business at their property. However, based upon staff research of the zoning history of the property, there

were no nonconforming rights to operate a vehicle major service establishment on the property and the repair of vehicles was never permitted at the property. She said no evidence had been presented to show that a vehicle repair use existed prior to March 1, 1941. The appellants failed to satisfy their burden of proof in support of that issue and continued to be in violation for operating a vehicle major service establishment in addition to a junk yard and storage yard.

Mr. Ribble stated that the affidavits presented to the Board indicated that the operation had been going on for some period of time and asked whether there had been other complaints about the use throughout the years. Ms. Epstein replied that there were two Notices of Violation written, one in 1987 for vehicle major service establishment which was eventually cleared and the other Notice of Violation was in 1997 for a vehicle light service establishment and operation ceased and the violation was cleared.

Ms. Gibb asked whether saying the violation was cleared meant that they stopped operation. Ms. Epstein replied yes.

Ms. McLean stated that they purchased the property in 1986 from the Wilsons and they had a towing and storage yard. She said the prior owners were the Stoops and they had the property in 1950 and rented out the garage during the weekends and someone worked on vehicles during the weekday. Ms. McLean said Mr. Stoop also repaired race cars and cars for other people in the community. She said in the early 40s the house was used as a Boarding House. Ms. McLean said they were the 4th owners of the property and the property had always been used as some type of business. She said they purchased the property in order to do auto repair which was what they were told by the previous owners was allowed. Ms. McLean submitted photographs to the Board. She said they had been doing auto repair for 16 years and they paid Federal and State taxes for the business. Ms. McLean said the portion of land where the garage was located was zoned commercial.

William Shoup, Deputy Zoning Administrator, said there was no indication that any of the property was zoned commercial. He said it was all zoned R-2.

Mr. Hammack said the tax map reflected C-8 on the frontage. Mr. Shoup said neither the zoning map nor the computer records indicate that there was commercial zoning on the property. He said they did a zoning history through mapping and the property had never been zoned commercial. Mr. Shoup said the property had been residentially zoned since 1941.

Mr. Hart asked whether the garage was located on Lot 37 or Lot 80. Ms. McLean stated that the garage was located on Lot 80.

Mr. Hart asked whether there were any plats associated with the property. Mr. Shoup stated that staff was not able to find any plats of the property.

Mr. Shoup stated that the cross-hatching reflected on the tax map indicated R-2 zoning and anything that was on Lot 80 was zoned residential.

Mr. Hart asked if Lot 80 was under separate ownership. Mr. Shoup said on some smaller lots in older subdivisions, over the years, portions of the lot would get conveyed to an adjoining property owner and that might be the case with the subject property.

Mr. Hart asked how did staff know that the garage wasn't located on the other part of Lot 80. Mr. Shoup responded that the garage would be located on the closest part to Lot 37.

Mr. Ribble asked whether a survey had been done when they purchased the property. Ms. McLean replied yes, but that she did not have it with her.

Mr. Hammack asked if the appellants paid taxes for the business and whether they had a business license. Mr. McLean replied yes they paid taxes and obtained a business license in 1985.

Mr. Hammack asked what happened in 1987 and the operation ceased. Mr. McLean said the business never stopped operating. He said they had been there for 16 years and he had been repairing cars everyday. Mr. McLean said he did not have a tow service and did not have a tow truck. He said he did not

have a junkyard, and staff had never come to the residence and found cars on stands or disassembled. Mr. McLean said he also did not store cars, and that as soon as they were repaired they were removed from the property.

Mr. Hammack asked whether there was anyone that could testify that a towing or repair business was there before 1941. Ms. McLean stated that some the letters submitted were from people that had been in the community for 39 years, but that she would check to see if there was someone who had been there longer than that.

Ms. Gibb asked what happened with the 1987 Notice of Violation. Ms. McLean said they showed the County staff their business license and told them they were operating in the garage which was commercially zoned and they continued working.

Mr. Hart asked whether there was a memo to show how the violation was cleared. Ms. Epstein said there was an inspector's report.

Mr. Shoup said the 1987 inspector's report indicated that Mr. McLean was working on friends' vehicles. He said the inspector noted that he informed Mr. McLean that he could only work on his own personal vehicle on the property. The report indicated that when the inspector returned to do a follow up inspection, there was no indication that the appellant was working on any other vehicles.

Mr. Hart asked how did staff know that the violation was cleared in 1987. Mr. Shoup said the inspector's report indicated that when he returned, the operation had ceased and the complainant was notified and the case closed. He said they could get the Board copies of the reports.

Chairman DiGiulian stated that he would like to have the appeal deferred to obtain a copy of the survey and review exhibits.

Mr. Shoup said staff would run a GIS report to see what that showed.

Chairman DiGiulian called for speakers.

Rev. Al Lawrence came forward, stating that the appellants provided quality service to the community and they were unique because of the personal nature of their business. He said they were an asset to the community.

Zulean Brandenburg, 8528 Highland Lane, stated that she had lived in her home since 1966. She said there had been two businesses there previously which the County had closed. Ms. Brandenburg said she could smell fumes from the gas and there was also noise. She said the business had grown and there were several cars parked on the street.

Glennette Post, 8528 Highland Lane, came forward to ask whether the letters submitted to the Board had been received. Ms. Gibb replied yes.

Karen Pohorylo, 8523 Highland Lane, came forward, stating that the appellants were nice neighbors, but the business had grown substantially and she did not support the property being business zoned.

Virginia Wills, 8522 Highland Lane, came forward, stating that there was school and commuter parking on the street and that customers of Wicks parked on the street. She said no one could see the repair operation from the street. Ms. Wills said she thought that Wicks repair was getting confused with the McLean's repair service.

Mr. Shoup noted that a neighbor had submitted an audiocassette, but there was no way to play it for the Board.

Mr. McLean stated in his rebuttal that the cars parked on the street were from commuters. He submitted photographs reflecting how the property looked once he was done with repairs.

Ms. McLean stated that they took pride in their home and their business.

Page 692 October 2, 2001, (Tape 1), GEORGE & ANGELISA MCLEAN, A 2001-MV-015, continued from Page 691

Mr. Shoup stated that because the McLeans did not appeal the January 8, 2001 Notice of Violation, the only issue was whether the violation was continuing. He said by not appealing that Notice of Violation, the appellants abandoned any right to a claim of non conformity or the claim of what constituted a repair service. He said it was clear that the violation continues and that was thrust of staff's argument in the appeal.

Mr. Hammack moved to continue the appeal to November 13, 2001, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Pammel and Mr. Kelley were absent from the meeting.

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Page 692 October 2, 2001, (Tape 1), Scheduled case of:

Approval of May 22, 2001 Minutes

Mr. Ribble moved to approve the Minutes. Mr. Hart seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 692 October 2, 2001, (Tape 1), Scheduled case of:

Approval of September 18, 2001 and September 25, 2001 Resolutions

Mr. Ribble moved to approve the Resolutions. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Pammel were absent from the meeting.

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Page 692 October 2, 2001, (Tape 1), Scheduled case of:

Additional Time Request
SP 96-D-038, All Dulles Area Muslim Society

Mr. Ribble moved to approve the additional time request. Ms. Gibb seconded the motion which carried by vote of 5-0. Mr. Pammel and Mr. Kelley were absent from the meeting. The new expiration date was September 17, 2002.

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As there was no other business to come before the Board, the meeting was adjourned at 11:33 a.m.

Minutes by: Regina Thorn Corbett

Approved on: March 26, 2002

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 9 2001. 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 policies 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 693 October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BARBARA B. SKIFFINGTON, VC 01-P-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 71B having a lot width of 9.84 ft. Located at 11716 Pine Tree Dr. on approx. 4.59 ac. of land zoned R-1. Providence District. Tax Map 46-4 ((2)) 71.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mark Jenkins, 2071 Chain Bridge Road, Vienna, Virginia, replied that it was.

Mr. Hart made a disclosure that would not affect his participation in the meeting.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the subdivision of the application parcel into two lots, with proposed Lot 2 having a lot width of 9.84 feet. The Zoning Ordinance requires a minimum lot width of 150 feet; therefore, a variance of 140.02 feet was requested for proposed Lot 2. The two lots were proposed to be developed with single family detached dwellings. Staff believed that the application did not meet Variance Standards 4, 5 and 6 as set forth in the Zoning Ordinance.

Mr. Jenkins presented the variance request as outlined in the statement of justification submitted with the application. He explained that the lot was created in 1955, and contained a floodplain that constituted almost one acre. He said that the existing house was located in the floodplain. He said that by-right, the lot could be subdivided into four lots. He said that there would be more vegetation lost if the property was divided by-right. Mr. Jenkins stated that the density for the proposed lots would be .44, which was below the requirement for Fairfax County.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-P-113 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BARBARA B. SKIFFINGTON, VC 01-P-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots with proposed Lot 71B having a lot width of 9.84 ft. Located at 11716 Pine Tree Dr. on approx. 4.59 ac. of land zoned R-1. Providence District. Tax Map 46-4 ((2)) 71. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 9, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant provided testimony indicating compliance with the required standards for the granting of a variance.

3. The application satisfied standards 2F, 4, 5, and 6.
4. The proposed development was consistent with other development in the neighborhood and provided for tree save wetland preservation and was well within the density prescribed for the zoning category.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of Lot 71 as shown on the plat prepared by Gallifant, Hawes & Jeffers dated April 12, 2001 as revised through July 5, 2001, signed July 6, 2001. 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. At the time of subdivision plan review or overlot grading plan review subsequent to subdivision plat approval, the applicant shall provide a re-planting plan that includes ground cover, native saplings and shrubs subject to the review and approval of the Urban Forestry Branch, Department of Public Works and Environmental Services (DPWES). This re-planting plan shall be implemented to revegetate the area of the existing home and swimming pool that is to be removed, specifically the areas that are located in the floodplain. In the event that stormwater management and best management practices are not waived, the restoration plantings shall be implemented as a low-impact development best management practice to detain and filter run-off, as approved by DPWES.

3. Prior to any land disturbing activity, a grading plan which establishes the limits of clearing and grading necessary to construct the improvements shall be submitted to DPWES, including the Urban Forestry Branch, for review and approval. Notwithstanding what is shown on the plat, the extent of

clearing and grading shall be the minimum amount feasible as determined by DPWES and no greater than that shown on the variance plat. Prior to any land disturbing activities for construction, a pre-construction conference shall be held between DPWES, including a representative from the Urban Forestry Branch 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. Any utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible, duly considering the cost and engineering feasibility of their installation.

4. The limits of clearing and grading shall be marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the applicant shall walk the limits of clearing and grading with an Urban Forestry Division representative and the developer's certified arborist to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time and the applicant shall be given the option of removing them as part of the clearing operation. Any tree that is designated for removal, at the edge of the limits of clearing and grading or within a tree preservation area, shall be removed using a chain saw to avoid damage to surrounding trees. If a stump must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees.

5. All areas of tree save depicted on the plat shall be protected by tree protection fence in the form of four foot high, 14-gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart. This fence type shall be shown on the Phase I and II erosion and sediment control sheets. The tree protection fencing shall be made clearly visible to all construction personnel, and shall be installed immediately after root pruning has taken place and prior to any clearing and grading activities on the site, including demolition of any existing structures. The installation of tree protection fence shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading or demolition activities, the developer's certified arborist shall verify in writing that the tree protection fence has been properly installed. In areas where silt fence is shown on the plat, super silt fence may be used as tree protection.

6. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as determined by DPWES. SWM/BMPs shall not be located outside the limits of clearing and grading as shown on the variance plat.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 695 October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. PILGRIM COMMUNITY CHURCH, SPA 81-A-002-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church and related facilities to permit a change in permittee. Located at 4925 Twinbrook Rd. on approx. 5.38 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A.

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.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested approval for a change in permittee from the Korean Presbyterian Church of Washington to the Pilgrim Community Church. The site had been the subject of special permits granted by the BZA since 1981. The applicant requested the same conditions as previously approved. Staff recommended approval of SPA 81-A-002-3.

Mr. Baskin presented the special permit amendment request as outlined in the statement of justification submitted with the application. He stated that the request was for a change in permittee from the Korean Presbyterian Church of Washington to the Pilgrim Community Church.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve SPA 81-A-002-3 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PILGRIM COMMUNITY CHURCH, SPA 81-A-002-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 81-A-002 previously approved for a church and related facilities to permit a change in permittee. Located at 4925 Twinbrook Rd. on approx. 5.38 ac. of land zoned R-1. Braddock District. Tax Map 69-3 ((1)) 29 and 29A. 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 9, 2001; 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 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, 4925 Twinbrook Road (5.38 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 B.W. Smith & Associates, Inc. dated April 4, 2001, 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. There shall be 88 parking spaces on the site, as shown on the special permit plat. All parking for the use shall be on site.

6. There shall be a maximum of 352 seats in the sanctuary of the church.

7. The single family dwelling on the property shall be limited to use for classroom and small gathering space. It shall not serve as a rectory or worship area.

8. Hours of operation shall be hours of normal church activities.

9. Transitional screening requirements shall be modified in favor of the existing vegetation along all lot lines.

10. The barrier requirement shall be waived along all lot lines.

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 a new Non-Residential Use Permit (Non-RUP) has been issued. The Board of Zoning Appeals may grant additional time to obtain a new Non-RUP 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 697, October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BRADFORD WHITE ASSOCIATES LC, VC 01-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 36A and 37 having lot widths of 12.11 ft. Located at 12711 Oxon Rd. on approx. 2.50 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((18)) 36.

This case was administratively moved to October 23, 2001.

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Page 697, October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BROOKFIELD WASHINGTON, INC., VA 99-V-152 Appl. under Sect(s). 18-401 of the

Zoning Ordinance to permit construction of dwelling 15.0 ft. from 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.

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.

Juan Bernal, Staff Coordinator, presented the variance amendment request as contained in the staff report. The applicants requested a variance amendment to permit the construction of a dwelling to be located 15.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 5.0 feet was requested. Variance VC 99-V-152 was previously approved by the Board on January 6, 2000, which permitted a variance of 15 feet from the same lot line.

Ms. Strobel presented the variance amendment request as outlined in the statement of justification submitted with the application. She stated that the previous variance approved a side yard of 15 feet rather than the required 20 feet and the applicant had slightly modified the building footprint. She explained that as a result of that change it was determined that an amendment was needed even though the variance requested was no more than what was previously approved.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VA 99-V-152 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BROOKFIELD WASHINGTON, INC., VA 99-V-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 15.0 ft. from 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. 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 October 9, 2001; 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. The property had previously been the subject of a variance.
4. The scope of the current proposal was of lesser impact than the previous variance.
5. The property is located in a subdivision that was constructed in 1937 and a variance is required to construct a present day home.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;

D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 E. Powell, dated January, 2001, as certified stamped through July 19, 2001, submitted with this application 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 October 17, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 699 October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DEBORAH J. WALSH, SP 01-M-046 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 7008 Woodland Dr. on approx. 22,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-4 ((3)) 509A.

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 J. Walsh, 7008 Woodland Drive, Springfield, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit amendment request 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 enrollment of 10 children. The proposed hours of operation were from 12:45 p.m. to 6:00 p.m. on Mondays and 2:45 p.m. to 6:00 p.m., Tuesday through Friday. A proposed 624 square foot play area was to be located within the fenced rear yard. An existing driveway area with a two-car garage would provide at least 4 spaces off Woodland Drive. Staff supported SP 01-M-046.

Mr. Pammel asked staff if the applicant would provide care for the entire day on Holidays. Mr. Bernal replied that the language in Condition #8 allowed for that possibility.

Ms. Walsh presented the special permit application as outlined in the statement of justification submitted with the application. She stated that she would be providing a much-needed service to the County with regard to after school care. She explained that the school bus dropped the kids off in front of her home and there were staggered pick up times throughout the afternoon. She stated that she had several letters of support from parents as well as from an inspector from the State of Virginia.

Mr. Hammack asked the applicant how many days a year the facility would be operated all day. Ms. Walsh requested that it varied on snow days and teacher work days. She said that there were five teacher work days and she did not normally provide care on every one of those days and it was dependent on the parents needs. She said there were approximately 6 or 7 full days with 5 to 8 children attending, during the school year. She stated that she did not provide care on Federal Holidays. Mr. Hammack noted that the Development Conditions indicated that the facility would be open during holidays and that the times of operation were incorrect.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve SP 01-M-046 with corrections to the development conditions to reflect the correct times and days of operation and for the reasons stated in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DEBORAH J. WALSH, SP 01-M-046 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home child care facility. Located at 7008 Woodland Dr. on approx. 22,000 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 71-4 ((3)) 509A. 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 9, 2001; 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). 2-303 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, 7008 Woodland Drive (22,000 square feet) lot 509-A, and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by Harold A. Logan, Land Surveyor, dated May 31, 1985, as revised by Deborah J. Walsh, dated June 28, 2001, 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 dwelling that contains the home child care facility shall also be the primary residence of the child care provider.

5. Parking for the residents shall be in the garage. Three (3) parking spaces shall be provided in the driveway. All parking for the use shall be on site in locations as shown on plat.

6. The maximum hours of operation for the home child care facility shall be limited to Monday from 12:45 p.m. to 6:00 p.m. and Tuesday through Friday from 2:45 p.m. to 6:00 p.m.

7. The total maximum daily enrollment shall be ten (10) children.

8. The applicant may operate the facility on teachers work days and /or snow days during the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday.

9. The only employee shall be the applicant.

10. 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.

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 17, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 701, October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CLYDE R. & MARJORIE L. SPRAY, VC 01-L-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 5823 Wessex La. on approx. 10,715 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((36)) 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. Clyde Spray, 5823 Wessex Lane, Alexandria, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The

applicants requested a variance to permit the construction of an addition to be located 17.4 feet from the rear lot line. The Zoning Ordinance requires a minimum rear yard of 25 feet; therefore, a variance of 7.6 feet was requested.

Mr. Spray presented the variance request as outlined in the statement of justification submitted with the application. Mr. Spray stated that the screened porch was needed to protect the family from insect bites. He said that the design of the porch would be in character with the neighborhood.

Ms. Gibb asked the applicant if the proposed porch, landing steps, and deck would be in the same footprint as the existing deck. Mr. Spray replied that they were.

Mr. Hammack asked if the reason for the variance was because the proposed deck was to be enclosed. Ms. Stanfield stated that was correct.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VC 01-L-115 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CLYDE R. & MARJORIE L. SPRAY, VC 01-L-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.4 ft. from rear lot line. Located at 5823 Wessex La. on approx. 10,715 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((36)) 3. 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 9, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants provided testimony indicating compliance with the prescribed standards for the granting of a variance.
3. The deck and screened in porch and landing intrude no farther into the rear yard than the existing deck.
4. The variance is needed because the deck is to have a roof and will be enclosed.
5. One corner of the deck intruded farther into the rear lot line than the other corners.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is

not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of a screened porch, shown on the plat prepared by George O'Quinn, dated June 25, 2001, 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. 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 October 17, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 703, October 9, 2001, (Tape 1) Scheduled case of:

9:00 A.M. ROBIN M. AND JONATHAN HUDGINS, VC 01-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 14.0 ft. from one side lot line and 12.5 ft. from other side lot line. Located at 9229 Hooes Rd. on approx. 13,651 sq. ft. of land zoned R-1. Mt. Vernon District. Tax Map 106-4 ((2)) 2.

This case was administratively moved to November 6, 2001.

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9:00 A.M. CHRISTOPHER J. AND KAREN S. CAMPBELL, VC 01-S-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7.0 ft. and eave 2.0 ft. from front lot line. Located at 12524 Chronical Dr. on approx. 39,840 sq. ft. of land zoned R-1 and WS. Springfield District. Tax Map 55-4 ((2)) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit construction of a dwelling to be located 7 feet from the front lot line with an eave located feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance of 33 feet was requested. The Ordinance permitted an extension of 3.0 feet into the minimum front yard for the eave; therefore, a variance of 35 feet was requested.

Ms. Strobel, agent for applicants, presented the variance request as outlined in the statement of justification submitted with the application. She explained that the applicants purchased the property on January 3, 2001, subsequent to a feasibility period during which the applicant's retained the services of an engineer to ensure the ability to construct a house on this property. She stated that the applicants purchased the property for a full market price on the assumption that they would be able construct their house on that location. She said that Fairfax County approved a grading plan on May 18, 2001, and upon review in anticipation of the issuance of a building permit it was rejected for the need of a variance. She explained that the engineer believed that the presence of Chronicle Drive created a through-lot condition requiring a 25-foot setback. She said that the County determined Chronicle Drive to be an ingress/egress easement serving more than five lots and required a 40-foot set back in accordance with an interpretation that was a part of the Zoning Ordinance.

Ms. Strobel stated that the applicants had pursued construction of the home in good faith after a due diligence investigation and a grading plan had been approved by the County. She said that Chronicle Drive was not a private street and that created an unusual condition which warranted the granting a variance. She contended that the property contained double front yard requirements and was encumbered by floodplain and storm drainage easements, which severely restricted the developable area of the property in accordance with its R-1 zoning. She stated that the other properties in the area did not share any of those circumstances and that the granting of the variance would not cause a detriment to the adjacent properties. She indicated that the variance request was from the limitations of the easement and not from the pavement. Ms. Strobel submitted photographs of the property in question to reflect that the variance requested was not out of character with the neighborhood. She submitted a petition for support that was signed by a number of the homeowners in the Crystal Springs subdivision. She explained that the applicants had been forthcoming in trying to talk to the neighbors.

Mr. Hart asked if the stakes correctly outlined the footprint of the home. Ms. Strobel replied that they did.

Mr. Hart and Alan Bacon, Charles P. Johnson & Associates, discussed the possibility of situating the home differently on the lot. The result was that there was very little flexibility in the location of the home on the lot in order to keep the back corner of the home within the 20 foot set back.

Ms. Strobel stated that if the house were situated different than what was proposed, it would interfere with existing vegetation along the property line.

Mr. Hart asked what would happen to the driveway that currently extended through the middle of the property. Ms. Strobel stated that the driveway would be removed upon the construction of the home.

Mr. Hart questioned whether or not the lot was buildable and asked for a history of the lot. Ms. Strobel provided the Board with the history of the lot and concurred that there had never been any restrictions on building on Lot 19. Mr. Hart asked how much the applicants paid for the lot. Ms. Strobel answered $135,000.

Chairman DiGiulian called for speakers in support.

Mark Schilling, 5378 Summit Drive, came forward to speak in support. He stated that he had lived in the

area since September of 2000. He said that the lot in question was different than the surrounding lots as it was encumbered by a floodplain and storm drainage easement and was divided by Chronicle Drive. He said he had no problem with the proposed home and he did not believe that it would have a negative impact on the neighborhood property values.
Chris Campbell, the applicant, stated that he and his wife purchased the property in good faith and they believed that the property contained unique circumstances to support approval of the variance request.

Sharon Warren, 5359 Summit Drive came forward to speak in support. She stated that she and her husband had initially signed the petition against the variance request but since talking to the applicants they withdrew their names. She stated that the applicants had done everything possible to site the house appropriately on the property.

Chairman DiGiulian called for speakers in opposition.

Susan Gilan, 5336 Summit Drive, came forward to speak in opposition. She stated that the land covenants of the subdivision required a 50 foot set back; therefore, the variance needed to be for 48 feet. She stated that the last 10 homes constructed in the neighborhood had not required a variance of that magnitude. She stated that there was other land available to purchase in the subdivision.

Laurie Ross, 5316 Summit Drive, came forward to speak in opposition. She stated that a variance of that magnitude would set precedence in the neighborhood.

Margaret Woodall, 12500 Chronicle Drive, came forward to speak in opposition. She said that the proposed home would not be in character of the neighborhood. She stated that the construction of the home would diminish the property values in the neighborhood and that the road in front of the proposed house was very hazardous in the winter weather.

Will Clayton, 224 Summit Drive, came forward to speak in opposition. He stated that the applicants should have researched the property before buying it.

Elaine Wilson, 5307 Summit Drive, came forward to speak in opposition. She informed the Board of the all of the problems that construction vehicles had caused on the roads in the neighborhood during the past two years.

Karen Schaffer, 5223 Summit Drive, came forward to speak in opposition. She stated Lot 19 was unbuildable because it was located in a floodplain. She explained that floodwaters collected on Lot 19 during heavy rain. She voiced her concern that the construction of the home with its close proximity to the road was not safe. She submitted photographs of Lot 19 after a heavy rain.

Steven Ellsworth, no address given for the record, came forward to speak in opposition. He stated that he had purchased Lot 1 on Chronicle Drive and after his offer was made, Lot 19 was sold. He explained that the access to Lot 1 was an existing driveway that extended through Lot 19, and because of the sale of Lot 19, he was required to remove it and install a new driveway. He stated his electrical system was destroyed during the clearing of Lot 19. He explained that due to those events his mortgage company did not approve his loan and he was enduring extreme financial difficulties.

Jenita Good, no address given for record, came forward to speak in opposition. She stated that the original builder of the subdivision indicated that Lot 19 could never be built on because it was in a floodplain.

Tom Berle, no address given for the record, came forward to speak in opposition. He stated that he had originally looked at Lot 19 to construct a home and decided not to because of the problems with the property.

Ms. Strobel, in her rebuttal, reiterated that the circumstances of the property were unique; therefore, a variance would not set a precedence in the neighborhood. She said that the easement would be owned by the applicants and would not be built on and the lot would have an open appearance. She contended that the applicants had consulted with a respected engineering firm in the area and it was their understanding that the set back had to be 25 feet from the easement and a home could be constructed on the property. She said that it was then that the applicants purchased the property with the belief that it could be built on. She reiterated that the variance request was from the limitations of the easement and not from the

pavement.

Mr. Ribble asked the applicants for any information that they had regarding the covenant mandating a 50-foot set back. Ms. Strobel stated that the covenants that the applicants were given did not contain any of that information. She submitted the covenants to the Board for their review.

Mr. Hart asked for the square footage of the proposed home. Ms. Strobel replied approximately 3,000 square feet.

Mr. Kelley asked Mr. Bacon for clarification that there was no other way to locate the dwelling on the lot to make a lesser variance. Mr. Bacon replied that was correct.

There was discussion between the Board and staff regarding the particular interpretation that mandated the 25 foot yard. Ms. Gibb asked if the interpretations were indexed. Ms. Stanfield replied that the interpretations were cataloged and indexed.

Mr. Hart asked if there was any other text that described what the particular easement was. Ms. Strobel replied that there was no reference to a document; however, the easement was shown on the plat as an ingress/egress easement.

Mr. Hart asked if Lots 19 and 1 were in common ownership. Ms. Strobel replied that was correct.

Mr. Hart asked how Lot 19 was listed in the Department of Taxation records. Ms. Strobel replied that it was shown to be a separate lot that was buildable.

Mr. Hammack asked for an explanation regarding Mr. Ellsworth's testimony that his driveway was removed from the property in question and his electrical hook up was removed. Ms. Strobel explained that the previous owner of the Ellsworth's property had an agreement to relocate the driveway and the fence. Mr. Hammack asked why the electrical utility lines had been removed. Ms. Strobel replied that the only thing that was removed was a wire that connected to the fence and not utilities to the home.

Mr. Hart stated that the printout from the Department of Taxation indicated that the assessed value of the lot was 17,000 as of January 1, 2001, and was coded as non-buildable/other. He asked if the applicants were aware of that at the time of purchase. Ms. Strobel replied that neither she nor the applicants were aware of that. Ms. Strobel stated that those records often contained errors. Mr. Hart asked for an explanation of what the applicants were told by the realtor and previous owner with regard to the assessed value of the lot. Mr. Campbell answered that he was told that the reason for the low assessed value was because the lot was open space and nothing else was disclosed to him.

An unidentified speaker provided the Board with a different version of the covenants. The Board noted that there was an error between the version that the applicant provided and the version that the speaker had submitted to them.

Mr. Hart stated that in order to make a decision the Board needed to be provided with enlarged copies of the 1945 plat and the later subdivision to the right and the relocation of the Chronicle Drive easement. He requested the correct covenants for Lot 19. He suggested that the applicants reconfigure the house on the property because the current configuration did not conform to the shape of the buildable area on the lot.

Mr. Kelley stated that the applicant acted in good faith and the easement was the primary cause for the need for a variance.

Mr. Pammel stated that the lot was legally recorded and the only issue was what the applicants would be permitted to build on.

Mr. Gibb requested a comparison of the square footage of the other homes in the neighborhood.

Mr. Hart moved to continue VC 01-S-124 until November 6, 2001, at 9:00 a.m. Mr. Kelley seconded the motion which carried by a vote of 7-0.
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Page 707, October 9, 2001, (Tape 1) Scheduled case of:

9:30 A.M. JO H. AND YUNG J. LEE, A 2001-BR-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the appellants' storage of a food vending trailer on their residential property is not a permitted accessory use and therefore is in violation of Zoning Ordinance provisions. Located at 4321 Duncan Dr. on approx. 24,051 sq. ft. of land zoned R-2. Braddock District. Tax Map 70-1 ((3)) 79.

William E. Shoup, Deputy Zoning Administrator explained that the notices had not been mailed. He referred to a letter from Mr. Park, which indicated that they had inadvertently failed to send out the notices and requested a deferral. Mr. Shoup explained that due to the heavy volume of appeal cases the next date available was not until January 22, 2002.

Chairman DiGiulian requested that staff inform the appellant that they would not approve another deferral request for the same reason.

Mr. Hart moved to defer A 2001-BR-018 to January 22, 2002, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 707 October 9, 2001, (Tape 1) Scheduled case of:

9:30 A.M. WILLIAM E. HOUSTON, A 2001-BR-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that an accessory structure (tree house) which exceeds 7 feet in height has been erected on the appellant's property in violation of the minimum setback requirements of the Zoning Ordinance. Located at 5507 Ferndale St. on approx. 15,015 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (10) 4.

Chairman DiGiulian stated that the notices were not in order for the appeal. William E. Shoup, Deputy Zoning Administrator, stated that was correct.

William Houston, 5507 Ferndale Street, came forward and stated that he was the appellant for the appeal. He explained that the instruction letter mandated that it was the responsibility of the Board of Zoning Appeals to make notice and that he, as the agent, was to send out the notices. He said that as a State function it was the responsibility of the County to mail out the notices. Mr. Houston stated a case from San Diego where the police department had abdicated their responsibilities for traffic enforcement to Lockheed Martin and the court decided that if there was a State function that the State could not abdicate their responsibilities. He stated that the notice to send to his neighbors would be in part to get witnesses against the appeal. He said that as a due process he should not be forced to notify his neighbors of the fact that they should attend the hearing and vote against his appeal.

Mr. Shoup stated that the standard letter that was sent out with the notice package gave instructions as to what needed to be done. He said it did identify that the County was responsible for posting the property with a sign and for advertising in the local newspaper. Mr. Shoup stated that it was very clearly stated in the Zoning Ordinance that the appellants were responsible for mailing out the notices.

Ms. Gibb asked the appellant if he had informed staff that he was not going to mail the notices. Mr. Houston replied that he had not had a chance to return several phone calls made to him from staff. Ms. Gibb stated that there were few time slots available to hear the many appeal cases that were pending and because he did not tell staff of his intentions prior to the hearing neither his case nor any other appeal could be heard. Mr. Houston stated that he had informed the Clerk upon filing his appeal that he would not do the notices. He read to the Board the section of the notice instructions which he understood to say that he, as an agent for the Board, was responsible for the notices. He stated that he was under the impression that he would have a chance to make his case regarding the notice and then come back at a later date to argue the appeal.

Mr. Kelley asked the appellant if he had any intention of mailing out the notices. Mr. Houston replied that he would if the Board instructed him that he had to; however, he did not feel that he was obligated to do so.

Mr. Hart asked staff if readvertising was needed should the Board defer the appeal. Mr. Shoup replied that it would need to be readvertised. Mr. Hart asked what the cost would be. Jennifer Josiah, Senior Staff

Coordinator, replied that the cost would be about $800.00.

Mr. Hart stated that he would have liked some forewarning that there was some contest to the notice procedures. He said that the purpose of the notice procedures was to promote interest in the community.

Mr. Pammel stated that the appellant informed the Clerk at the time that he filed the appeal that he had no intention of sending out the notices and then he stated that he did not want to notify his neighbors of the hearing.

Mr. Kelley stated that he had no sympathy for the appellant and he moved to dismiss the appeal. Mr. Pammel seconded the motion. The motion carried by a vote of 6-0-1. Mr. Hammack abstained from the vote.

Mr. Hammack suggested that the Board offer the appellant an opportunity to readvertise the hearing. He said that the appellant might reconsider and voluntarily send out the notice. He said that it was not unusual for the Board to grant one deferral.

Mr. Kelley stated that the appellant had an obligation to the Board to inform them of his intentions prior to the time of hearing.

Mr. Hart stated that the Board had previously dismissed an appeal for similar reasons.

Mr. Houston stated that in the notice instructions it stated that failure to comply with the instructions could cause a cancellation of the hearing and not a dismissal.

Chairman DiGiulian stated that the appellant clearly knew what the instructions said and chose to ignore them.

Mr. Hammack asked the appellant if he had read the Code. Mr. Houston stated that he had and did not recall any dismissal for not completing the notices.

Chairman DiGiulian stated that it was up to the Board to make a motion to defer. There was no motion and the appeal was dismissed.

Mr. Shoup noted for the record that there was no opportunity to re-file for an appeal. Mr. Hart stated that if the Board had done something wrong than the judge could inform them of that.

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Page 708, October 9, 2001, (Tape 1) After Agenda Item:

Approval of September 12, 2000; October 3, 2000; and April 10, 2001 Minutes

Mr. Ribble moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 708 October 9, 2001, (Tape 1) After Agenda Item:

Approval of October 2, 2001 Resolutions

Mr. Ribble moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained from the motion.

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As there was no other business to come before the Board, the meeting was adjourned at 11:14 a.m.

Minutes by: Lori M. Mallam

Approved on: March 26, 2002

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. H. Thilen

John DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 16, 2001. The following Board Members were present: Vice Chairman John Ribble, Paul Hammack, James Hart, Robert Kelley, James Pammel and Nancy Gibb. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 711, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01 and 8/14/01).

Vice Chairman Ribble stated that this case had been deferred for decision only. Mr. Hammack stated that he would like a little time to look over the material that had just been distributed.

Vice Chairman Ribble stated that they would recall the case later in the hearing.

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Page 711, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. BECKFORD T. MACKEY, SPA 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 99-D-003 previously approved for an accessory dwelling unit to delete atrium. Located at 1014 Harriman St. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 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. Beckford Mackey, 1014 Harriman Street, Great Falls, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit amendment request as contained in the staff report. He stated that the applicant sought a special permit amendment to allow the deletion of an atrium that had previously been approved for use as a connector to an accessory dwelling unit. He said that the accessory dwelling unit was currently located as a freestanding accessory structure approximately 40 feet south of the principal dwelling.

Mr. Bernal stated that on April 20, 1999, the BZA heard the original application to permit the construction of an accessory dwelling unit. He said that due to design concerns from neighbors and the Great Falls Citizen Association, it was suggested that the accessory building be attached to the principal unit. He said that on May 20, 1999, the applicant submitted a revised plat depicting the atrium connection from the accessory dwelling unit to the principal structure and it was approved by the BZA on June 1, 1999.

Mr. Mackey presented the variance request as outlined in the statement of justification submitted with the application. He stated that originally he had intended to build an atrium to connect the two structures. He said that Mr. and Mrs. Buff, occupants and original owners of the house, had aged somewhat and the atrium connector would have given them easier access between the two structures. Mr. Mackey stated that Buff's health had greatly deteriorated since the original application, and it would now be an extreme financial burden on them with an estimated cost of at least $30,000.

Mr. Hammack stated that he remembered the first hearing, and that the covered walkway was a very important part of the special permit application. He said the atrium was expressly included at the request of the Great Falls Citizens Association and was the reason that the application originally got approval. Mr. Hammack asked what the building cost would be at this time and if Mr. Mackey had any estimates that he could show the Board to verify the cost.

Mr. Mackey replied that the cost would be approximately $30,000 to $40,000. He stated that he originally wanted to build a real atrium so that his wife and Mrs. Buff could enjoy their plants all year long. He stated that the Great Falls Citizens Association's opposition to his variance was based on the fact that they thought the owners were actually going to build rental property or going to expand their house, which was untrue.

Mr. Mackey stated that his wife recently spoke with the head of the Great Falls Citizens Association and she made their intentions very clear. He stated that the person who originally objected to his structure had been an abutting neighbor, who had moved and none of the other neighbors objected.

Mr. Hart asked staff if they had any knowledge of how Mr. Mackey got a Residential Use Permit (RUP), without building what had been on the special permit plat. Mr. Bernal stated that he had called DPWES, and found that the RUP had been issued November 3, 2000, but there were no other details available.

Vice Chairman Ribble asked if there were any speakers in support or opposition to the application.

John Ulfelder, Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association, came forward to speak in opposition to the application. He stated that the staff of DPWES had erroneously issued the RUP to Mr. Mackey. He stated that they knew all of the conditions of the Special Permit and Special Permit Plat had not been met, but issued the RUP anyway.

Mr. Ulfelder stated that this was discovered when the Mackey's filed for a permit to build a deck onto the back of their house. He said they had been told they were in nonconformance at that time. He said the Mackey's then sought an interpretation from the Director of the Zoning Evaluation Division. Mr. Ulfelder stated that the Director had told them that the elimination of the atrium would still be in substantial conformance with the approved plat and development conditions, but the Director of the Zoning Enforcement Division disagreed. He said it had been determined that they would have to go back to the BZA.

Ms. Gibb asked what had been the objections of the Great Falls Citizens Association back in 1999.
Mr. Ulfelder replied that the area was zoned R-1 and most of the houses were on one acre lots. He said Mr. Mackey's property was slightly larger, with almost two acres and there were a number of separate buildings on Mr. Mackey's lot. He said the Association felt that it would be appropriate to connect the accessory dwelling unit to the principal dwelling unit in order to reduce the appearance of multiple structures on the property. He said they felt that the connectivity would underscore the fact that the second unit was an accessory use to the principal dwelling unit.

There were no other speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel stated that he felt there were some serious issues with this application. He said that the Board had approved the previous special permit with the improvements shown on the revised plat and the County had approved occupancy without the atrium.

Mr. Pammel moved that SPA 99-D-003 be continued for two weeks. He stated that this would give Mr. Mackey time to find an acceptable alternative solution to provide a connecting link between the accessory dwelling and the main dwelling.

Mr. Kelley and Mr. Hart seconded the motion which carried by a vote of 6-0. Susan Langdon, Chief, Special Permit and Variance Branch, stated the case would be deferred until October 30, 2001, at 9:00 am.

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Page 712 October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. PETER AND SUZANNE BORGO, VC 01-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. from side lot line. Located at 7000 Southridge Dr. on approx. 11,771 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 95. (Concurrent with SP 01-D-048).

9:00 A.M. PETER AND SUZANNE BORGO, SP 01-D-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit covered deck to remain 1.3 ft. from side lot line. Located at 7000

Southridge Dr. on approx. 11,771 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 95. (Concurrent with VC 01-D-127).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Borgo, 7000 South Ridge Drive, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the special permit request as contained in the staff report. He stated that the applicants sought reduction of minimum yard requirements based on an error in building location to permit a covered deck to remain 1.3 feet from the side lot line. He said that the minimum side yard requirement was 12 feet; therefore, a modification of 10.7 feet had been requested.

Mr. Bernal stated that the applicants also sought a variance to construct an addition to the existing garage that was proposed to be located 8.3 feet from the side lot line. He said that the minimum side yard requirement was12 feet; therefore, a variance of 3.7 feet was requested for the garage addition.

Mr. Borgo presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. He stated that when he purchased his house seven years ago, there had been an existing deck behind it. He said that he and his wife decided they would like some shade over the deck, so they decided to go with a natural vegetative shading. He stated that he had constructed a lattice terrace over the top of the deck and planted some vines that had grown up over the top. He said that he and his wife had been unaware that the deck was in noncompliance with the zoning regulations, and therefore requested a variance.

Mr. Borgo stated that the current garage was the length of the house and approximately 14 feet wide. He stated that he and his wife wanted to expand the garage 3.7 feet in order to have a two car garage in the front of his home with a storage workshop in the rear. Mr. Borgo said that his neighbor could not be present but he had a letter from him stating that he had no objections.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 01-D-127 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND SUZANNE BORGO, VC 01-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. from side lot line. Located at 7000 Southridge Dr. on approx. 11,771 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 95. (Concurrent with SP 01-D-048). 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 October 16, 2001; 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. The lot is exceptionally narrow.
4. The slight expansion of the existing garage to a two-car garage is in keeping with other neighborhood houses.
5. The requested variance is significantly less than others previously approved within this

neighborhood.

6. The closest neighbor supports 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.

1. This variance is approved for the location of an addition as shown on the plat prepared by George M. O'Quinn, dated April 23, 2001, as revised through July 24, 2001, 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 addition time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion which carried by a vote of 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 24, 2001. This date shall be deemed to be the final approval date of this variance.

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Mr. Hart moved to approve SP 01-D-048 for the reasons noted in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PETER AND SUZANNE BORGO, SP 01-D-048 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit covered deck to remain 1.3 ft. from side lot line. Located at 7000 Southridge Dr. on approx. 11,771 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 95. (Concurrent with VC 01-D-127). 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 October 16, 2001; 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 as shown on the plat prepared by George M. O'Quinn, dated April 23, 2001 as revised through July 24, 2001, 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 6-0. 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 24, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 716, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83-D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01 and 8/14/01).

Vice Chairman Ribble re-called SPA 83-D-022-2.

Mr. Pammel stated that the Board had received new material regarding the case at the 11th hour and felt it did not help the Board to understand all the issues, and each time the case came up, new issues were raised. Mr. Pammel stated that a report from Ergotech Associates, Inc. had been submitted prior to the beginning of the Board meeting. Mr. Pammel questioned if this same report had been submitted to the Planning Commission and the Board of Supervisors (BOS) when the case was before them.

Ms. Rosati, Agent, replied that she had not seen the latest report but she did know that Ergotech had testified at either the Planning Commission or the BOS and had submitted written materials at that time. She stated that she did not know if the exact material had been submitted to them or not.

Mr. Pammel stated that at the last meeting he had asked if there were microwaves involved and Ms. Rosati stated there were not. He said that the newest report clearly used the term "Microwave Tower Transmitting Radio Waves" throughout the entire report. He asked for clarification of whether the tower used microwaves or not and requested that an expert be brought in to clarify this issue.

Ms. Rosati stated that there were no microwave dishes proposed to be on this structure and if the Board would like to defer the case, she could arrange to have an expert at the next hearing. She stated that since she had not seen the subject report, she was unprepared to speak to the issues.

Mr. Hammack asked if she knew what type of waves were being emitted. Ms. Rosati replied that radio waves were emitted, but not microwaves.

Mr. Hammack asked what the difference was between radio waves and microwaves. Ms. Rosati replied that she was unprepared to answer that question. She said she was not an expert and felt it was inappropriate for her to answer, but she could bring in an expert for clarification.

William Mayland, Staff Coordinator, stated that Bert Umpte, editor of the Ergotech articles, had testified before the Planning Commission and the BOS, and actually at one of the BZA's public hearing. He said he believed that this report was a reiteration of all the previous letters and reports submitted by Ergotech to date.

Mr. Pammel stated that he found this report to be much more extensive with illustrations and statistical data,

and he was very uncomfortable with the new information just presented. He stated he felt torn by what the community saw as a very serious issue versus what had been represented to the Board. He stated that he wanted a response from Ms. Rosati and her engineers relative to this report so the Board would be comfortable with whatever action it felt was appropriate to take.

Ms. Rosati stated that if the Board would defer, she would be able to get some expert answers.

Ms. Gibb stated that she understood from the report that the applicant could add a pole antenna as an addition and gain 20 more feet in height. She said that her understanding from the report was that once the tower had been built, the owners would have free range to change it. Mr. Mayland replied that was incorrect.

Mr. Hart stated that the report dealt with a lot of issues regarding the effect on the human body and asked if this was something staff had evaluated. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the report had been received very late on the previous day and staff had not had time to review it.

Mr. Mayland stated that the issue of health was brought up extensively at the Special Exception public hearings and had been discussed at length by the citizens. He stated that according to his understanding, any issues related to health and radiation emissions could not be considered as reasons to deny a telecommunication facility. He said that the Telecommunications Act of 1996 specifically stated that local governments did not have the right to use radiation, radio emissions, or health environmental concerns related to those emissions as reasons to deny a telecommunication facility.

Mr. Hammack stated he needed more time to formulate a motion for this case.

Vice Chairman Ribble stated the Board would move on to the next case and come back to this one later in the hearing.

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Page 717, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. SEVILLE HOMES, LLC, VC 01-M-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence and an accessory structure in a front yard of a lot containing 36,000 sq. ft. or less. Located at 3449 Sleepy Hollow Rd. on approx. 23,092 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 52.

Susan Langdon, Chief, Special Permit and Variance Branch, stated that application had been administratively moved to November 13, 2001, because the notices were not in order.

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Page 717, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. KHANH CONG NGUYEN & HONG DIEM THI VO, SP 01-V-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling and deck to remain 7.1 ft. from side lot line. Located at 7438 Ridge Rd. on approx. 8,839 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((20)) 30. (Concurrent with VC 01-V-122).

9:00 A.M. HONG DIEM VO, VC 01-V-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.0 ft. from side lot line. Located at 7438 Ridge Rd. on approx. 8,839 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((20)) 30. (Concurrent with SP 01-V-047).

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hong Diem Thi Vo, 7438 Ridge Road, Springfield, Virginia, replied that it was. A translator (no name given) came forward to speak for the applicant.

Mavis Stanfield, Staff Coordinator, presented the special permit and variance requests as contained in the

staff report. She stated that the applicants sought a special permit to allow reduction to the minimum yard requirement based on error in building location to permit a dwelling and a deck to remain 7.1 feet from the side lot line. She said the Zoning Ordinance required a minimum side yard of 8 feet; therefore, the structure represented an error of 0.9 feet.

Ms. Stanfield stated that the applicants also sought a variance to construct a deck, which would be an extension of the existing deck, to be located 6 feet from the side lot line. She said that the Zoning Ordinance required a minimum side yard of 8 feet; therefore a variance of 2 feet was requested.

The applicant, through a translator (no name given) presented the special permit and variance requests as outlined in the statements of justification submitted with the applications. The applicant stated that they would like to remove the existing deck and construct a new one in its place and enlarge it at the same time, and had proposed to build the deck about 6 feet from the side lot line.

Ms. Gibb asked if there was any other way to place the extension on the lot without requiring a variance. The applicant replied that it would look awkward as the house sat at a slant on the lot.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 01-V-122 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

HONG DIEM VO, VC 01-V-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.0 ft. from side lot line. Located at 7438 Ridge Rd. on approx. 8,839 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((20)) 30. (Concurrent with SP 01-V-047). 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 16, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant presented testimony indicating compliance with the required standards for the granting of a variance.
3. The house is placed at an angle on the subject property.
4. The deck cannot be enlarged in any other way.
5. The variance is 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 a deck, as shown on the plat prepared by Thomas G. Gilbert, dated July 17, 2001, as revised through July 18, 2001, submitted with this application and is not transferable to other land.

2. 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.

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 24, 2001. This date shall be deemed to be the final approval date of this variance.

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Ms. Gibb moved to approve SP 01-V-047 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KHANH CONG NGUYEN & HONG DIEM THI VO, SP 01-V-047 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling and deck to remain 7.1 ft. from side lot line. Located at 7438 Ridge Rd. on approx. 8,839 sq. ft. of

land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 89-3 ((20)) 30. (Concurrent with VC 01-V-122). 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 16, 2001; 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 and a deck, as shown on the plat prepared by Thomas G. Gilbert, dated July 17, 2001, as revised through July 18, 2001, 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 24, 2001. This date shall be deemed to be the final approval date of this special permit.
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Page 721 October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. TRUSTEES OF THE DRANESVILLE UNITED METHODIST CHURCH, SPA 83- D-022-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 83-D-022 previously approved for a church and related facilities, nursery school and child care center to permit site modifications. Located at 1089 Liberty Meeting Ct. on approx. 8.11 ac. of land zoned R-1. Dranesville District. Tax Map 6-4 ((1)) 66B, 70A and 6-4 ((14)) A. (In association with SE 99-D-043 and 2232-D99-13). (Moved from 5/2/00, 7/18/00, 3/27/01) (Def. Dec. from 7/31/01 and 8/14/01).

Vice Chairman Ribble re-called SPA-83-D-022-2.

Mr. Hammack stated that the hearing actually had been closed one month ago but the Board continued to receive more information, letters, faxes, mail, etc. He stated that he felt the applicant's agent, Ms. Rosati, should be given a chance to review the latest material and allow her time for rebuttal before the Board made a final decision.

Mr. Hammack made a motion to defer the decision on this application for another period of time. He stated that, other than Ms. Rosati's response, no other evidence or testimony would be accepted.

Mr. Pammel seconded the motion which carried with a vote of 6-0, and Susan Langdon, Chief, Special Permit and Variance Branch, suggested a date of November 6, 2001, at 9:00 am.

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Page 721, October 16, 2001, (Tape 1), Scheduled Case of:

9:00 A.M. SANTIAGO MORENO, VA 83-D-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.8 ft. and 11.9 ft. and deck 8.1 ft. from side lot line. Located at 1965 Virginia Ave. on approx. 37,500 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 69 - 71.

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. Elena and Santiago Moreno, 1965 Virginia Avenue, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicants sought approval to permit construction of a second story addition 6.8 feet from the side lot line, a two story addition 11.9 feet from the side lot line, and a new deck 8.1 feet from the side lot line of their current home. She said that the Zoning Ordinance required a minimum side yard of 15 feet; therefore, variances of 8.2 feet, 3.1 feet, and 6.9 feet were requested respectively.

Ms. Stanfield stated that the previously approved variance plat for this property showed distances of 6.8 feet for the existing dwelling, and 7.1 feet for an addition from the side lot line. She stated that a variance for Lot 72, north of the Morenos, had been denied by the BZA as stated in the staff report. She said that particular variance had been requested for the construction of a new dwelling which would have been located 10.1 feet from the side lot line.

Ms. Moreno presented the variance request as outlined in the statement of justification submitted with the application. Ms. Moreno stated that their house was built in the 1920's before the Zoning Ordinance was in effect. She said they acquired it in good faith 18 years ago, and the fact that the house sat only 6.8 feet from the property line was extraordinary. She said that the proposed variance would not disrupt the site and no trees would be removed.

Ms. Moreno stated that their house was extremely outdated and a variance was necessary to expand and increase the living space to the requirements of modern life. She said that without stacking a second story over the original one story cottage, expansion would be impossible and that the only viable alternative would be to tear down the existing structure and rebuild a new house, which was not affordable.

Ms. Moreno stated that building a new house would be far more invasive and a detriment to the mature trees that were assets to the whole neighborhood. She said that the proposed addition to the house would be 85 feet from the right property line, 165 feet from the rear line, and 39.5 feet from the front.

Ms. Moreno stated that every effort had been made to minimize the impact on the house to the left, which was quite large. She said that house was approximately 6,000 square feet and appeared to be the largest house in the neighborhood. She stated that the large house was uphill and rose an average of 40 feet above grade, with a roof ridge more than 30 feet above their roof ridge.

Ms. Moreno stated that the proposed addition lined up directly with a large area of blank wall of the adjacent house, and there were no windows, doors, or other openings. She said that their addition would be secluded from the neighbors by a row of existing tall trees and bushes on their property and a second row of fast growing Leland Cypress on the neighbor's property.

Ms. Moreno stated that to her knowledge, their home was the last of the one-story cottages of the pre-war era. She stated that they wanted to preserve the original structure of the house while expanding in a way that complimented the cottage and was in character with the neighborhood. She said she had signatures of support from 15 property owners within one block of their home.

Vice Chairman Ribble called for speakers.

Grayson Hanes, Agent, Reed Smith, 3110 Fairview Park Drive, Falls Church, Virginia came forward to speak in opposition to the application. He represented Mr. & Mrs. Brett Lowell, adjacent property owners to the north of the subject property.

Mr. Hanes stated that the addition the applicants had requested would be so close that a wind-tunnel would exist between the two houses. He stated that the applicant had proposed a nice construction job, but it was suggested that they flip it to the other side to allow for more room. He said that would allow them to build what they wanted without requiring a variance.

Mr. Hanes stated that the variance failed the test of an undue hardship for the Morenos. He said they had other alternatives but did not want to use them. He said the granting of the variance would have an adverse affect on his client's property.

Mr. Hart made the disclosure that two years ago he had been retained as an expert witness by another attorney in Mr. Hanes firm. He stated that he also had three other cases with attorneys from Mr. Hanes' firm, but did not believe they would affect his ability to participate in this case.

Brett Lowell, owner of the adjacent property, came forward to speak in opposition to the application.
He stated that the Morenos had testified that they would not have to remove any trees. Mr. Lowell stated that the Morenos had recently taken down a number of large trees so that technically, tree removal would not be necessary. He said that in talking with Ms. Moreno, she had indicated that the line of trees that ran between the two houses on their side of the property would have to be taken down because they were growing over the top of their existing structure. Mr. Lowell stated that the line of trees provided a buffer between the two houses.

Mr. Lowell said that the Moreno's proposed roof would project out 2 additional feet. He said that would leave only 4.8 feet from their side lot line, and that would not leave space for light to come through for the trees.

Mr. Lowell stated that the Morenos also had mentioned that they could not afford to take down the bungalow and build a new structure. He said he could not speak about their finances, but stated that Mr. Moreno was a principal of a company known as Portico Construction that was buying up lots in their neighborhood and putting up multiple houses where there was previously just one house. He stated that the new homes being built were not consistent with the character of the neighborhood.

Mr. Lowell stated that he felt that if the Morenos proposal was granted, it would allow them to put a second and third house on their land. He said that Ms. Moreno indicated that her petition had been signed by 15 people. He stated that he did not have time to visit all 15 people, but visited two neighbors and he had two letters from them retracting their signatures.

Wallace Sansone came forward to speak in opposition to the application. He stated that a portion of his property was directly across the street from the property line where three variances were embodied in the subject application. He stated that he was opposed to the application because it did not comply with the requirements set forth in the law. He said it was clear to him that the applicants had created a self-imposed

hardship in order to gain special privileges and convenience at the expense of the neighborhood. Mr. Sansone stated that he felt that the application was not in harmony with the intended spirit of the law and was contrary to the public interest.

Mr. Sansone stated that the applicant was a professional architect and builder practicing in their neighborhood and was an expert in zoning restrictions. He said that as an architect, Mr. Moreno should be knowledgeable in various home designs that would fully conform to those restrictions. Mr. Sansone said that if the additions were properly situated, the applicants would not require any variance. He said it was important to note that the new house would be nearly 85 feet from the opposite property line and only 6.8 feet from the other side lot line which indicated that there was no restriction for reasonable use of the subject property.

Mr. Hart asked staff for clarification of the drawing of the house. He asked if the overhang of the proposed upstairs roof was 6.8 feet high, or was the wall 6.8 feet with the roof still hanging over that. Ms. Langdon stated that she was not absolutely sure, but assumed that they took the measurement at the wall because a 3 feet eave would be allowed. She stated that the wall was 6.8 feet and the eave was less than 3 feet from the property line.

James Mehan, President of the Franklin Area Citizens Association came forward to speak in opposition to the application. He said the Association's Board was divided on the subject, and that the majority of the Board objected to granting the variance as submitted because of the extreme nature of the request. He said the Association's Board wanted to remind the BZA that one of the reasons for zoning codes and setback requirements was the promotion of light, and air in restricted spaces. He said the applicant was not merely asking to amend the existing structure, but they had proposed to increase the height of the structure significantly. He said the majority of the Association's Board felt that the proposed bulk of the addition on the left side appeared to be an encroachment.

Mr. Mehan stated that their neighborhood had a large number of lots similar to Mr. Moreno's, and the Association's Board was constantly concerned that these 50 foot lots would be individually developed. He stated that the precedence of variances such as this would encourage other developers to request site plans that use setbacks less than the 15 feet as required. He said that other variances that had been granted in the area had been minimal compared to what the Morenos had requested.

Holly Ross Lowell, 1963 Virginia Avenue, came forward to speak in opposition to the application. She stated that she was concerned that the second story windows on the proposed addition would look directly into her kitchen and bedroom windows.

Mr. Moreno stated in his rebuttal that he had recently removed a very large poplar tree from the back of his property. He said the tree had been entirely hollow, and one third of it had fallen into their yard, so it had been cut down. He stated that all the other trees that had been removed were also diseased. He said that the trees that separated the houses were 20-year old maples and he had absolutely no intention of removing those. Mr. Moreno stated that they would probably have to be trimmed, but they were making every effort to preserve the vegetation

Mr. Moreno explained in detail the multiple factors he had used to base his configuration for the expansion of the house.

Ms. Moreno stated in her rebuttal that she felt the design of the house was good looking and that it fit in well with the tone of the other houses that had been developed in the neighborhood.

There were no other speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to deny VA 83-D-017 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SANTIAGO MORENO, VA 83-D-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.8 ft. and 11.9 ft. and deck 8.1 ft. from side lot line. Located at 1965 Virginia Ave. on approx. 37,500 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 69 - 71. 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 16, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The application does not meet Standard #4. The request is a convenience, not a hardship.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Gibb and Mr. Pammel seconded the motion which carried by a vote of 5-1. Mr. Hammack voted against the motion and Chairman DiGiulian was absent from the meeting. Mr. Kelley moved to waive the 12-month waiting period for re-filing. 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 24, 2001. This date shall be deemed to be the final approval date of this variance. //

9:00 A.M. BUCKMAN ROAD PRESERVATION CORPORATION, SP 01-L-042 Appl. under Sect(s). 3-2003 of the Zoning Ordinance to permit a private school of special education for less than 100 students daily. Located at 3426 Buckman Rd. on approx. 10.33 ac. of land zoned R-20 and HC. Lee District. Tax Map 101-2 ((1)) 19. (moved from 9/11/01)

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 Gottdiener, Agent and Land Use Planner, Holland and Knight, replied that it was.

Mr. Hart disclosed that he had one case where the attorney from Holland and Knight were on the opposing side, but he did not believe that would affect his ability to participate.

Mavis Stanfield, Staff Coordinator, presented the special permit request as contained in the staff report. She stated that the applicant, a private school of special education, sought approval of a special permit for the use of two apartment units, consisting of 1,675 square feet, located within the apartment complex, to be used for educational purposes.

Ms. Stanfield said the school would consist of two computer rooms with a total of 34 work stations, a classroom, two offices, a reading area and a small work room. She said that it was anticipated that no more than a total of 40 students would be in the facility at any given time for a total maximum daily enrollment of 74 students. The hours of operation would be limited to 9:00 a.m. until 8:00 p.m., Monday through Thursday; 9:00 a.m. until 1:00 p.m. on Friday; and 11:00 a.m. to 4:00 p.m. on Saturday.

Ms. Stanfield stated that the proposed private school of special education would not meet the current parking requirements of the Zoning Ordinance as described in detail in the staff report. She said staff had prepared revised development conditions that had been distributed prior to the meeting. She said the new development conditions required the approval of a parking reduction by the Board of Supervisors in order to permit a total of 25 off-site students to attend the school. She said the applicant had agreed to the revised conditions.

She said staff concluded that the subject application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance revisions, and recommended approval of the application subject to the revised development conditions of October 16, 2001.

Ms. Gottdiener presented the special permit request as outlined in the statement of justification submitted with the application. She stated that the applicant was the Buckman Road Preservation Corporation, which was a subsidiary of the Community Preservation and Corporate Development (CPCD). CPCD was a non-profit organization that developed and operated affordable housing for low to moderate income residents throughout the metro area.

Ms. Gottdiener stated that the Neighborhood Networks Program (NNP), part of the CPCD, was designed to bridge the digital divide through the provision of technology, employment, and language training. She said it had become evident that obtaining skills in technology was a key factor in obtaining a living wage job, and many corporations were eager to hire people who had received training through their Program.

Ms. Gottdiener stated that CPCD currently operated a NNP at the Buckman Road site in a 985 square foot apartment located on the property. She said this use was considered a by-right accessory use and was currently utilized by residents only. She said that due to space constraints and the growing demand for technology training, CPCD was currently renovating the inside of two vacant apartment units to provide for a larger training area. She said that the use would also be a by-right accessory if it continued to be used only by Buckman Road residents.

Ms. Gottdiener stated that the purpose of a special permit would be to allow a limited number of individuals from the surrounding communities to benefit from the NNP. She said that there would be no new construction and that only the interior of the apartments would be renovated. She said approval of this application would increase the availability to more people while promoting the economic goals of the Route 1 corridor by expanding the skilled labor pool.

Mr. Hammack asked if Ms. Gottdiener had read the revised development conditions for October 16, and if she agreed with them. Ms. Gottdiener replied that she had seen them, and she was in agreement with them.

Mr. Pammel asked if the proposal had been reviewed by the Southeast Fairfax Development Corporation and what was their response. Ms. Gottdiener replied that it had not been presented to them. She stated that she had spoken with Supervisor Kaufmann's office and it was believed that, due to the limited scope of the application, the review was not necessary.

There were no speakers, and the public hearing was closed.

Mr. Hammack moved to approve SP 01-L-042 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

BUCKMAN ROAD PRESERVATION CORPORATION, SP 01-L-042 Appl. under Sect(s). 3-2003 of the Zoning Ordinance to permit a private school of special education for less than 100 students daily. Located at 3426 Buckman Rd. on approx. 10.33 ac. of land zoned R-20 and HC. Lee District. Tax Map 101-2 ((1)) 19. (moved from 9/11/01). 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 date October 16, 2001; 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.

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). (3-2003) 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, 3426 Buckman Road, 10.33 acres, units 103 and 104, 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 A. Raymond Koenig & Sons, dated December, 1973, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. 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 total maximum daily enrollment for the private school of special education shall not exceed 74 (seventy-four) students. A maximum of forty (40) students shall utilize the school at any one time. The number of students at any one time who attend the school but do not live in the Buckman Road Apartments shall not exceed twenty-five (25).

6. The maximum number of employees shall be limited to three (3) on-site at any one time.

7. Hours of operation shall be limited to a maximum of 9:00 a.m. until 8:00 p.m., Monday through Thursday, 9:00 a.m. to 1:00 p.m. on Friday and 11:00 a.m. to 4:00 p.m. on Saturday.

8. All parking shall be on-site in the existing parking areas shown on the Special Permit Plat. Prior to issuance of a non-residential use permit, the applicant shall submit a request for a parking reduction for review and approval by the Board of Supervisors. Subject to review and approval of the parking reduction request, the private school of special education may include a maximum of twenty-five (25) non-resident students at any one time. If approval of a parking reduction is not obtained by the applicant, then this special permit shall be null and void.

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 as evidenced by the issuance of a 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. 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 October 24, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 727 October 16, 2001, (Tape 1 and 2), Scheduled Case of:

9:00 A.M. SCHREINER INVESTMENTS LIMITED PARTNERSHIP II, DOUGLAS WILLIAM DAVIS AND DEBORAH S. DAVIS, VC 01-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of part of two lots into three lots with proposed Lot 2 having a lot width of 30.0 ft. and proposed Lot 3 having a lot width of 96.19 ft. Located on the E. side of Utterback Store Rd. approx. 500 ft. S. of Woodland Falls Dr. on approx. 6.08 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((7)) pt. E and pt. 30.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne Strobel, Walsh, Colucci, et al., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, replied that it was.

Ms. Gibb recused herself from the hearing as she currently represented the applicant on a different matter.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. She stated that the applicant sought approval to permit subdivision of the application parcel into three lots, with proposed Lot 2 having a lot width of 30 feet, and proposed Lot 3 having a lot width of 96.19 feet. She said a minimum lot width of 200 feet was required; therefore, variances of 170 feet and 103.81 respectively had been requested for Lot 2 and Lot 3. She said it was proposed that the three lots would be developed with single family detached dwellings. She said a land swap between Lots 30 and Parcel E was also proposed in order to provide a lot width of 200 feet for proposed Lot 1. Ms. Josiah stated that staff believed

the application did not meet Variance Standards 2, 3, 4, 5, 6, 8, and 9 as set forth in the Zoning Ordinance.

Ms. Strobel presented the variance request as outlined in the statement of justification submitted with the application. She stated that the applicants proposed a variance of minimum lot width requirements to permit a subdivision of part of two lots into three lots. She said the subject property included 6 acres and was zoned RE. Ms. Strobel stated that the property could be subdivided under its existing zoning into three lots with the construction of a public street. She said the applicant had not requested rezoning and the proposed variance would not allow a greater density than the existing regulations permitted under a by-right subdivision. She said the property did include a unique feature that merited the consideration of a variance. She stated that there was a significant grove of holly trees centrally located on this property. She said that the trees were of a species and age that made them unique in the area, and the owner and builder believed it would be highly desirable to save at least a portion of them.

Ms. Strobel stated that a strict application of the Ordinance would result in the construction of a public street to meet VDOT standards, which required the dedication of 44 feet, with the pavement width of approximately 28 feet. She said the length and width of that street would require significant grading and she believed that would be out of character with the neighborhood. She said that it would also result in the removal of the holly grove.

Ms. Strobel stated that the division of part of these two lots into three would result in a subdivision that the applicant believed was compatible with the area. She stated that she disagreed with staff's assessment of the application in the context of the existing Comprehensive Plan. She said the proposal was in accordance with the existing zoning regulations for density and surrounding lots were similar in size to the proposed lots.

Ms. Strobel stated that the applicant had met twice with the Great Falls Civic Association and they had made several requests. She said the applicant had incorporated these requests into the current proposal. She stated that the first request had been to limit the clearing and grading, which had been enhanced and definitively shown on the plat. She said that a portion of the holly grove that was being preserved was depicted on the plat and was to be placed within a conservation easement to ensure its preservation.

Ms. Strobel stated that she had the opportunity to speak with two of the neighbors located to the south of the subject property and had proposed some development conditions to address their concerns. She said that the applicant had proposed Development Condition 6 at the request of Mr. Hausman. She said the applicant proposed the planting of eight (8) Leland Cypress trees that would be located along the southern property line to screen the proposed drain field that was shown for Lot 3.

Ms. Strobel stated that, at the request of Mr. Nichols, the applicant had proposed a covenant that would be recorded among the land records to ensure that the area of trees depicted on the plat at the southwest corner of Utterback Store Road and the property line, would be preserved. She said the applicant would record a covenant that stated there would be no structures or fences within that area and there would be no removal or planting of trees within that area unless directed by the Urban Forester. She said this would become a permanent covenant in the land records.

Mr. Hart asked Ms. Strobel if there was a septic field for each of the three houses on the by-right development. Ms. Strobel replied that there were two existing approved septic fields on the property. She said the applicant did not pursue septic fields with this particular design as he believed the soils were good enough on the property to allow for that, but had not specifically located them.

Mr. Hart asked if there was any way to relocate the home or the drain field to save more of the holly grove. Ms. Strobel replied that at the time of final engineering that might be possible as the plan represented the minimum holly trees that would be saved. She stated that staff's proposed Development Condition 3 required the developer to meet with representatives of DPWES on site for a pre-construction conference.

Mr. Hart asked why the middle house was not located more to the left of the property and further away from the holly trees. Ms. Strobel deferred the question to Alan Beacon, the engineer who had provided the plans.

Alan Beacon, Charles B. Johnson Associates, 3959 Pender Drive, Fairfax, Virginia came forward to speak. He stated that there was some flexibility for the location of the houses. He said the plat showed house pads large enough to accommodate a house size that someone might want in that geographic area. He said there

was a possibility that those homes could shift, but he was trying to be cautious, and showed the worse case scenario so if the pad shifted or the house got smaller, there would be additional savings in the area.

Mr. Hart said the statement of justification dealt with preserving the holly trees and one of the problems that concerned the staff was the small portion of holly trees that were being saved. He said it appeared that the location of the house on Lot 2 could be further away and the portion of the tree area could be extended to the left.

Mr. Hart asked if Ms. Strobel's client was okay with the Utterback Store Road dedication. Ms. Strobel replied they had no problem with the dedication, but believed that the Great Falls Civic Association did have an issue with it.

Mr. Hart asked staff if they felt that the house should be moved to the left, and if they had found it to be too close to the holly trees. Ms. Josiah replied that was correct, and that staff could support two lots, but triple stacking was not what had been envisioned on this site.

John Ulfelder, Chairman of the Great Falls Civic Association, came forward to speak in support of the application. He stated that it was a difficult case and he and some of the other neighbors had met with the applicant last week and there had been a number of additional changes that had been proposed to try and address some of the neighbors concerns. Mr. Ulfelder stated that many neighbors were concerned about the by-right alternative. He said the Association questioned whether there would really be room to locate a 3rd drain field for Lot 3, and were also concerned about having large, public streets in that area. Mr. Ulfelder stated that the Association opposed the suggestion for a 45-foot dedication from the center-line and felt 30 feet would be adequate. He said he believed that this road was a small, narrow, semi-rural road and there were no plans for widening it in the future. He said it served only a low density residential area, and they thought there was no need for that much right-of-way dedication in this case. He said that they were concerned that the road would take out additional trees and be an environmental detriment.

Mr. Ulfelder stated that in looking at all the alternatives for this property, they would support the variance or not to object to it as opposed to the by-right. He suggested that the Board defer decision on this case for a few weeks, to have the applicant and his agent to meet with the neighbors again.

Robert McClay, 214 Carwood Road, Great Falls, Virginia, came forward to speak in support of the application. He stated that he was a member of the family of the original owner of the property, Dr. George Schreiner. He said he wanted to convey Dr. Schreiner's intense interest in conserving the character of the property and the holly grove and would like to make it clear to the Board how important the preservation of the holly grove was to the family.

Marc Labgold, 10906 Lake Windemere Drive, came forward to speak in opposition to the application. He said he agreed with the issues that had been raised in the staff report. He stated that if the applicant was as truly concerned about the area as he had said, he would not be seeking to maximize the density of the property. Mr. Labgold was concerned that the proposed properties were not in character with the existing properties. He stated that he believed the proposed homes were placed in awkward positions because there was not a drainfield for a third lot. He stated that Lot 30 was part of the Lake Windemere Homeowners Association, which had a provision that the land could not be subdivided any further; therefore, Parcel E could not be swapped for Lot 30.

Dale Hausman, 833 Utterback Store Road, Lot 20, came forward to speak in opposition to the application. He stated his primary concern was the location of the drainfield. He said that the drain- field would be located directly across from his property and he understood that the intent of the applicant was to clear the lot all the way up to the border of his property to accommodate the drain- field. He stated that at the location of the proposed drainfield, there were a substantial number of mature holly trees that would need to be removed. Mr. Hausman stated he would like to preserve the holly trees behind his home and move the drainfield to some other area and was open to alternative solutions.

Dennis Kakol, 10914 Lake Windemere Drive, came forward to speak in opposition to the application. He said according to the application for the Zoning Variance, the plat cited that the approval for the easement was found in deed book 8141, page 1821, which he presented a copy. He stated that they would find that it was for a property in McLean, Virginia, not in the Dranesville District, not in Great Falls, and therefore the

application and the plat associated with it, had an error.

Mr. Kakol stated that another concern was the water runoff problem and the preservation of the Chesapeake Bay management effort. He said that the proposal for this particular lot had approximately 60-70% of the land removed for clearing and grubbing and, the water protection that was currently afforded by the existing shrubs and trees would be minimized. He said there was not any evidence in the applicants' plan that they had addressed water runoff issue.

Jacqueline Archibald, 10916 Lake Windemere Drive, came forward to speak in opposition to the application. She stated she was concerned with the application not meeting the standards for a variance and with the environmental protection of the holly trees. She said division of the land was not consistent with the existing RE district; the proposal of triple stacking was not compatible with the surrounding development and the low density. She summarized how the applicant had not met Variance Standards 2, 3, 4, 5, 6 8, and 9.

Phil McKissick, 10913 Lake Windemere Drive, came forward to speak in opposition to this application. He said his lot was across from the proposed pipestem that would allow for a third property. He said he was concerned about the detrimental effect on his property along with at least five neighboring properties. He stated that the standards for a variance had not been met and that it was a self imposed hardship because of the need for three separate drain fields. He stated that because the drainfields were very close to the wells in the Lake Windemere subdivision, he was concerned about the possible pollution to the wells.

Patrick Nichols, 831, Utterback Store Road, Lot 19, came forward to speak in support to the application. He stated that subdivision of land by state roads was the least desirable outcome, but the applicants had shown a clear interest in trying to protect the property and had tried to preserve trees in the front of the property on Utterback Store Road. He asked the County to examine carefully the site plans as they developed. He said he believed that with a carefully developed site plan in which the neighbors were informed of what was taking place, the property could be developed in a way that was reasonably harmonious to almost everyone.

Mr. Hart asked Mr. Nichols if he had seen the Revised Development Condition 7 regarding the covenant. Mr. Nichols replied he had seen it and discussed it briefly. He said the change from moving it from a personal nature to one of a running covenant on the property satisfied him.

Mr. Prasad, 824 Utterback Store Road, came forward to speak in opposition to the application. He asked the Board to give citizens some additional time to review the proposed drainfield and three houses on that lot.

Ms. Strobel stated in her rebuttal that there were some technical issues. She said with regard to the recorded easement, there was an error on the plat that had since been corrected by Mr. Beacon. The easement was actually recorded in deed book 6141 page 1824.

Ms. Strobel stated that Parcel E was also a part of the Lake Windemere Subdivision. She stated the reason the applicant was asked to work with the adjacent owner was to provide them with an equal exchange of property and to give them more of a buffer to the development that was being proposed. She said this would be an equal exchange of property or boundary line adjustment between these two lots as shown on the tax map. She said it appeared that this type of issue was handled before and did not think it conflicted with the covenants for the property.

Ms. Strobel stated that the applicant did not pursue further locations of drainfields on a by-right subdivision because there were two existing drainfields that had already been approved. She said it was very costly to do the research and find drainfields. Ms. Strobel also noted that the lots were oddly shaped because each of them had to maintain frontage on Utterback Store Road.

Ms. Strobel stated that what the applicant had proposed was not out of character with lot size or density with the surrounding area. She said that the applicant chose to put himself through this process because the current owner believed that the preservation of a large part of the holly trees would be desirable.

Ms. Strobel stated that going through a variance process was the only way to ensure an opportunity to save these trees. She said that going through just a subdivision there was no such control. She said the applicant had agreed to such measures as a tree preservation plan and had walked the site with the Urban Forester in order to locate a number of the holly trees within a conservation easement.

There were no other speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel stated that if his motion was approved, he believe there would not be any winners in this case. He said that the property already had a reasonable use as it existed, but the issue presented had been to obtain a variance in order to save the holly grove. Mr. Pammel stated that the Board had to look at the regulations and the issue of hardship, and he did not think that hardship for the applicant had not been proven.

Mr. Pammel moved to deny VC 01-D-118 for reasons noted in the Resolution. Mr. Hammack seconded the motion, which failed by the lack of four votes*. Vice-Chairman Ribble, Mr. Pammel, and Mr. Hart did not support the motion,

Mr. Hart stated that the presence of the holly grove was an extraordinary condition on the property. However, he stated, that by denying the variance they would be forcing the owners to use the by-right plan, which he felt would be detrimental to everyone involved.

Mr. Kelley associated himself with Mr. Hart. He stated he believed that the variance would be better than the by-right situation.

Mr. Pammel moved to waive the 12-month waiting period. Mr. Hart seconded the motion which carried with a vote of 5-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

SCHREINER INVESTMENTS LIMITED PARTNERSHIP II, DOUGLAS WILLIAM DAVIS AND DEBORAH S. DAVIS, VC 01-D-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of part of two lots into three lots with proposed Lot 2 having a lot width of 30.0 ft. and proposed Lot 3 having a lot width of 96.19 ft. Located on the E. side of Utterback Store Rd. approx. 500 ft. S. of Woodland Falls Dr. on approx. 6.08 ac. of land zoned R-E. Dranesville District. Tax Map 7-3 ((7)) pt. E and pt. 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 October 16, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The applicants have not met all the required standards
3. The applicants can develop the site by-right; therefore, a hardship was not proven.

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 2-3*. Mr. Hart, Mr. Kelley, and Mr. Ribble voted against the motion. Ms. Gibb recused herself from the hearing and Chairman DiGiulian was absent from the meeting. Mr. Pammel moved to waive the 12-month waiting period for re-filing an application. 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 October 24, 2001. This date shall be deemed to be the final approval date of this variance.

*Par. 5 of Sect. 8-009 of the Zoning Ordinance requires that a concurring vote of 4 members of the Board of Zoning Appeals is needed to grant a special permit.

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9::00 A.M. GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SPA 91-C-070-2 previously approved for outdoor recreation uses to permit modification of development conditions including but not limited to change in hours of operation, additional lighting, increased food service, addition of special events, and reduction of landscaping. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (OTH HEARING GRANTED) (Deferred from 6/5/01 and 9/18/01)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Grayson Hanes, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, Agent, replied that it was.

Mr. Pammel made a motion to defer SPA 91-C-070-04. He stated that he found the lighting study that had been presented to the Board the week before to be inconclusive and contained many inconsistencies. He said he found that different standards had been applied to the description of light spillover and that he was not prepared to move forward on this case based on what had been submitted.

Mr. Hart made a disclosure that he had been involved as an expert witness for Mr. Hanes' firm two years earlier, which had been concluded. He said that he currently had three cases with which Mr. Hanes' firm

was involved on the other side, but felt that those matters would not affect his ability to participate in this case.

Mr. Kelley seconded the motion.

Ms. Gibb asked staff if they still felt that Development Condition 7 was appropriate in view of the new lighting study. Ms. Josiah replied that she did.

Mr. Hart stated that there had been two other lighting studies that had come before the Board since he started working for the Board, and felt he needed to help the applicant to understand the long timeframe involved in getting lighting approval. Mr. Hart stated that if the case could not be decided within the next eight days, the application would become a Special Exception, which would require two more public hearings and additional expense to the applicant. Mr. Hart said that he could not support the lighting study, but if the applicant wanted to go forward on the other issues as a Special Permit, he would agree to go forward.

Mr. Hammack stated that he agreed with Mr. Hart and noted that the Special Permit Amendment had been filed on March 21, 2001, with a request for an Out-of-Turn-Hearing to be granted. He said that it had been scheduled for June 5, but due to conflicts with the applicant's attorney it had been continued again until September, and then continued again. Mr. Hammack stated that the applicant had submitted the lighting study less than one week before the hearing date, with an eight-day deadline behind it. He said he was disappointed that the lighting study came in so late in time. He said an older lighting study had been filed with the original request in 1992, and the current study appeared to be more of a proposal. Mr. Hammack stated that if the applicant wanted, he would be willing to hear the case.

Vice Chairman Ribble stated that he agreed with Mr. Hart and Mr. Hammack. He asked the applicant to address the deferral request.

Grayson Hanes, Agent, stated that the applicant had tried, but had been unable to get the lighting study to the staff and citizens at an earlier time. He reviewed what he expected to be able to do with the application over the next week if it was deferred for one week.

The Board had a brief discussion regarding the application. It was decided that the applicant had substantial time to prepare prior to the hearing and the Board asked if the applicant wanted to go forward with the BZA or go through the Special Exceptions process.

Vice Chairman Ribble asked if there was anyone who wanted to address the deferral.

John Dowd, an adjacent landowner, came forward to speak in opposition to the deferral. He stated that it had been costly for everyone in the audience, including himself, to attend the meetings since March. He stated that in the past, the burden had been placed on the applicant, but he felt that the problem was that the applicant never carried the burden. Mr. Dowd said that the hearings had always been continued to allow time for the applicant to research and get information, but that the applicant had never accomplished anything and continued to fail to carry the burden. Mr. Dowd stated that to give a deferral would increase the citizen's expense and continue with the uncertainty of their land.

Mr. Hammack briefly explained the changes in the Ordinance that were to occur in eight days, and that the BZA would lose jurisdiction to hear the case. He reviewed the new process that the applicant would face, and the difficult decision before the Board.

A gentleman (no name given) came forward to speak in opposition to the deferral. He stated that most everyone was aware of the upcoming Ordinance changes. He stated that the Board was concerned with the cost to the applicant and the applicant's attorney. He said that everyone present, including the Board, was paid to be in attendance except the citizens, and their expense had not even been a consideration. He stated that he saw no reason to defer.

Mr. Hanes conferred with his client and stated that the applicant wanted to proceed.

Vice Chairman Ribble asked for a vote on the motion. Mr. Pammel stated that he would withdraw the motion

given the comments from the audience and acknowledgement from the applicant. Mr. Kelley agreed and it was decided to go forward with the hearing.

Grayson Hanes, Reed-Smith, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, reaffirmed the affidavit as the representative for the applicant.

Jennifer Josiah, Senior Staff Coordinator, presented the special permit amendment request as contained in the staff report. She stated that the applicant sought approval of modifications of development conditions approved with SPA 91-C-070-2. She said that the site had been the subject of special permits granted by the BZA since 1992. She stated that the applicant requested the re-wording and/or the updating of some of the existing development conditions.

Ms. Josiah stated that the applicant requested that Development Condition1 be modified so that the special permit would run with the land and not with the applicant. She said the staff recommended maintenance of the current development condition as it was, which had been the policy of the BZA in the past, to limit special permit approval to the applicant only.

Ms. Josiah stated that the applicant had requested the re-wording of Development Condition 6 regarding flexibility in parking requirements. She said that since the parking on the site currently met the Zoning Ordinance requirements, staff recommended that the development condition be modified to reflect a minimum of 75 spaces and a maximum of 131 spaces.

Ms. Josiah stated that the applicant had requested updating Development Condition 13, regarding a streamline review for the pesticides and fertilizer plan. She stated that in reviewing other driving ranges in the County, staff recommended updating the development condition to reflect current agency titles and reviewing agencies.

Ms. Josiah stated that the applicant had requested the updating of Development Condition 24, to recognize that the eastern berm had been constructed and to eliminate all references to maximum elevations for all berms. She stated that staff had proposed revisions to the development condition to reflect the existence of the berm, but recommended that the development condition maintain reference to maximum elevation.

Ms. Josiah stated that the applicant had requested that Development Condition 7 be modified to permit the approval for installation of taller parking lot light poles, additional light fixtures per pole on the driving range, ten upward focusing bunker lights and a temporary portable generator to power the lighting. She said the applicant submitted a revised lighting study on October 10, 2001. Ms. Josiah stated that due to inconsistencies within the lighting studies, staff could not perform an analysis and continued to support the current conditions which represented a compromise between the interest of the applicant and the community. She said staff felt that any changes to the intense lighting should not be permitted unless the applicant could demonstrate that the proposed lighting would not adversely impact the surrounding residences. Ms. Josiah stated that staff did not oppose the use of a portable temporary generator.

Ms. Josiah stated that the applicant requested that Development Condition 8 be modified to permit expanded hours of operation and that those hours be voluntarily seasonally adjusted. She said staff supported expanding the hours of operation in the morning to start at 7:00 a.m. and unlimited hours of operation for security and administrative personnel. Ms. Josiah said that staff did not support the applicants request to include even earlier morning and later evening hours and unlimited hours for maintenance. She said that staff did not recommend any changes in the hours of operation for closing times, as current conditions were consistent with other driving ranges in the County.

Ms. Josiah stated that the applicant had requested changing Development Condition 9. She said he wanted a reduction in the amount of landscaping approved previously to that existing as of May 24, 2001, and that landscaping also be deemed to meet the transitional screening requirements along all lot lines. Ms. Josiah stated that the applicant did not submit any justification in favor of the request to reduce the amount of landscaping to be provided. She said staff continued to believe that the landscaping shown on the March 15, 2001, plan, and currently existing on site, should be provided to mitigate the impact of the use.

Ms. Josiah stated that the applicant had requested a change in Development Condition 12 to permit

participation in a regional stormwater detention facility rather than being required to have on-site detention. She said DPWES had granted a waiver to the applicant since a portion of the property already drained to an off-site stormwater management facility. She said staff proposed that Development Condition 12 be revised to permit DPWES to use discretion in the implementation of stormwater management.

Ms. Josiah stated that the applicant had requested a change to Development Condition 15 to permit lighted signage along Hunter Mill Road or the Dulles Toll Road. She said that staff did not support that request, since an illuminated sign would not be consistent with the low density, residential character of the area.

Ms. Josiah stated that the applicant had requested a change to Development Condition 16 to have some flexibility of the location of the clubhouse and to delete architectural and building material restrictions. She said that staff recommended revision of the condition only in order to provide clarity for the building materials, and that the architecture of any new buildings be subject to the review and approval of the Zoning Administrator to ensure compliance with the condition.

Ms. Josiah stated that the applicant had requested that the clubhouse be permitted to be up to 100 feet closer to any lot line from the location shown on the special permit plat. She said that staff did not support locating the building closer to the adjacent residential properties but the staff had agreed to a more modest degree of flexibility of 10%.

Ms. Josiah stated that the applicant requested changes to Development Conditions 20 and 22 in relation to the modification of accessory activities and operations permitted in the clubhouse facility. The applicant requested the deletion of food preparation and sales restrictions, the inclusion of a grill and modifications permitting children of employees to be able to use the child care facility.

She said that staff proposed development condition number 20 be revised to delete the restriction that prohibited food preparation on-site and to permit a grill within the clubhouse. Ms. Josiah said that the grill could not occupy more than 750 square feet or 15% of the total square footage of the clubhouse, whichever was less. She stated that the proposed development condition had been revised to clarify that permitted accessory activities and operations would only be allowed to be conducted inside the clubhouse building.

Ms. Josiah said that Development Condition 22 could be revised to permit children of employees to use the child care facility.

Ms. Josiah stated that the applicant proposed deletion of Development Condition 5 which provided that the applicant should pay pro rata contribution toward a traffic signal at the intersection of Sunset Hills Road and Hunter Mill Road. She said that VDOT had informed staff that the signalization of the light would be done before the fall of 2001. She said DOT estimated that the applicant's pro rata contribution would not exceed $3,135. She stated that the staff recommended that the condition remain and that the contribution not exceed $3,135.

Ms. Josiah stated that the applicant proposed the deletion of Development Condition 17 to eliminate a requirement for a covenant that restricted uses of an adjacent parcel of land, Tax Map 18-4-((1))22. She said staff recommended that the condition be revised to reference the filed covenant, but not to delete it.

Ms. Josiah stated that the applicant proposed the deletion of Development Condition 18 pertaining to sources of potable water. She said staff recommended that the condition be retained, but be revised to delete the specific water main.

Ms. Josiah stated that the applicant proposed the deletion of Development Condition 19 in order to permit amplified announcements and/or loud speakers on the site. She said loud speakers were not compatible or appropriate for a low-density residential area and staff recommended that the condition remain.

Ms. Josiah stated that the applicant proposed the deletion of Development Condition 21 in order to eliminate the prohibition against a jukebox and arcade games. She said staff believed that the provision of jukeboxes could be appropriate, but that arcade and video games should continue to be prohibited. She said the games were prohibited at other driving ranges since they were not typically associated with a golf driving range and would intensify the use of the site.

Ms. Josiah stated that the applicant proposed the deletion of Development Condition 26 which would give the applicant permission to conduct special events on the site. She said the applicant had not provided any information regarding the types of special events or whether they would be related to the driving range use. She said staff recommended the condition remain in full force.

Ms. Josiah stated that staff concluded that some aspects of the subject application as submitted were not in harmony with the Comprehensive Plan and were not in conformance with the applicable Zoning Ordinance provisions. She stated that staff found the requests for additional lighting, special events, reduction in landscaping, illuminated signage, loudspeakers, increase in the hours of operation and deletion of the covenant on Lot 22 were specifically problematic.

Ms. Josiah said that staff believed that some of the proposals could be compatible with surrounding residential areas and in harmony with the Comprehensive Plan, but only with the development conditions contained in Appendix 1 of the staff report. She said that staff recommended denial of the application as submitted. She said staff would recommend approval subject to the proposed development conditions previously stated.

Mr. Hart asked Ms. Josiah how the pro rata dollar figure had been derived. Michael Davis, DOT, gave a brief explanation of the criteria used in attaining that figure.

Mr. Hart stated that Development Condition 9 had been extraordinarily detailed. He asked if the condition that Mr. Hanes wrote could be used as a replacement in order to simplify the language. Barbara Byron, Director, Zoning Evaluation Division, stated that the date Mr. Hanes used was not acceptable because it was before the plants had been installed.

Mr. Hart asked Ms. Josiah if staff had a chance to review Mr. Hanes' proposed development conditions and if they agreed with any of them. Ms. Josiah replied that staff had an opportunity to review them briefly, and that staff was not in agreement with the majority of them.

Mr. Hart asked about the placement of the proposed generators. Ms. Byron replied that when Mr. Thoburn submitted his application, he had not requested six generators. She said that would have a significant impact on noise in the residential neighborhood. She stated that staff's development condition limited the generators in number and location.

Mr. Hammack addressed several issues regarding the operation of the child care center and asked for some clarification. Ms. Langdon replied that the State regulated different types of child care centers based on the number of children at any given time. She said that this center would be of a temporary use and therefore different than a full daycare center and would be regulated by the State.

Mr. Hanes presented the special permit amendment as outlined in the statement of justification submitted with the application. He gave a brief summary of the history of the application and stated that the applicant wanted to bring it up to current standards. Mr. Hanes proposed that the hours of operation be the same as Woody's Golf Range, also located in Fairfax County.

Mr. Hanes stated that the applicant had withdrawn the request to restrict the covenant, the request related to potable water, and the request for the amplified loudspeakers. He stated that staff's development conditions 2, 3, 4, 6, 10, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 were all acceptable to the applicant.

Mr. Hanes addressed proposed Development Condition 1 requiring that the permit be granted only to this applicant. He noted that the various Boards in Fairfax County did not restrict applications to the applicant.

Mr. Hanes addressed proposed Development Condition 5 and stated that he did not understand how the Department of Transportation (DOT) arrived at the dollar figure, and wanted to know who else had contributed to the cost of the light. He said that it really had no connection to the subject property, and should not be enforceable.

Mr. Hanes addressed proposed Development Condition 8. He stated that he took the language from Woody's Range and inserted it into the proposed development conditions. He said it started at 8:00 a.m.

and ended at 9:30 p.m., September through April. He said the hours would be 8:00 a.m. to 10:00 p.m., May through August.

Mr. Hanes stated that directly across the street from the property was an illuminated sign for the church. He said he felt that the subject property should be able to have a sign also.

Mr. Hanes addressed proposed Development Condition 16. He stated that it was felt that the clubhouse should be able to move within an envelope, and that was what had been proposed.

John Thoburn, 1630 Hunter Mill Road, came forward to speak in support of his application. He spoke in depth regarding the history of his application and the problems that ensued since he first filed for it in 1992.

Mr. Thoburn addressed the lighting at the golf range. He said they had requested a 20% increase in downrange lighting. He stated that he felt the parking lot lighting was not an issue. He spoke in depth of the different poles, lighting and wattage that he had requested.

Mr. Pammel clarified with Mr. Thoburn his understanding of the wattage on the lighting fixtures.

Mr. Hart asked for clarification as to the function of the generators and the proposed locations for them. Mr. Thoburn replied that the staff had misunderstood his application as he had specifically requested generators for parking lot and driving range lighting. He said that implied more than one. He stated that he previously had two generators on the property, one for the range and one for the parking lot.

Mr. Thoburn stated that as a small businessman, he did not have the financial means to run power underground and put in permanent lighting. He said that it would not be prudent to consider putting lighting in for the next six months since the Virginia Department of Transportation (VDOT) was conducting a $1,000,000 study of what to do with their interchange improvements. He stated that VDOT had shown a preference for taking out a corner of the driving range, half of his parking lot, and perhaps half of his tee line, and he preferred to wait to see what they intended to do.

Mr. Thoburn stated that he would like to have four smaller generators on the tee lines and then one generator in each section of the parking lot. He stated that he thought that six smaller generators would be quieter than a 50,000 watt generator. He said they would all be diesel powered.

Mr. Hart asked if there was any information available on the road interchange. Mr. Davis replied that there had been several discussions of various options for improvements at Hunter Mill Road and the Dulles Toll Road, but there had not been anything selected yet. Mr. Davis said that several of the options would have a significant impact to the Thoburn site.

Vice Chairman Ribble called for speakers in support of the application.

Charles Reigle came forward to speak in support of the application. He expressed his negative opinion of the County for the way he felt they had treated Mr. Thoburn. He stated that he felt the Board should let Mr. Thoburn off the hook on the plantings.

Vice Chairman Ribble called for speakers in opposition to the application.

Carol Dowd, 1529 Crowell Road, came forward to speak in opposition to the application. She stated that she had sent a copy of Mr. Thoburn's lighting proposal to a highly renowned engineer named Delvin Armstrong. She said that he had responded after studying it and she wanted to read into the record a letter from him. The letter gave several reasons why Mr. Armstrong could not support the new lighting study

Bruce Bennett, 1459 Hunter View Farms, came forward to speak in opposition to the application. He reviewed excerpts from Mr. Armstrong's letter. He stated that the applicant had always been difficult over the past ten years, always requesting deferrals, incomplete submissions, continuances, etc. He stated that Mr. Thoburn first got around the Fairfax County laws in 1992 by calling the golf park a horse farm and then laughed at his neighbors. He stated he felt that the Board should not let him go any further in his expansion.

Ms. Patton (no address given) came forward to speak in opposition to the application. She wanted to emphasize to the Board that the decision made at the hearing would impact her personal home life. She stated that when she bought her home, she was assured from Fairfax County that the golf property would be used in harmony with the neighborhood. She said she felt that had not happened and should be stopped.

Jody Bennett, 1459 Hunter View Farms, came forward to speak in opposition to the application. She said she came to support the neighbors who lived adjacent to the driving range. She stated she opposed all aspects of the application. She stated that at the June 5, 2001, hearing it was stated that this application was about land use issues. Ms. Bennett stated that the Comprehensive Plan language was changed in 1999 and that was what needed to be used to evaluate this application.

Holly Towne came forward to speak in opposition to the application. Ms. Holly read a letter from David Emory, 10903 Pony Court, Reston, Virginia. He stated that he was concerned over many of the development conditions proposed by Mr. Thoburn and how he felt the property had been allowed to become commercialized in a residential area.

Ken Cox, 10344 Brittenford Drive, came forward to speak in opposition to the application. He stated that he wanted to reiterate what the other citizens had already said. He stated that the property was zoned residential and he did not want to see it turned into an amusement park.

Dennis Hannemann, 10201 Westford Drive, Vienna came forward to speak in opposition to the application. He stated he wanted to read a letter from Jeanette Twomy of the Hunter Mill Defense League. Her letter addressed the history of noncompliance by Mr. Thoburn and stated she felt he was on a campaign to get the property rezoned from residential to commercial. She was especially concerned about allowing Mr. Thoburn to cook on-site, about the child care expansion and loud music with jukeboxes.

Brian McMillan, 10302 Brittenford Drive, came forward to speak in opposition to the application. He said his concerns were based on the use of the property. He said that according to the Comprehensive Plan, the property use should be in harmony with the general purpose of the residential zoning district. He said that the proposed use would not be harmonious with the neighborhood and would adversely affect the use and development of neighboring property.

Keith Harrison, 10306 Forest Maple Road, came forward to speak in opposition to the application. Mr. Harrison stated his major concern was with the lighting study, and stated that adding any lights to the area would be a detriment to the local homeowners and to the character of the neighborhood.

Frank Knock, 1505 Brookmeade Place, came forward to speak in opposition to the application. He stated that when he had bought his home 22 years ago, he had asked the builder about the development of the area and was told it was strictly residential and would not be changed. He said he supported everything the people who had gone before him had said. Mr. Knock stated that Sandy Bakewell could not be present for the hearing, but she wanted him to relay that she fully supported everything Mrs. Dowd said regarding the lighting, and she felt the lighting was an important thing to consider for the local residents.

John Carrins, President of the Hunter Mill Estates Homeowners Association, came forward to speak in opposition to the application. He stated that he did not want to see Mr. Thoburn with a carnival-style hotdog stand like last year and hoped the grill would stay inside the clubhouse. He stated that the lighting in the past had been distinctly noticeable and the new lighting study indicated that the lights would be tripled. He stated he did not believe Mr. Thoburn had demonstrated any hardship from the lack of lighting.

Julia Rose came forward to speak in opposition to the application. She said she would be short and stated 'don't be shy, just please deny!'

Bob Ruedisueli, 1537 Crowell Road, came forward to speak in opposition to the application. He stated he and his wife supported all the concerns of the people who spoke before him. He said that the grill on Mr. Thoburn's grounds would also produce trash cleanup for homeowners. He stated that the lighting Mr. Thoburn had used before had been extremely bright, and the generators were very noisy. He asked the Board to be very careful when deciding what is and what is not compatible within an existing neighborhood.

Shawna Harrison, 10306 Forest Maple Road, came forward to speak in opposition to the application. She stated that her main concern was that Mr. Thoburn had stated that his ultimate goal was to build a high-density complex on his property. She said every exception given to Mr. Thoburn allowed him to get closer to his ultimate goal and this would change everything in their neighborhood forever.

A woman (no name given) came forward to present a letter from Ellot Edder, who was unable to be present at that time. She entered the letter of opposition for the record.

Mr. Hammack confirmed that there were no lights on the golf range at that time. Ms. Josiah replied that there were none installed currently but Mr. Thoburn was approved for some. She stated that the lights had been installed originally, but then were voluntarily removed.

Mr. Hammack asked if staff had reviewed Development Condition 9 and the change requested by Mr. Hanes. Ms. Byron replied that they had and now had streamlined the language for it. She stated that the staff had also made a small change to Development Condition 11, which was circulated it to the Board at that time.

Mr. Hanes stated in his rebuttal that it appeared that whomever owned the property would be irrelevant, as the neighbors had some strong feelings about the land. Mr. Hanes said that he felt the requested hours of operation was a reasonable request. He said that the grill would not have any adverse impact on anyone.

Mr. Hanes summarized that the conditions that staff had offered and those that Mr. Thoburn offered were sensible and would bring the operation into compliance.

Ms. Gibb asked for clarification of the original lights and why they had been removed. Mr. Thoburn replied that he had temporary lighting installed on the property powered by generators for several years. He said the County cited him in violation for having a generator on the property that was not an approved use. He said he was told he would have to request the use of generators through the BZA. Mr. Thoburn stated he did not have the finances to run electricity underground so he took the lights out, and now requested to have generators.

Mr. Pammel questioned if the number of light fixtures had been a problem. Mr. Thoburn gave an explanation as to the number of lights and why they had not been taken down permanently.

Ms. Gibb asked staff to compare their recommendation for lighting to what Mr. Thoburn had temporarily utilized in the past. Ms. Josiah replied that once the extra fixtures had been eliminated, the lighting was consistent with the staff's recommendation.

Ms. Gibb asked staff how their lighting study had been determined. Ms. Byron replied that the staff had not made any changes to what the BZA had approved originally. She said that staff did have problems with Mr. Thoburn's original lighting study that had been submitted with his original special permit. She said the BZA had granted him a certain amount of lighting, and he had not submitted anything new to justify additional lighting. She said the staff imposed the same condition that the Board had in 1992.

There were no other speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to Approve in Part SPA 91-C-070-4 for the reasons noted in the resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SPA 91-C-070-2 previously approved for outdoor recreation uses to permit modification of development conditions including but not limited to change in hours of operation, additional lighting, increased food service, addition of special events, and reduction of landscaping. Located at 1627 Hunter Mill

Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23, 26; 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (OTH HEARING GRANTED) (Deferred from 6/5/01 and 9/18/01) 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 October 16, 2001; 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 standards for the granting of a special permit.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect(s). 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED IN PART** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application, 1627 Hunter Mill Road (46.57 acres), and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structures and/or use(s) indicated on the special permit plat prepared by D.A. Bryant, P.C., dated May 15, 1996, revised through January 14, 1997, the landscaping plan prepared by D.A. Bryant, P.C., dated January 26, 1993, annotated by the Fairfax County Urban Forestry Branch of DPWES on March 15, 2001, and the berm survey plan prepared by Marlin R. Zook and Richard Overton Spencer, based upon aerial photography dated February 18, 2001, 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 minimum of seventy-five (75) and a maximum of one-hundred-thirty-one (131) parking spaces shall be provided. All parking shall be located on-site in the areas designated for parking on the special permit plat. No parking shall be permitted on Hunter Mill Road, Crowell Road, or along other neighborhood streets.

6. Notwithstanding that shown on the special permit plat, driving range lights shall be limited to a maximum of ten (10), thirty (30) foot high light poles, with a combined total of no more than twenty (20) light fixtures. All lights used to illuminate the driving range shall be extinguished no later than the time the driving range is closed to the public, pursuant to Condition #7, below. Parking lot lights shall not exceed twelve (12) feet in height. Parking lot lights shall be extinguished within one-half (½) hour after the driving range closing time. No bunker lights shall be permitted for use on the site. All parking lot and driving range lighting shall be on permanent fixtures except that one light no more than twelve (12) feet in height may be permitted in conjunction with each of the generators permitted

pursuant to Development Condition #26, below. All lights shall be fully shielded and directed downward. Driving range lights shall be a maximum of 1500-watt metal halide bulbs fitted with glare controls, or an equivalent. In no event shall the light bulbs be brighter that 1500 watts.

7. Upon issuance of the Non-RUP to establish this special permit amendment, the hours of operation for the driving range, putting area and clubhouse shall not exceed 8:00 a.m. until 9:30 p.m., September through April, and 8:00 a.m. until 9:30 p.m. May through August. Activities on the site requiring the use of motorized machinery or vehicles, including, but not limited to, maintenance of vehicles and equipment, ball collection requiring motorized equipment, mowing operations, and deliveries shall begin no earlier than 8:00 a.m. and shall cease one-half (½) hour after closing, daily, year round. Administrative and security staff shall be permitted on site at all times.

8. The required landscaping shall consist of that shown on the landscape plan prepared by D.A. Bryant, P.C., dated January 26, 1993, as annotated by the Fairfax County Urban Forestry Branch of DPWES on March 15, 2001, as installed as of October 16, 2001.

9. The barrier requirement shall be waived.

10. All vegetation as depicted on, and installed pursuant to, the landscaping plan prepared by D.A. Bryant, P.C., dated January 26, 1993, annotated by the Fairfax County Urban Forestry Branch of DPWES on March 15, 2001, shall be maintained, except that the two dying evergreen trees to the west of the northern end of the tee area and the dying deciduous tree at the northern end of the site along Hunter Mill Road, need not be maintained.

11. Stormwater management/Best Management Practices shall be provided, as determined by DPWES. Nothing in these conditions shall be construed to prevent the participation in a regional stormwater detention facility if approved by DPWES.

12. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Difficult Run watershed shall be implemented for this use. This program and plan shall provide for periodic monitoring and adjustment that demonstrates an intent to reduce the amount of nutrient, phosphate, and pesticide applied to the property over time. The design of this program and all monitored parameters shall be prepared in accordance with the Virginia Cooperative Extension Pest Management Guide and be reviewed by the Virginia Cooperative Extension, Fairfax County Office, as determined by DPWES prior to site plan approval. A copy of the approved pesticide management program shall be kept on-site at all times. Records of all applications of pesticides and herbicides shall be kept and shall be made available to County staff on request. To provide added protection for the Difficult Run Watershed, any on-site structural detention ponds shall be maintained to provide a length of detention and type of filtration necessary to remove pollutants which may be generated by turfgrass management.

13. The existing and proposed parking surfaces shall be maintained and landscaped in accordance to PFM standards as determined by DPWES.

14. All signs shall comply with Article 12, Signs. To preserve the residential character of the area, no back lighted signs, no illuminated signs, and no roof signs shall be installed.

15. Irrespective of that shown on the special permit plat, the total square footage for the clubhouse structure(s) shall not exceed 5,000 square feet, shall be a maximum of one story/thirty (30) feet in height, shall consist of a maximum of two (2) structures and shall be constructed no more than 10 percent closer to any peripheral lot line than the dimensions depicted on the special permit plat. The two (2) gazebos shall not exceed 1,500 square feet each. In addition, the architecture of the clubhouse and gazebos shall be consistent with one another in terms of building materials, style and color, shall not be of a theme park nature and shall be compatible with the neighborhood's residential architecture. The structures shall be constructed of wood, siding, masonry or stone; they shall not be metal. If the clubhouse consists of more than one structure, the two structures shall be constructed of the same materials and color. To ensure compliance with this condition prior to

issuance of a Building Permit, final architectural style and materials shall be subject to review and approval of the Zoning Administrator.

16. The attached covenant on the 2.0 acre property known as Tax Map 18-4((1))22 which is located at the intersection of Crowell Road and Hunter Mill Road that stipulates that so long as the 46 acre parcel located at Tax Map 18-4((1))23, 26; 18-4((8))A, 1A, 2, 3, 4, and 5 is operated as golf driving range in accordance with the terms and conditions of this approval, no land use application shall be filed relating only to this 2.0 acre parcel shall remain in full force and effect.

17. The proposed use shall continue to be served by public water and not by private well.

18. There shall be no use of loudspeakers on the property.

19. Notwithstanding any notes on the special permit amendment plat, accessory activities and operations shall be permitted in the clubhouse facility only and shall be limited to the following: child care center as qualified by Condition 21, golf equipment rental, administrative office use, maintenance of equipment directly related to the driving range facility, the sale of vending machine and snack bar concessions, and the sale of golf-related accessories. A "grill", consisting of a snack bar or refreshment counter where food, frozen desserts and/or beverages are prepared and sold, shall be permitted within the clubhouse provided that the area devoted to food preparation and serving occupies no more than 750 square feet or 15% of the square footage of the constructed clubhouse, whichever is less, and that the "grill" is clearly accessory to the driving range use. Notwithstanding the above, food and beverages may be consumed elsewhere on-site; however, no carry-out service shall be provided.

20. There shall be no arcade games or video games operating or present on the property.

21. Any child care center operating as an accessory use on the site shall be restricted to use by patrons while on site and employees of the driving range while they are working, and shall otherwise comply with all applicable state and county laws, ordinances and regulations for childcare.

22. The berms along Crowell Road may be no higher than those existing as of January 26, 1994. There are ten (10) high points, with approximate maximum elevations from west to east of 352', 352', 352', 354', 354', 354', 356', 360', 362', and 358'.

23. Berms proposed on the Special Permit Plat as "Proposed Extension Of Undulating Earth Berm (0' to 8'-12')" located along the eastern edge of the driving range shall be in conformance with the berm survey plan prepared by Marlin R. Zook and Richard Overton Spencer, based upon aerial photography dated February 18, 2001, and shall be a maximum of 367 feet above sea level in elevation. The berm shall be stabilized as determined by DPWES. The berm proposed on the special permit plat as "Proposed Extension of Undulating Earth Berm (0' to 16'-20')" located along the southern boundary shall be installed at the option of the applicant. If installed, it shall not exceed an elevation of 367 feet above sea level.

24. The tee area may be covered by a permanent or temporary structure as shown on the special permit plat. The area which may be covered shall not exceed 650 feet in length, 35 feet in width, or 20 feet in height. Temporary tee area structures, which shall include any structure covering the tee area for which a building permit may or may not be required by the County of Fairfax, may be utilized. A maximum of 100 tees shall be located on the site.

25. There shall be no special events held on the site.

26. The use of up to two generators shall be permitted, provided that the generators are completely enclosed with solid fencing compatible in material and color to the clubhouse. The generators shall be located to the south of the existing or any future clubhouse in order to locate it the farthest distance from residential properties possible.

These development conditions incorporate and supersede all previous development conditions.

Page 743 October 16, 2001, (Tape 2, 3, and 4), GOLF PARK, INC. & HUNTER MILL EAST, LLC, SPA 91-C-070-04 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SPA 91-C-070-2, continued from Page 742

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. 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 24, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 743, October 16, 2001, (Tape 4), After Agenda Items:

Approval of May 22, 2001 Minutes

Mr. Pammel noted that a correction needed to be made on Page 12 of the Minutes, before the resolution on that page.

Mr. Pammel made the motion to approve the minutes as corrected. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 743 October 16, 2001, (Tape 4) After Agenda Items:

Approval of October 9, 2001 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 1:59 p.m.

Minutes by: Judith A. Gobbi

Approved on:

Regina Thorn Corbett

Regina Thorn Corbett, 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 23, 2001. The following Board Members were present: Nancy Gibb; Paul Hammack; James Hart; Robert Kelley; James Pammel and John Ribble. Chairman DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:07 a.m. Vice Chairman Ribble discussed the policies and procedures of the Board of Zoning Appeals. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

Page 745, October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DAVID L. & SANDRA J. GIDDENS, VC 01-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in front yard of a lot containing 36,000 sq. ft. or less. Located at 7921 Tire Swing Rd. on approx. 13,402 sq. ft. of land zoned PDH-3. Providence District. Tax Map 39-4 ((45)) 16.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the application had been administratively moved to December 4, 2001, because the notices were not in order.

Mr. Hammack asked why notices were not done. Ms. Langdon replied that the applicant never picked up the notification package from the post office.

Mr. Pammel asked whether there was an explanation given to why the notices were not picked up. Mavis Stanfield, Staff Coordinator, replied that she had spoken with the applicant and no explanation was given.

Mr. Hammack said he was concerned that applicants were not sending their notices, which cost the County money.

Mr. Hart said the County was running big bills for advertising. He asked whether there was some way to emphasize the importance of completing the notification requirements. Ms. Langdon replied that the applicant was sent a letter informing them of their public hearing date and to expect the notification package 30-40 days prior to their public hearing date. She said the application packet also explained that the applicant has to prepare notifications.

Mr. Hammack asked whether there was something in the Statute that would require that the application be dismissed if the applicant did not pursue it. Ms. Langdon said there was nothing that required that, but the Statute said that the Board could dismiss or move cases, but it did not require that they be dismissed.

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Page 745, October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DAVID NARINS, VC 01-V-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.9 ft. from side lot line and 4.5 ft. high fence to remain in a front yard. Located at 1809 Cool Spring Dr. on approx. 14,483 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((14)) 19. (def. from 9/18/01 for decision only)

Vice Chairman Ribble noted that VC 01-V-111 had been deferred for decision only.

Mr. Hammack said he had reviewed the new plat, and given the siting of the house on the lot and the enlargement of the distance between the nearest corner of the house and the lot line, the applicant had done everything he could that would permit construction and minimize the variance request.

Mr. Hammack moved to approve VC 01-V-111 for the reasons noted in the Resolution.

Mr. Pammel noted that all the variances approved in the area were greater than what the applicant had requested.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID NARINS, VC 01-V-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.9 ft.**(THE BOARD APPROVED THE ADDITION 7.3 FEET)** from side lot line and 4.5 ft. high fence to remain in a front yard. Located at 1809 Cool Spring Dr. on approx. 14,483 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((14)) 19. (def. from 9/18/01 for decision only) 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 23, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant satisfied the required standards for a variance.
3. The siting of the house on the lot and the shallowness of the lot causes 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 fence, shown on the plat prepared by George M. O'Quinn, dated April 25, 2001 revised through October 3, 2001, 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. 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 31, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 747 October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. BRADFORD WHITE ASSOCIATES LC, VC 01-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 36A and 37 having lot widths of 12.11 ft. Located at 12711 Oxon Rd. on approx. 2.50 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((18)) 36. (Admin moved from 10/9/01)

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.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicant requested a variance to subdivide one lot into three lots, with proposed Lots 36A and 37 having a lot width less than the minimum required by the Zoning Ordinance. Lot 36A and 37 were proposed to have a lot width of 12.11 feet; and a minimum width of 150 feet is required by the Zoning Ordinance for the R-1 District. The three proposed lots would be accessed from a shared pipestem driveway to Oxon Road. Lot 36A was proposed to contain 36,554 square feet, Lot 37 was proposed to contain 36,145 square feet and Lot 38 was proposed to contain 36,162 square feet, which resulted in a density of 1.2 dwelling units per acre. Staff felt that the application did not meet all of the required standards for variances as outlined in the staff report.

Mr. Hammack asked what would happen to Outlot B and what was the strip of land extending from Lot 36 towards Outlot B. Mr. Bernal replied that Lot B was an outlot with a conservation easement and was supposed to remain.

Mr. Hammack asked in whose favor did the conservation easement run. Mr. Bernal replied Oakton Chase.

Mr. Hart said the application property was smaller than would yield what was requested and one way to do the math is to divide the density across the whole subdivision even though there is just the one parcel coming in. Mr. Hart asked if the density calculation was for the whole subdivision instead of just the piece of property that is the subject of the application. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the subdivision was created around 1995 or 1996 and in consolidating the land and determining the density for the entire subdivision, the lot was part of the Oakton Chase subdivision and was included in the original density calculations. She said they were looking at the entire subdivision with a density of .82 for the entire subdivision, and if you would subdivide the lot, the density for the whole subdivision would be .86. Ms. Langdon said the lot is part of the Oakton Chase subdivision and must be taken in that relationship. She

said many of the lots that request to be subdivided were independent subdivisions and were not part of another subdivision and stood on their own.

Mr. Hart asked how did staff know whether the lot stood alone or not. Ms. Langdon replied that was part of the research done and it was a submission requirement that the applicant do the research and have it verified by staff.

Ms. Gibb asked whether Lot 21 was a part of Oakton Chase. Ms. Langdon replied no.

Ms. Kelsey, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application. She said currently there were 36 lots in the approved subdivision. Ms. Kelsey said the current density shown on the plat was 0.81 and the proposal would make it 0.86. She said the citizens thought Lot 36 would remain as treed open space. Ms. Kelsey said Outlot B and Outlot C were required for stormwater management which was the reason there was a homeowner's association to maintain the open space. She stated that the application met the required standard for a variance, that the property was acquired in good faith. Ms. Kelsey said the applicants purchased the property thinking that since there was something that looked like pipestem lots within Oakton Chase they would subdivide into 3 lots. She said the pipestem lots located within Oakton Chase looked like pipestem lots but did not meet the technical definition as contained in the Zoning Ordinance. Ms. Kelsey said the lot was long and narrow and the developer did not leave enough acreage for development. She stated that subdividing with a variance would save more trees. Ms. Kelsey said the request was reasonable and consistent with the area. She said it would not be detrimental to other properties. Ms. Kelsey stated that staff indicated that they did not like triple stacking, but across the street there was a triple stacked pipestem. She stated that in her research she found no preclusion in the Zoning Ordinance or the Public Facilities Manual (PFM) for the proposed arrangement. Ms. Kelsey presented diagrams from the PFM reflecting the acceptable and non-acceptable pipestem lots. She submitted revised development conditions.

Mr. Hart asked what was the minimal lot size for a lot in the R-1 District. Ms. Langdon replied that it was 36,000 square feet.

Mr. Hart asked if Lot B was landlocked. Ms. Kelsey replied yes.

Vice Chairman Ribble called for speakers.

Tony Dorseff came forward to speak in opposition. He said he could accept 2 houses being built on the property but not 3. Mr. Dorseff said the applicant did not contact the neighbors to discuss the application. He said the variance would change the character of the neighborhood.

Ms. Kelsey stated in her rebuttal that she met with the Sully District Council Land Use and Transportation Committee and they did not take a position on the application.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said the applicant presented good arguments to subdivide 1 lot into 3 lots; however, he said he looked at both sides of the issue but he did not think it was fair to compare the subject area with Franklin Farms and to use that as a justification for triple stacking. Mr. Pammel said Oakton Chase and the development in the immediate area show a particular character of development and what was proposed was not consistent with that. Mr. Pammel said he could not say the lot was unique because it shared many of the same characteristics as Lots 34 and 35. Mr. Pammel moved to deny VC 01-Y-116 for the reasons noted in the Resolution.

Ms. Kelsey asked that the Board reconsider accepting subdivision of one lot into two lots. Mr. Pammel replied that Ms. Kelsey needed to submit a formal written request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRADFORD WHITE ASSOCIATES LC, VC 01-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots with proposed Lots 36A and 37 having lot widths of 12.11 ft. Located at 12711 Oxon Rd. on approx. 2.50 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((18)) 36. (Admin moved from 10/9/01) 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 23, 2001; 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 meet the required standards for a variance.
3. The uniqueness of the lot is not justifiable.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Hammack seconded the motion which carried by a vote of 6-0. 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 31, 2001.

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Mr. Pammel moved that the Board recess and go into Executive Session for consultation with legal counsel and/or briefing by staff members, consultants, pertaining to actual and probable litigation and to other specific legal matters requiring the provision of legal advice by counsel pursuant to Virginia Code 2.1-344A7. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

The Board recessed at 10:01 a.m. and reconvened at 10:08 a.m.

Mr. Hammack then moved that the members of the Board of Zoning Appeals certify that to the best of their knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia freedom of information act, and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the Board of Zoning Appeals during the Executive Session.

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Page 750 October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CATHERINE B. & WILLIAM A. MCCOLLOUGH, VC 01-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in front yard of a corner lot. Located at 6827 Old Chesterbrook Rd. on approx. 17,202 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((29)) 80.

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 McCollough, 6827 Old Chesterbrook 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 6-foot high fence in the front yard of a corner lot along Westmoreland Road. The Zoning Ordinance permits a maximum fence height of 4 feet in the front yard; therefore, a variance of 2.0 feet was requested for the height of the proposed fence. Mr. Bernal noted that a revised affidavit dated October 16, 2001, had been approved by the County Attorney's office and distributed to the Board.

Ms. McCollough presented the variance request as outlined in the statement of justification submitted with the application. She said the request was to replace an existing 4-foot fence with a 6-foot fence. Ms. McCollough stated that their yard was behind a bus stop and that their house sat below street level and the fence would provide them with some privacy. She requested a waiver of the 8-day waiting period.

Ms. Gibb asked what the fence would be made of. Ms. McCollough replied that it would be a board fence to match the neighborhood.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Hart moved to approve VC 01-D-135 for the reasons noted in the Resolution.

Ms. Gibb indicated that she passed the property daily and the house does sit low and she could see why the applicants requested the 6-foot fence.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CATHERINE B. & WILLIAM A. MCCOLLOUGH, VC 01-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6.0 ft. high fence in front yard of a corner lot. Located at 6827 Old Chesterbrook Rd. on approx. 17,202 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((29)) 80. 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 October 23, 2001; 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 is appropriate because of the strange configuration of the lot.
4. Another fence variance has been granted in the neighborhood.
5. The corner of the lot is an acute angle and most of the lot has street frontage and is impacted by front yard requirements.
6. Based on the photographs, the request will not be a significant negative impact on the neighbors.
7. The fence will allow the applicants to have a 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 a six (6) foot high fence as shown on the plat prepared by Curtis L. McAllister, dated November 9, 1999, as submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 moved to waive the 8-day waiting period. Ms. Gibb seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 23, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 752, October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN J. & IRMA K. SHEEHY, VC 01-M-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into two lots with each lot having a lot width of 75.0 ft. Located at 6436, 6438 and 6440 Columbia Pi. on approx. 1.16 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((12)) 9, 10 and 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. Adrian Fiano, Agent, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. The applicants proposed to consolidate the subject lots and re-subdivide into two (2) lots, with proposed Lots 9A and 11A having lot widths of 75 feet each. The minimum lot width of 100 feet is required by the Zoning Ordinance for the R-2 District. Both of the proposed lots would be located off a future service road adjacent to Columbia Pike. Lot 9A was proposed to contain 25,346 square feet, while Lot 11A was proposed to contain 24,978 square feet. It was staff's judgment that the application met all of the required standards for variances.

Mr. Pammel noted that it was rare for a favorable staff report on subdivision variances.

Mr. Fiano, the applicant's agent, presented the variance request as outlined in the statement of justification submitted with the application.

Ms. Gibb asked if there were houses currently on the lots. Mr. Fiano replied that there was one house. He said that there was a similar variance granted on the adjacent property.

Vice Chairman Ribble called for speakers.

Stephen Sheehy, applicant, came forward stating that the variance would enhance the character of the neighborhood and denial of the application would cause him a hardship.

Mr. Fiano asked for a waiver of the 8-day waiting period.

Vice Chairman Ribble closed the public hearing.

Ms. Gibb moved to approve VC 01-M-130 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

STEPHEN J. & IRMA K. SHEEHY, VC 01-M-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into two lots with each lot having a lot width of 75.0 ft. Located at 6436, 6438 and 6440 Columbia Pi. on approx. 1.16 ac. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((12)) 9, 10 and 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 October 23, 2001; 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 staff report was favorable and the request was fairly modest.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the subdivision of Lots 9, 10, and 11 as shown on the plat prepared by Harold A. Logan, dated April 12, 2001, as revised through July 17, 2001. All development shall be in conformance with this plat as qualified by these development conditions. 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 an additional 38.0 feet of right-of-way along the site's frontage on Columbia Pike (Route244). Dedication shall be conveyed to the Board of Supervisors in fee simple and be dedicated upon demand by Fairfax County or VDOT or at the time of subdivision plan approval, whichever occurs first.

3. The application site shall meet all tree cover requirements, as determined by the Urban Forester. Measures to ensure that trees designated to be saved shall be protected from damage by construction activity shall be implemented to the satisfaction of the Urban Forester.

4. The maximum limits of clearing and grading shall be the limits of disturbance as shown on the plat and shall be the minimum amount necessary to provide for the development shown on the approved plat. Prior to overlot grading plan approval, the Urban Forestry Division shall review the plan and final limits of clearing shall be designated to preserve as much vegetation as possible.

This approval, contingent upon above-noted conditions, 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 the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Ms. Gibb 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 October 23, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 754 October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER J. & PATRICIA S. INGLESE, SP 01-D-035 Appl. under Sect(s). 3 -303 of the Zoning Ordinance to permit a home professional office. Located at 1451 Cedar Ave. on approx. 7,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7)) (3) 66 and 67. **(RECONSIDERATION APPROVED ON 8/14/01)**

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher and Patricia Inglese, 1451 Cedar Avenue, McLean, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, made staff's presentation as contained in the staff report. Mr. Bernal indicated that the Board approved a reconsideration on the application. The applicant requested a special permit for a Home Professional Office to provide certified public accounting services from the basement of their home to serve one client at a time with a maximum of four clients per day. The public accounting service would consist of the applicant, who would provide the accounting services and his wife, who would provide the day to day management of the office. The proposed office would be located in the basement of the dwelling, which has an access from the rear yard. Approximately 567 square feet of the 2,600 square foot dwelling was proposed to be utilized for the home professional office or 22% of the dwelling. There was no new construction or other physical changes proposed for the site. The proposed hours of operation for

the home professional office were from 9:30 a.m. to 6:30 p.m., Monday through Friday and during the tax season on Saturdays, from 9:30 a.m. to 6:30 p.m. February 1 through April 15. Mr. Bernal stated that the applicant submitted revised development conditions of which staff had adopted all with exception of Number 14. Staff believed that there was adequate parking on the subject property, however staff would not object to the addition of applicant's condition regarding an additional parking space. Staff recommended approval of application SP 01-D-035 with the revised development conditions dated October 23, 2001.

Mr. Hart asked whether condition #10 meant that only one client at a time could visit the home professional office since it was cars that caused the impact.

Susan Langdon, Chief, Special Permit and Variance Branch stated that it was staff's intention that one client would mean one tax return.

Mr. Inglese presented the request as outlined in the statement of justification submitted with the application. He said he would be the only full time employee and that he would only have one client at a time. Mr. Inglese stated that typically there would be no conflict of more than one person because the appointments were spaced far apart. He said that during the off peak season it could be less than one client per day. Mr. Inglese stated that there was ample parking on the property, but he would widen the driveway if the Board thought it was necessary to do so. He also offered to put 8 trees along the side of the property. Mr. Inglese stated that the neighbors who originally opposed the application had written a letter retracting their opposition. He said he had obtained 22 signatures from neighbors in favor of the application and letters of support were also submitted.

Mr. Kelley asked the applicant if he could live without having clients on Saturdays. Mr. Inglese stated that he needed to see clients on Saturdays.

Mr. Hammack asked how the applicant would handle business from corporations. Mr. Inglese said he did not have large clients, that he typically met with one person.

Mr. Hammack asked whether the applicant was in agreement with the conditions. Mr. Inglese replied yes.

Mr. Hammack said he was concerned about Saturday hours. Mr. Inglese stated that 25% of his clients could not come within normal business hours.

Mr. Hammack said he was concerned about the commercial nature of the application. Mr. Inglese stated that during tax season, which was in the winter months, the impact would be the same as having guests over to visit.

Ms. Gibb asked where the trees would be located. Mr. Inglese stated that the trees would be on both sides of the property and no would be able to see the cars from the street.

There were no speakers, and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to approve SP 01-D-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

CHRISTOPHER J. & PATRICIA S. INGLESE, SP 01-D-035 Appl. under Sect(s). 3 -303 of the Zoning Ordinance to permit a home professional office. Located at 1451 Cedar Ave. on approx. 7,500 sq. ft. of land zoned R-3 and HC. Dranesville District. Tax Map 30-2 ((7)) (3) 66 and 67. **(RECONSIDERATION APPROVED ON 8/14/01)** 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 23, 2001; 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).3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with th e 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, 1451 Cedar Avenue, 7,500 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 L. Carl Gardner, Jr., dated January 31, 2001, 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 hours of operation of the home professional office shall be limited to 9:30 a.m. to 6:30 p.m., Monday through Friday and 9:30 a.m. to 4:30 p.m. on Saturday from February 1 through April 17.

6. Upon issuance of a Non-Residential Use Permit, the maximum number of employees shall be limited to two (2) on-site at any one time.

7. The area utilized for the home professional office shall not exceed 570 square feet.

8. The dwelling that contains the home professional office shall also be the primary residence of the applicant.

9. Parking shall be limited to two (2) spaces for the dwelling and two (2) spaces for the Home Professional Office. All parking shall be on-site as shown on the special permit plat.

10. No more than two (2) client vehicles at any one time on site and the maximum number of clients per day shall be limited to three (3).

11. An administrative variance shall be obtained for the location of the existing garage.

12. There shall be no signage associated with the home professional office.

13. The applicant shall construct a walkway from the driveway, to the steps leading to the entrance of the home office.

14. The applicant shall maintain a row of evergreen trees (5-10 trees) along the Lot 66 property line for neighbor privacy.

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. 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 31, 2001. This date shall be deemed to be the final approval date of this special permit.

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Page 757 October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. DONALD AND IRMA REISER, VC 01-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and one outlot with proposed Lot 2 having a lot width of 12.0 ft. and proposed Lot 3 having a lot width of 17.5 ft. Located at 4042 and 4044 Hunt Rd. on approx. 1.50 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 14 and 14A. (moved from 7/24/01) (deferred from 9/11/01 for decision only)

Vice Chairman Ribble noted that the application had been deferred for decision only.

Susan Langdon, Chief, Special Permit and Variance Branch, indicated that the applicant had submitted additional information which was distributed to the Board, but staff had not had an opportunity to review it.

Mr. Hart asked Mr. Sanders to explain the new plat. Mr. Sanders said since the last public hearing they had walked the property with the neighbors and that was the reason the plat was finalized over the weekend. He said the plat showed expanded limits of clearing and grading and the addition of evergreen trees and an ingress/egress easement from the driveway to the outlot.

Mr. Hart said a neighbor had a problem with looking at the sides of new houses and he thought the supplemental plantings would be along the street. Mr. Sanders said the neighbor was in agreement with what was reflected on the new plat.

Ms. Langdon stated that staff would need a revised plat that was signed and sealed.

Mr. Hammack moved to defer decision to October 30, 2001, at 9:00 a.m. to allow time for a revised plat to be submitted by the applicant and to allow staff time to review the language changes. 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 758, October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. YOUNG H. SON, VC 01-B-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into six lots and one outlot with proposed Lot 1 having a lot width of 15.9 ft., Lot 2 having a lot width of 4.6 ft., Lot 3 having a lot width of 4.5 ft., Lot 4 having a lot width of 4.3 ft., Lot 5 having a lot width of 4.9 ft. and Lot 6 having a lot width of 4.4 ft. and to permit dwellings on Lots 5 and 6 to be located 15.0 ft. from front lot line. Located at 4512 Ravensworth Rd. on approx. 1.56 ac. of land zoned R-4. Braddock District. Tax Map 71-1 ((1)) 52.

Vice Chairman Ribble noted that VC 01-B-126 had been adminitratively moved to January 15, 2002.

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Page 758, October 23, 2001, (Tape 1), Scheduled case of:

9:00 A.M. LESTER H. SMALLWOOD, JR., SP 01-L-037 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 4.8 ft. from side lot line and to permit an accessory dwelling unit. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Concurrent with VC 01-L-101) (Admin. moved from 8/21/01 for notices)

9:00 A.M. LESTER H. SMALLWOOD, JR., VC 01-L-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of an addition 4.8 ft. from side lot line and 9.8 ft. from other side lot line. Located at 6116 Pioneer Dr. on approx. 8,412 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((5)) (9) 17. (Concurrent with SP 01-L-037) (Admin. moved from 8/21/01 for notices)

Vice Chairman Ribble noted that the notices had not been done. Susan Langdon, Chief, Special Permit and Variance Branch, stated that staff would agree to an indefinite deferral. She said this was the second time the applicant had not completed his notices. Ms. Langdon said each time this application was advertised it cost $695.

Ms. Langdon stated that the special permit was included as part of the application but the addition was small enough that the applicant could apply for an administrative approval for the building in error.

Mr. Hart asked for clarification regarding the letter submitted by the applicant. Jennifer Josiah, Senior Staff Coordinator, replied that the applicant was having problems with his contractor and the letter referred to those issues.

Mr. Hart moved to indefinitely defer SP 01-L-037 and VC 01-L-101. Ms. Gibb seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted against the motion. Chairman DiGiulian was absent from the meeting.

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Page 758, October 23, 2001, (Tape 1), Scheduled case of:

9:30 A.M. SANG T. KIM AND BONG Y. KIM, A 2001-MA-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that a building addition which was constructed on the appellants' property violates setback and floor area ratio requirements for the C-5 District and was constructed without valid site plan approval or a valid Building Permit, all in violation of Zoning Ordinance provisions. Located at 8716 Little River Tnpk. on approx. 8,150 sq. ft. of land zoned C-5. Mason District. Tax Map 59-3 ((1)) 8B. (Def. from 5/22/01 and 7/10/01)

Vice Chairman Ribble noted that an Intent to Defer was approved on October 2, 2001. Mr. Pammel moved to defer A 2001-MA-004 to January 8, 2002 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting

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Page 759, October 23, 2001, (Tape 1), Scheduled case of:

9:30 A.M. IL CIGNO RISTORANTE, A 2001-HM-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellant has installed on the property a tent which displays advertising signs, without Building Permit or Sign Permit approval and without obtaining Architectural Review Board approval of such permits, as required in the Historic Overlay District, all in violation of Zoning Ordinance provisions. Located at 1617 Washington Pl. on approx. 4,075 sq. ft. of land zoned PRC and HD. Hunter Mill District. Tax Map 17-2 ((31)) 1617 and B.

Vice Chairman Ribble noted that A 2001-HM-021 was administratively moved to January 8, 2002.

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Page 759, October 23, 2001, (Tape 1), After Agenda Item:

Approval of October 10, 2000 and May 29, 2001 Minutes

The Board deferred approval of the Minutes to October 30, 2001.

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Page 759, October 23, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration
Santiago Moreno, VA 83-D-017

The Board took no action on the Request for Reconsideration; consequently, the request was denied.

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Page 759, October 23, 2001, (Tape 1), After Agenda Item:

Request for Reconsideration for two development conditions
Golf Park, Inc. SPA 91-C-070-4

The Board took no action on the Request for Reconsideration; consequently, the request was denied.

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Page 759, October 23, 2001, (Tape 1), After Agenda Item:

Approval of October 16, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Ms. Gibb seconded the motion which carried by a vote of 6-0 Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:26 a.m.

Minutes by: Regina Thorn Corbett

Approved on: February 5, 2002

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

A regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Tuesday, October 30, 2001. 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 policies 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.

9:00 A.M. JOHN P. EMERY, VC 01-L-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.7 ft. from side lot line. Located at 5535 Arbor Rd. on approx. 10,799 sq. ft. of land zoned R-3. Lee District. Tax Map 91-4 ((6)) 48.

This case was administratively moved to November 27, 2001, at 9:00 am.

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Page 761, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. CHRISTOPHER W. CLUBB AND MERRIAM MASHATT, VC 01-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5 ft. 10 5/8 in. from side lot line. Located at 6923 River Oaks Dr. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Merriam Mashatt, 6923 River Oaks Drive, McLean, Virginia, replied that it was.

Mavis Stanfield, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 5.0 feet, 10 5/8 inches from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 14 feet 3/8 inches was requested.

Ms. Mashatt presented the variance request as outlined in the statement of justification submitted with the application. She stated that the lot in question was unique because it was 100 feet in width as opposed to all of the other lots in the neighborhood, which were 150 feet in width. She said that the proposed garage would only be one story. Ms. Mashatt explained that there was no other location on the property to construct the garage due to the location of the septic field. She stated that there was neighborhood support of the application.

Mr. Hart stated that the size of the garage was larger than what was usually requested. Ms. Mashatt explained that there was an existing mudroom behind the carport that was the rear entrance of the home and the intent was to extend the garage to the mudroom.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to approve VC 01-D-134 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER W. CLUBB AND MERRIAM MASHATT, VC 01-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5 ft. 10 5/8 in. from side lot line. Located at 6923 River Oaks Dr. on approx. 21,781 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 19. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 2001; 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 standards for the granting of a variance.
3. The applicants have explored the possibility of locating the garage on other areas on the lot and the proposed area was the only functional location on the property to construct the garage.
4. The neighborhood was going through re-development and transition and the proposed variance would not be out of character or not in harmony with the neighborhood.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for a garage addition, shown on the plat prepared by Jon R. Kline, date stamped August 14, 2001, 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 garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0-1. Ms. Gibb 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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 763 October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. LOUIS AND MARY BERTAMINI, VC 01-M-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to be located 8.37 ft. from side lot line. Located at 3516 Lake St. on approx. 9,894 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((17)) (J) 2 and 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. Jason Brown, 2534 E. South Walter Reed, Alexandria, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. Due to a lot line adjustment which reconfigured the lot area the applicants requested a variance to permit an existing dwelling to remain 8.37 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 3.63 feet was requested.

Mr. Brown, contract purchaser, presented the variance request as outlined in the statement of justification submitted with the application. He stated that the variance request was to achieve a minor lot line adjustment.

Mr. Hammack stated that the plat reflected a sunroom that extended out to the side lot line. Mr. Brown replied that the applicant intended to remove the sunroom.

Mr. Hammack suggested that the Board include a condition that mandated the removal of the sunroom.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to approve VC 01-M-144 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

LOUIS AND MARY BERTAMINI, VC 01-M-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling to be located 8.37 ft. from side lot line. Located at 3516 Lake St. on approx. 9,894 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((17)) (J) 2 and 3. Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 2001; 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 standards for the granting of a variance.
3. The lot is irregularly shaped.
4. Both of the lots were classified as buildable within the County.
5. Through a boundary line adjustment, the resulting product would be far superior than allowing development on the lots as they exist presently.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 as shown on the plat prepared by Elizabeth L. Thurber, dated, July 23, 2001, as revised through October 15, 2001, as submitted with this application and is not transferable to other land.

2. The sunroom shall be removed.

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. Hart seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Page 765, October 30, 2001, (Tape 1), LOUIS AND MARY BERTAMINI, VC 01-M-144, continued from Page 764

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 765, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. BECKFORD T. MACKEY, SPA 99-D-003 Appl. under Sect(s). 8-918 of the Zoning Ordinance to amend SP 99-D-003 previously approved for an accessory dwelling unit to delete atrium. Located at 1014 Harriman St. on approx. 2.14 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((15)) 3. (continued from 10/16/01)

Susan Langdon, Chief, Special Permit and Variance, stated that the applicant had submitted a letter explaining that he worked for the Department of State and was on 24-hour call for the next several months and was out of town. She suggested a deferral to March 5, 2002.

Mr. Hammack moved to defer SPA 99-D-003 to March 5, 2002, 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 765, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. RAAD AL-BERMANI AND AMIRA AL-BERMANI, VC 01-P-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line. Located at 9220 Okla Dr. on approx. 27,635 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 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. Raad Al-Bermani, 9220 Okla Drive, Fairfax, Virginia, replied that it was.

Juan Bernal, Staff Coordinator, presented the variance request as contained in the staff report. The applicants requested a variance to permit the construction of a garage addition to be located 14 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 6 feet was requested.

Mr. Al-Bermani presented the variance request as outlined in the statement of justification submitted with the application. He stated that his intent was to construct a garage in place of the existing carport to provide shelter for his vehicles and additional storage space.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hart moved to approve VC 01-P-139 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

RAAD AL-BERMANI AND AMIRA AL-BERMANI, VC 01-P-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.0 ft. from side lot line. Located at 9220 Okla Dr. on approx. 27,635 sq. ft. of land zoned R-1. Providence District. Tax Map 58-4 ((10)) 18. 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 October 30, 2001; 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 standards for the granting of a variance.
3. The lot is narrow and small.
4. The lot pre-dates what would be required under the current R-1 standards.
5. The homes in the neighborhood that were originally built in the 1950's and 1960's were beginning to be torn down.
6. The variance request was minimal.
7. The photographs and statement of justification indicated that there would be no detrimental impact on the neighborhood.
8. There were several variances approved in the neighborhood that were consistent with this 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 an addition as shown on the plat prepared by Daniel J. Maletic, dated, August 20, 2001, as submitted with this application and is not transferable to other land.

Page 767, October 30, 2001, (Tape 1), RAAD AL-BERMANI AND AMIRA AL-BERMANI, VC 01-P-139, continued from Page 766

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 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 November 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 767, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DAR-AL-HIJRAH ISLAMIC CENTER, INC., SPA 84-M-009-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 previously approved for a place of worship to permit a private school of general education which has an enrollment of 100 or more students daily. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with VC 01-M-008). (moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01)

Chairman DiGiulian stated that an intent to defer had been approved at the October 23, 2001, public hearing.

Mr. Pammel moved to defer SPA 84-M-009-2 to January 29, 2002 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 767, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. NORTH AMERICAN ISLAMIC TRUST, INC., VC 01-M-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 2.0 ft. from front lot line of a corner lot. Located at 3159 Row St. on approx. 3.32 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B. (Concurrent with SPA 84-M-009-2). (moved from 4/3/01 and 5/22/01) (Deferred from 7/17/01)

Chairman DiGiulian stated that an intent to defer had been approved at the October 23, 2001, public hearing.

Mr. Pammel moved to defer VC 01-M-008 to January 29, 2002 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 767 October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. JENNIFER G. KUSMIK, VC 01-P-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. and porch 9.3 ft. from side lot line. Located at 2847 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 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. Jennifer Kusmik, 2847 Meadow Lane, Falls Church, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested a variance to permit the construction of a two-story addition and a one-story porch to the dwelling to be located 8.3 feet and 9.3 feet from the north side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, variances of 1.7 feet and 0.7 feet, respectively, were requested for the addition and the porch.

Ms. Kusmik presented the variance request as outlined in the statement of justification submitted with the application. She stated that her intent was to remove an existing porch and construct the new addition that would extend to the existing footprint of the home. She said that the variance was needed because her lot was extremely narrow.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to approve VC 01-P-132 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JENNIFER G. KUSMIK, VC 01-P-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.3 ft. and porch 9.3 ft. from side lot line. Located at 2847 Meadow La. on approx. 5,625 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((8)) 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 October 30, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant indicated compliance with the prescribed standards for the granting of a variance.
3. The lot is narrow.
4. The proposed variance would not extend any farther toward the side lot line than where the house is currently situated.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition and porch shown on the plat prepared by Alexandria Surveys International, LLC, dated June 18, 2001, as revised through August 9, 2001, 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 and porch shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 769 October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. P. BRADFORD STERL, VA 00-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line. Located at 8506 Lewinsville Rd. on approx. 34,739 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 29. (Admin moved from 11/6, formerly VC 01-D-133)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Brad Sterl, 8506 Lewinsville Road, McLean, Virginia, replied that it was.

Jennifer Josiah, Senior Staff Coordinator, presented the variance request as contained in the staff report. The applicant requested approval to permit the construction of a garage addition to be located 12 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, a variance of 8 feet was requested.

Mr. Sterl presented the variance amendment as outlined in the statement of justification submitted with the application. He stated that the original variance submission was incorrect with respect to the side yard measurement and the amendment corrected the error.

Ms. Gibb stated that there was a letter from an adjoining neighbor. Mr. Sterl replied that he was aware of the letter. He explained that his neighbor's home was approximately 120 feet from the proposed addition.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Ms. Gibb moved to approve VA 00-D-060 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

P. BRADFORD STERL, VA 00-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.0 ft. from side lot line. Located at 8506 Lewinsville Rd. on approx. 34,739 sq. ft. of land zoned R-1. Dranesville District. Tax Map 29-1 ((1)) 29. (Admin moved from 11/6, formerly VC 01-D-133) 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 30, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The proposed construction was not consistent with the previously approved variance due to an error on the plat and architectural drawings.
3. The impact on the adjacent property would be minimal.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Scott W. Sterl, AIA, dated July 16, 2001, and signed August 15, 2001, 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 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. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 771, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. DONALD AND IRMA REISER, VC 01-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and one outlot with proposed Lot 2 having a lot width of 12.0 ft. and proposed Lot 3 having a lot width of 17.5 ft. Located at 4042 and 4044 Hunt Rd. on approx. 1.50 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 14 and 14A. (moved from 7/24/01)(deferred from 9/11/01 and 10/23/01 for decision only)

Susan Langdon, Chief, Special Permit and Variance Branch, informed the Board that there was a letter regarding the case that incorrectly stated that Supervisor Bulova supported the application. Supervisor Bulova had not given support to the application but was not opposed to it either.

Mr. Hammack asked staff if the applicant's proposed development condition changes had been incorporated into the revised development conditions that the Board had received. Jennifer Josiah, Senior Staff Coordinator, replied that the applicant's proposed development conditions had been incorporated.

H. Kendrick Sanders, agent for the applicants, stated that they had no issue with the way the conditions were worded. He stated that he had spoken with a member of Supervisor Bulova's office regarding the application and they had no objection to the application. Mr. Sanders stated that the applicants had provided for access to the open space and had walked the property with the neighbors and flagged tree save areas. He said that the new plat reflected maximized limits of clearing and grading. He reiterated that the variance would be of lesser impact on the property than developing it by-right.

There were no speakers, and Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that the property could be developed as a matter of right and he was not happy with the way the applicant's had proposed to deal with Outlot A. He said that it was a convenience for the developer to be able to develop 3 lots instead of 2.

Mr. Hammack moved to deny VC 01-B-071. Mr. Pammel seconded the motion which failed by a vote of 2-4. Chairman DiGiulian, Ms. Gibb, Mr. Hart and Mr. Ribble voted against the motion. Mr. Kelley was not present for the vote.

Ms. Gibb moved to approve VC 01-B-071 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DONALD AND IRMA REISER, VC 01-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots and one outlot with proposed Lot 2 having a lot width of 12.0 ft. and proposed Lot 3 having a lot width of 17.5 ft. Located at 4042 and 4044 Hunt Rd. on approx. 1.50 ac. of land zoned R-2. Braddock District. Tax Map 58-4 ((1)) 14 and 14A. (moved from 7/24/01 and deferred for decision only from 10/23/01) 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 30, 2001; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The variance proposal would have less impact than the by-right development.
3. The lot is unusually shaped.
4. The applicants have made every effort to conserve the back portion 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 lots 14 and 14A as shown on the plat prepared by BC Consultants dated March 28, 2001, as revised through October 25, 2001. 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. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as approved by DPWES, unless waived or modified by DPWES.

3. The applicant shall grant an ingress/egress easement for the benefit of proposed Lots 1, 2 and 3 over the common driveway shown on the variance plat. Said easement shall be the subject of a private maintenance agreement to be recorded at time of subdivision plat approval for the Application Property. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement.

4. The limits of clearing and grading shall be as shown on the variance plat and the minimum amount necessary to provide for the development shown on the approved variance plat and shall depict the limits of clearing to preserve as much vegetation possible, as determined by the Urban Forestry Division of DPWES. Prior to approval of an overlot grading plan, a tree preservation plan shall be submitted for the review and approval of the Urban Forestry Division.

5. A conservation easement shall be recorded among the land records of Fairfax County over Outlot A as shown on the variance plat. The applicant shall record a conservation easement to the benefit of Fairfax County, in a form approved by the Office of the County Attorney, over the area in proposed Outlot A as shown on the submitted variance plat. The conservation easement shall ensure that area within Outlot A remain in undisturbed open space, and shall prohibit the construction of any structures. The easement shall specify that undisturbed open space shall be maintained by hand, as needed only to remove dead and dying vegetation, and there shall be no fertilizing or mowing of weeds or grass. Initial prospective purchasers of the home on proposed Lots 1, 2 and 3 and Outlot A shall be advised of these requirements in writing prior to contract execution. Said purchasers shall be required to acknowledge receipt of this information in writing. Notwithstanding what is shown on the plat, Outlot A shall be conveyed to a homeowners' association in a form as approved by the County Attorney. In the event that Outlot A is not conveyed as provided herein, it may not be developed in the future.

Pursuant 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 4-2. Mr. Hammack and Mr. Pammel voted against the motion and Mr. Kelley was not present for the vote.

Page 774, October 30, 2001, (Tape 1), DONALD AND IRMA REISER, VC 01-B-071, continued from Page 773

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 2001. This date shall be deemed to be the final approval date of this variance.

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Page 774, October 30, 2001, (Tape 1) Scheduled case of:

9:00 A.M. TRUSTEES OF THE CHURCH OF THE LIVING GOD FULL GOSPEL MINISTRIES, INC., SP 01-V-028 Appl. under Sect(s). 3-403 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 6234 Quander Rd. on approx. 1.98 ac. of land zoned R-4, HC and CRD. Mt. Vernon District. Tax Map 83-3 ((22)) 2. (Admin moved from 7/24/01 and 10/2/01)

This case was indefinitely deferred.

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Page 774, October 30, 2001, (Tape 1) Scheduled case of:

9:30 A.M. TAVARES FAMILY L.P., A 2001-LE-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that appellants must clear violations indicated in a Notice of Violation dated June 15, 2001, within 30 days of the date of the Notice. Located at 7805 Cinder Bed Rd. on approx. 21,780 sq. ft. of land zoned I-4. Lee District. Tax Map 99-2 ((1)) 22.

This case was administratively moved to December 14, 2001, at 9:30 a.m.

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Page 774, October 30, 2001, (Tape 1) Scheduled case of:

9:30 A.M. MOHAMMAD Q. KHAN AND REHMAT BIBI, A 2001-DR-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal of determination that the dwelling unit located on the appellant's property is occupied by two families in violation of Par. 1 of Sect. 2-502 of the Zoning Ordinance. Located at 1338 Shallow Ford Rd. on approx. 12,900 sq. ft. of land zoned R-3. Dranesville District. Tax Map 10-2 ((6)) 2. (Admin moved from11/6/01)

Chairman DiGiulian stated that there was a withdrawal request. Mr. Hammack asked staff if the County had sent an inspector to the property to make sure that the violation had been cleared.

William E. Shoup, Deputy Zoning Administrator, replied that the violation was for two families occupying a dwelling unit. He said that the owner of the property had submitted an affidavit that indicated that the second family had moved and an inspector had been to the property to verify that.

Mr. Hammack moved to withdraw A 2001-DR-024. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 774, October 30, 2001, (Tape 1) After Agenda Items:

Approval of October 10, 2000 and May 29, 2001 Minutes

Mr. Hammack moved to approve the Minutes. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 775, October 30, 2001, (Tape 1) After Agenda Items:

Request for Reconsideration
VC 01-Y-116, Bradford White Associates

Mr. Pammel stated that when the Board granted a reconsideration, it allowed an applicant to appear a second time before the Board without any payment. He stated that applicants should be prepared to make any modifications to the applications at the time of the first hearing. He said that the case in question was denied and then they immediately requested reconsideration based on a modification for two lots. He stated that the case should be treated as a new application and should be subject to the notice and advertising fees.

Mr. Hart asked how much the filing fee and advertising costs were. Susan Langdon, Chief, Special Permit and Variance Branch, replied that the filing fee was $1,485 and the advertising fee was approximately $350.00

Jane Kelsey, agent for the applicants, stated that the applicants did not have a problem with paying the fees; however, submitting a new application would take at least 4 months where reconsideration requests moved in a more timely fashion. She stated that the she had asked for the official reconsideration policy from staff and was not provided with it. She said that she had an old copy of the reconsideration policy that was different than the current, which stated that if the request for reconsideration was made before anyone had left the room, then readvertising was not required.

Ms. Langdon stated that the new policy for reconsideration was under consideration for adoption with the By-laws. She explained that once a case was closed, a decision was made and then a request for reconsideration was granted, a new hearing date had to be set and the case had to be readvertised.

Mr. Pammel moved to deny the request for reconsideration. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel moved to waive the 12-month waiting period for refiling an application. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the votes.

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Page 775, October 30, 2001, (Tape 1) After Agenda Items:

Approval of October 23, 2001 Resolutions

Mr. Pammel moved to approve the Resolutions. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 775, October 30, 2001, (Tape 1) After Agenda Items:

Intent to Defer
A 2001-LE-001, Delano Container Services, Inc.

William E. Shoup, Deputy Zoning Administrator, stated that the appeal involved a recycling center use that was operating without a site plan and a non-residential use permit. The appellants indicated that a site plan would be filed no later than November 2, 2001, and they had requested the deferral to allow time for the review process to take place. Mr. Shoup stated that it was most likely that a site plan would be approved at some point during the month of May. He suggested keeping a tighter time frame to ensure that the process stayed on track. He said that the appellants would still have to make whatever improvements the site plan required in order to get their non residential use permit, which would then constitute compliance. Mr. Shoup recommended a deferral to March 5, 2002.

Mr. Hammack moved to defer A 2001-LE-001 to March 5, 2002, at 9:30 a.m. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

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The Board discussed the memorandum from Brian McCormack regarding Emmanuel Stikas v. Board of Zoning Appeals and Randy Lieven and Arthur Kyser v. Jane W. Gwinn. The Board requested a meeting on November 6, 2001, at 10:30 a.m., with Brian McCormack and Pat Taves to discuss several issues that were mentioned in the memorandum.

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As there was no other business to come before the Board, the meeting was adjourned at 10:22 a.m.

Minutes by: Lori M. Mallam

Approved on: February 26, 2002

Regina Thorn Corbett

Regina Thorn Corbett, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals